

SMALL BUSINESS ADVOCACY IMPROVEMENT ACT OF 2002

MAY 2, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MANZULLO, from the Committee on Small Business,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4231]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 4231) to improve small business advocacy, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF LEGISLATION

The purpose of this legislation is to amend the Small Business Act to strengthen and improve the Office of Advocacy within the Small Business Administration and to ensure that there exists an entity in the executive branch that has the statutory independence and adequate financial resources to effectively advocate for and on behalf of small businesses.

BACKGROUND AND NEED FOR LEGISLATION

There is abundant evidence, which has been the recurring focus of hearings of this Committee, that the Nation's small businesses continue to be burdened by excessive regulations and that this burden falls disproportionately upon small businesses. In his speech to the Women's Entrepreneurship Summit, held in Washington, D.C., March 19, 2002, the President underscored the complication encountered by small businesses in doing business and the excessive costs that needless regulations can place on small business concerns. In this respect the President stated:

“There are a lot of federal regulations that complicate the lives of small business people all across the country. The SBA [Small Business Administration] has calculated that the hidden costs of regulations to businesses with fewer than 20 workers * * * comes down to \$7000 per worker. That’s a lot of money, particularly if you are trying to figure out ways to expand the employment base. And this is a drag on our economy. Hidden costs are a drag upon our economy.”

The President has pledged to clean up the regulatory burden on small businesses. In line with this objective, an independent office of small business advocacy will help to ensure that federal agencies properly assess the impact of proposed regulations on the small business community and comply with the statutory obligations with respect to small business.

It is essential to Congress in performing its constitutional duties and to the President in carrying out his small business objectives that there is an office that acts as an independent advocate for small businesses and can provide unbiased views of present and proposed regulations, without being restricted by the views or policies of the Small Business Administration or any other federal executive branch agency.

To be effective, an office that acts as an advocate for small businesses requires sufficient resources to conduct creditable economic studies and research essential to an accurate evaluation of the impact of regulations on small businesses, the role of small business in the Nation’s economy, and the barriers to the growth of small businesses. In the past, the Office of Advocacy has not had the necessary resources. This legislation helps to ensure that resources are available to support the independence of the office and to assure that the research, information, and expertise provided by an independent office of advocacy is a valid source of information and advice for Congress and the federal agencies with which the office will advocate for small businesses.

SUMMARY OF LEGISLATION

The legislation makes certain amendments, briefly reviewed in this summary, to Public Law 94–305 (15 U.S.C. 634a–634g) in order to strengthen and improve the Office of Advocacy. The Chief Counsel is to be appointed by the President, with the advice and consent of the Senate, without regard to political affiliation and solely on the grounds of fitness to perform the duties of the office. During the history of the Office of Advocacy, there have been extended periods where the position of Chief Counsel has been vacant. To provide some degree of continuity in office, a serving Chief Counsel may remain in office, at the pleasure of the incumbent President, for one year after a presidential term has expired.

Small business concerns owned and controlled women, by veterans, and service-disabled veterans are added, as applicable, to those small business concerns named as requiring assistance as apart of the primary functions of the Office of Advocacy. Minority owned small businesses are included in the present provisions of the Act. In addition as a primary function, the Chief Counsel is empowered to make recommendations to the President and Congress with respect to issues and regulations affecting small businesses.

As functions in addition to those presently mandated by statute, the Office of Advocacy will be required to maintain economic databases and share the information with Congress and the Small Business Administration, and to enter into a memorandum of understanding with the Small Business and Agriculture Regulatory Enforcement Ombudsman to provide for greater cooperation between the two offices.

Independence of the Office of Advocacy is contingent upon needed resources which in the past have been diminished in the executive branch budgetary review process administered by the Office of Management and Budget. To ensure that such resources are provided, the Chief Counsel is required to transmit to the President annually estimated expenditures and proposed appropriations for the Office of Advocacy, which the President must include in the Budget without revision. This provision is not without precedent. Other independent agencies within the Executive Branch already have this authority, including the International Trade Commission, to insure that their decisions are truly independent and not influenced by any budgetary manipulations.

The legislation would permit the appointment of two Deputy Chief Counsels, one responsible for regulations and the other for economic research and studies. The bill also defines the duties of regional advocates, one in each of the ten Federal regions. The Small Business Administration is required to provide adequate office space, equipment, and personnel to the Office of Advocacy.

The Chief Counsel is specifically required to report to the President and Congress, at least annually, concerning federal agency compliance with the Regulatory Flexibility Act. The legislation reauthorizes the Office of Advocacy for a 3-year period, i.e., \$10,000,000 for fiscal year 2003, \$12,000,000 for fiscal year 2004, and \$14,000,000 for fiscal year 2005.

COMMITTEE ACTION

The Committee held two hearings, one on March 12, 2001, and another on March 20, 2002. Both hearings were directed at receiving testimony and reviewing draft legislation as to how to strengthen and make the Office of Advocacy more independent. Following these hearings, H.R. 4231 was introduced by Congressman Donald A. Manzullo (R-IL) for himself and Congresswoman Nydia Velázquez (D-NY) on April 16, 2002, and was referred to the Committee on Small Business. On April 17, 2002, the Committee on Small Business met to consider the bill. There were no amendments. The bill was ordered favorably reported by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation. There was no recorded vote taken in connection with ordering H.R. 4231 reported.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirements of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to: (a) reduce the unnecessary and excessive regulatory burden disproportionately placed on small businesses by certain federal agencies; (b) ensure that there exists an entity that has the statutory independence and adequate financial resources to effectively advocate for and on behalf of small businesses; (c) improve the effectiveness of the Small Business and Agriculture Regulatory Enforcement Ombudsman to resolve small business issues by working in cooperation with the Office of Advocacy; and, (d) collect and make available creditable economic studies, research, and expertise for the accurate assessment of the impact of regulations on small businesses, the role of small businesses in the Nation's economy, and the barriers of growth to small businesses.

STATEMENT OF CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the cost estimate for H.R. 4231 from the Director of the Congressional Budget office as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 29, 2002.

Hon. DONALD MANZULLO,
*Chairman, Committee on Small Business,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4231, the Small Business Advocacy Improvement Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4231—Small Business Advocacy Improvement Act of 2002

H.R. 4231 would increase the amount authorized to be appropriated under current law for the Office of Advocacy within the Small Business Administration (SBA). The Office of Advocacy researches and assesses the effect of federal programs on small businesses and issues recommendations based on these findings.

CBO estimates that implementing H.R. 4231 would cost \$6 million in 2003 and \$32 million during the 2003–2007 period, assuming the appropriation of the authorized amounts. H.R. 4231 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 4231 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4231 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit). Based on information from the SBA, CBO estimates that the Office of Advocacy will spend about \$7 million in 2002. However, under current law, only \$1 million a year is authorized to be appropriated for the office for future years. H.R. 4231 would increase the authorization of appropriations for the office to \$10 million in 2003, \$12 million in 2004, and \$14 million in 2005. Estimated outlays are based on historical spending patterns.

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
Spending for SBA's Office of Advocacy Under Current Law:						
Authorization Level ¹	7	1	1	1	1	1
Estimated Outlays ¹	7	1	1	1	1	1
Proposed Changes:						
Authorization Level	0	9	11	13	0	0
Estimated Outlays	0	6	10	12	3	1
Spending for SBA's Office of Advocacy Under H.R. 4231:						
Authorization Level ¹	7	10	12	14	1	1
Authorization Level ¹	7	7	11	13	4	2

¹ The 2002 level is the estimated spending of the Office of Advocacy in that year.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 4231 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On March 7, 2001, CBO transmitted a cost estimate for S. 395, the Independent Office of Advocacy Act of 2001, as ordered reported by the Senate Committee on Small Business on March 1, 2001. S. 395 would authorize such sums as are necessary for the Office of Advocacy, while H.R. 4231 would authorize specific amounts for 2003 through 2005.

Estimate prepared by: Federal Costs: Ken Johnson; Impact on State, Local, and Tribal Governments: Susan Sieg Tompkins; and Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1994 requires the report of any committee on a bill or joint resolution to include a statement of the extent to which the bill, or joint resolution is intended to preempt state, local, or tribal law. Except to the extent the Office of Advocacy is a federal entity, the Committee states that H.R. 4231 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8 of the Constitution of the United States, which grants to Congress the power to enact this bill.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

The short title is the “Small Business Advocacy Improvement Act of 2002.”

Section 2. Findings and purpose

The findings of Congress include the fact that excessive regulations promulgated and proposed by federal agencies continue to impose a disproportionate burden on small business; that an entity within the executive branch to effectively advocate for small business must be independent and not restricted by views of the Small Business Administration or any other federal executive branch agency; and, that to be effective such an independent office needs adequate resources to conduct creditable economic studies and research to be a valuable source of information and advice for Congress and the federal agencies with which the office will advocate on behalf of small businesses.

The purpose of this Act are to: ensure that an entity exists that has statutory independence and adequate resources to effectively advocate for small businesses; require that the independent office keep Congress informed about issues and regulations affecting small business concerns and the necessity for corrective action by a regulatory agency or Congress; provide a separate authorization for appropriation for such an entity; and, create greater cooperation between the Small Business and Agriculture Regulatory Enforcement Ombudsman and the independent office is assisting small

businesses in resolving issues plaguing one or more small businesses.

Section 3. Appointment of Chief Counsel for Advocacy

The Chief Counsel for Advocacy is to be appointed by the President, with the advice and consent of the Senate, without regard to political affiliation and solely on the grounds of fitness to perform the duties of the office. An individual may not be appointed who was employed by the Small Business Administration during the 5-year period preceding the date of such individual's appointment.

The position of Chief Counsel is raised from level IV to level III of the Executive Schedule. A Chief Counsel may remain in office, at the pleasure of the President, until a successor is nominated, but in no instance longer than one year from the end of a President's term. The present Chief Counsel is to continue to serve, but the pay increase will be applicable to a successor Chief Counsel.

Section 4. Primary functions of Office of Advocacy

This section adds assistance to small business concerns owned and controlled by women and small business concerns owned and controlled by veterans as primary functions of the Office of Advocacy. Assistance to small business concerns owned and controlled by socially and economically disadvantaged individuals, or minority enterprises, is already a primary function of the Office of Advocacy.

As a new primary function, the office of Advocacy is required too make recommendations to Congress with respect to issues and regulations affecting small businesses and the necessity for corrective action by any federal agency or by Congress.

Section 5. Additional functions

This section adds three additional functions to be performed by the Office of Advocacy which are: (1) maintain economic databases and make the information available to the Administrator of the Small Business Administration and to Congress; (2) carry out the responsibilities of the Chief Counsel under the Regulatory Flexibility Act; and, (3) enter into a memorandum of understanding with the Small Business and Agriculture Regulatory Enforcement Ombudsman concerning cooperation between the Ombudsman and the Office of Advocacy in assisting small businesses resolve issues involving federal agencies.

The Chief Counsel is given the authority to transmit to the President the estimated expenditures and proposed appropriations for the Office of Advocacy, which shall be included by the President in the Budget without revision.

Section 6. Deputy Chief Counsels and regional advocates

The Chief Counsel may appoint 2 persons to serve as Deputy Chief Counsels, one whose focus shall be in reducing the regulatory burden on small businesses and the other responsible for providing valid economic studies and reports. The Chief Counsel may also appoint 10 regional advocates, one in each of the Standard Federal Regions, as appropriate. The duties of the regional advocates shall include: (1) furthering the research efforts concerning small businesses; (2) interfacing with Federal agencies that regulate or do business with small businesses; (3) in coordination with the Small

Business and Agriculture Regulatory Enforcement Ombudsman, assisting the functioning of regional small business fairness boards, including, where requested, helping small businesses to resolve matters that are subject of complaints made to such boards with respect to adverse Federal agency action; (4) assisting in disseminating information about programs and services that help small business concerns; and, (5) performing such other duties as the Chief Counsel shall assign.

Section 7. Overhead and administrative support

The Administrator of the Small Business Administration is required to provide the Office of Advocacy with all necessary office space, together with such equipment, office supplies, communications facilities, and personnel and maintenance services, as may be needed.

Section 8. Reports

The Chief of Counsel is required, not less than annually, to advise Congress and the Administrator of the Small Business Administration on whether Federal agencies are complying with the Regulatory Flexibility Act. The Chief Counsel may prepare and publish other reports as deemed necessary.

Section 9. Authorization for appropriations

The amounts authorized to be appropriated are \$10,000,000 for fiscal year 2003, \$12,000,000 for fiscal year 2004, and \$14,000,000 for fiscal year 2005.

Section 10. Conforming amendments

This section makes conforming amendments as required by changes in this Act to strengthen and improve the Office of Advocacy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JUNE 4, 1976

(Public Law 94-305)

AN ACT To amend the Small Business Act and Small Business Investment Act of 1958 to provide additional assistance under such Acts, to create a pollution control financing program for small business, and for other purposes.

* * * * *

TITLE II—STUDY OF SMALL BUSINESS

ESTABLISHMENT

SEC. 201. (a) There is established within the Small Business Administration an Office of Advocacy. [The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be ap-

pointed from civilian life by the President, by and with the advice and consent of the Senate.】

(b) *The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the ground of fitness to perform the duties of the office.*

(c) *No individual may be appointed under subsection (b) if such individual has served as an officer or employee of the Small Business Administration during the 5-year period preceding the date of such individual's appointment.*

(d) *Any Chief Counsel appointed after the date of the enactment of this subsection shall be paid at a rate not to exceed the rate of basic pay for level III of the Executive Schedule.*

(e) *After the expiration of the term of a President, the Chief Counsel may continue to serve at the pleasure of the President for a period of not to exceed one year until such date as a successor to the Chief Counsel is nominated.*

STUDY

SEC. 202. The primary functions of the Office of Advocacy shall be to—

(1) * * *

* * * * *

(6) determine financial resource availability and to recommend methods for delivery of financial assistance 【to minority enterprises】 *to small business concerns owned and controlled by socially and economically disadvantaged individuals, to small business concerns owned and controlled by women, and to small business concerns owned and controlled by veterans*, including methods for securing equity capital, for generating markets for goods and services, for providing effective business education, more effective management and technical assistance, and training, and for assistance in complying with Federal, State, and local law;

(7) evaluate the efforts of Federal agencies, business and industry to assist 【minority enterprises】 *small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and small business concerns owned and controlled by veterans*;

(8) make such other recommendations as may be appropriate to assist the development and strengthening of 【minority and other small business enterprises】 *small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, small business concerns owned and controlled by veterans, and other small businesses*;

(9) recommend specific measures for creating an environment in which all businesses will have the opportunity to 【complete】 *compete* effectively and expand to their full potential, and to ascertain the common reasons, if any, for small business successes and failures;

* * * * *

[(11) advise, cooperate with, and consult with, the Chairman of the Administrative Conference of the United States with respect to section 504(e) of title 5 of the United States Code; and]

[(12)] (11) evaluate the efforts of each department and agency of the United States, and of private industry, to assist small business concerns owned and controlled by veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)), and small business concerns owned and controlled by [serviced-disabled] *service-disabled* veterans, as defined in such section 3(q), and to provide statistical information on the utilization of such programs by such small business concerns, and to make appropriate recommendations to the Administrator of the Small Business Administration and to the Congress in order to promote the establishment and growth of those small business concerns[.]; and

(12) *make recommendations and submit reports to the President, to the Chairmen and Ranking Members of the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate, and to the Administrator of the Small Business Administration, with respect to issues and regulations affecting small businesses and the necessity for corrective action by any Federal agency or by Congress.*

DUTIES

SEC. 203. (a) The Office of Advocacy shall also perform the following duties on a continuing basis:

(1) * * *

* * * * *

(4) represent the views and interests of small businesses before other Federal agencies whose policies and activities may affect small business; [and]

(5) enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services[.];

(6) *maintain economic databases and make the information contained therein available to the Administrator of the Small Business Administration and to Congress;*

(7) *carry out the responsibilities of the Chief Counsel under chapter 6 of title 5, United States Code; and*

(8) *enter into a memorandum of understanding with the Small Business and Agriculture Regulatory Enforcement Ombudsman regarding methods and procedures for cooperation between the Ombudsman and the Office of Advocacy and transmit a copy of such memorandum to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate.*

(b) *On or before October 15 of the year preceding the beginning of each fiscal year, the Chief Counsel shall transmit to the President the estimated expenditures and proposed appropriations for the Of-*

Office of Advocacy, which shall be included by the President in the Budget without revision.

STAFF AND POWERS

SEC. 204. (a) In carrying out the provisions of this title, the Chief Counsel for Advocacy may—

(1) * * *

* * * * *

(b)(1) *The Chief Counsel may appoint 2 individuals to serve as Deputy Chief Counsels.*

(2) *Notwithstanding any other provision of this section, the pay rate for each Deputy Chief Counsel may not exceed the rate of basic pay for level III of the Senior Executive Service.*

(3) *Individuals appointed to positions under this subsection shall not be counted toward the limitation contained in subsection (a)(1) regarding the number of individuals who may be compensated at a rate in excess of the lowest rate for GS-15 of the General Schedule.*

(c) *The Chief Counsel may appoint regional advocates within each Standard Federal Region as appropriate. Such regional advocates shall—*

(1) *assist in examining the role of small business in the economy of the United States by identifying academic and other research institutions that focus on small business concerns and linking these research resources to research activities conducted by the Office of Advocacy;*

(2) *assist in representing the views and interests of small business concerns before Federal agencies whose policies and activities may affect small business;*

(3) *in coordination with the Small Business and Agriculture Regulatory Enforcement Ombudsman, assist the functioning of regional small business fairness boards;*

(4) *assist in enlisting the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government that are of benefit to small business concerns and the means by which small business concerns can participate in or make use of such programs and services; and*

(5) *carry out such duties pursuant to the mission of the Office of Advocacy as the Chief Counsel may assign.*

ASSISTANCE OF GOVERNMENT AGENCIES

SEC. 205. (a) *The Administrator of the Small Business Administration shall provide the Office of Advocacy with appropriate and adequate office space at central and field office locations of the Administration, together with such equipment, office supplies, communications facilities, and personnel and maintenance services as may be necessary for the operation of such offices.*

(b) *Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Chief Counsel for Advocacy such reports and other information as he deems necessary to carry out his functions under this title.*

REPORTS

SEC. 206. [The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. Not later than one year after the date of enactment of this title, he shall transmit to the Congress, the President and the Administration, a full report containing his findings and specific recommendations with respect to each of the functions referred to in section 202, including specific legislative proposals and recommendations for administration or other action. Not later than 6 months after the date of enactment of this title, he shall prepare and transmit a preliminary report on his activities.]

(a) *Not less than annually, the Chief Counsel shall submit to the President, the Committee on Small Business of the House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Government Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives, and the Administrator of the Small Business Administration a report on agency compliance with chapter 6 of title 5, United States Code.*

(b) *In addition to the reports required by this title, the Chief Counsel may prepare and publish such other reports as the Chief Counsel determines appropriate.*

(c) The reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President.

AUTHORIZATION

SEC. 207. There are authorized to be appropriated [not to exceed \$1,000,000] \$10,000,000 for fiscal year 2003, \$12,000,000 for fiscal year 2004, and \$14,000,000 for fiscal year 2005 to carry out the provisions of this title. Any sums so appropriated shall remain available until expended.

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

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§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

* * * * *

Chief Counsel for Advocacy, Small Business Administration.

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

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【Chief Counsel for Advocacy, Small Business Administration.】

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SECTION 311 OF THE SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENTS ACT OF 1990

SEC. 311. RURAL TOURISM TRAINING PROGRAM.

The **【Chief Counsel for Advocacy】** *Administrator* of the Small Business Administration shall conduct training sessions on the types of Federal assistance available for the development of rural small businesses engaged in tourism and tourism-related activities. Such training sessions shall be conducted in conjunction with the Office of Rural Affairs (established pursuant to section 26 of the Small Business Act) and appropriate personnel designated by each district office of the Administration.

* * * * *

SECTION 30 OF THE SMALL BUSINESS ACT

SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

(a) * * *

(b) SBA ENFORCEMENT OMBUDSMAN.—

(1) * * *

(2) The Ombudsman shall—

(A) * * *

* * * * *

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; **【and】**

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft[.];
and

(F) enter into a memorandum of understanding with the Office of Advocacy regarding methods and procedures for cooperation between the Ombudsman and the Office of Advocacy.

* * * * *

ADDITIONAL VIEWS

Democrats strongly support the goal of providing the Office of Advocacy with a stronger voice in the formation of public policy across the federal government. At the same time, it is important to ensure the Office of Advocacy stays true to its core mission of providing support to small businesses and entrepreneurs. Other legislation that has been considered significantly expanded the authority and duties of the Office of Advocacy. The provisions in this legislation do not force Advocacy into a much greater role—which could lead to a decline in its effectiveness as an office.

Congress established the Office of Advocacy to be an independent voice for small business in the formation of public policy across the federal government. Advocacy focuses on researching small business trends, characteristics, and contributions to the economy. It also monitors Executive Branch compliance with the Regulatory Flexibility Act.

The Office of Advocacy's responsibilities regarding agency compliance with the Regulatory Flexibility Act are crucial to fulfilling the intent of the statute. Small Business Committee Democrats believe that the heart of the Regulatory Flexibility Act lies in its own inherent flexibility. The flexibility of the law is due to the fact that the Regulatory Flexibility Act statutory terms are necessarily vague. This allows agencies to tailor their regulatory alternatives and relief to their own rules or policies. Agency interpretations vary widely—some select a few regulations with obvious small business impacts for Regulatory Flexibility Act analyses, while others analyze the majority of their regulations but the analysis is usually very limited. The Office of Advocacy exists to patrol these interpretations and educate agencies about the implications their actions have on small business.

Agency interpretations of the Regulatory Flexibility Act should be developed and enforced with serious consideration. The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) is intended to give small businesses, small governments and small non-profit enterprises a special opportunity to participate in the development of regulations that significantly affect them. Agencies need to focus their efforts and resources on the select number of regulations that will have a truly significant impact on a substantial number of small businesses. If too many regulations are subject to the RFA's requirements, agencies will be less likely (and less able) to devote substantial resources to this task. Any RFA statutory clarifications should be clear and targeted. Democrats believe that granting an agency authority to define RFA/SBREFA terms or regulate certain provisions of the act will likely work against the interests of small businesses.

The Chief Counsel has a dual responsibility. First, he/she must act as an independent watchdog for small business. Second, he/she is also part of the President's Administration. These two roles can be difficult to perform together without the risk of undue influence from the Small Business Administration (SBA), the Office of Management and Budget (OMB), or other federal agencies. The influences from these offices may compromise Advocacy's independence and freedom to take positions that support small business, but may be contrary to the Administration's policies or regulatory actions.

Given the nature of Advocacy's job, it could be called upon to criticize federal government actions that are not in the best interest of small businesses. This could create a natural tension between the Office of Advocacy and OMB as well as other federal agencies. For this reason, we believe that the Office of Advocacy Improvement should have fiscal independence from the Administration. The Office of Advocacy Improvement Act of 2002 stipulates that the budget request of the Chief Counsel will be included in the President's budget without change. Creation of a line item budget for the Office of Advocacy would have still required Advocacy to negotiate with OMB for resources through the budget pass-back process. This legislation allows the Administration (i.e., OMB) and the Office of Advocacy to be relieved from discussions regarding budget allocations.

Earlier draft legislation granted the Office of Advocacy the authority to issue regulations governing federal agency compliance with the Regulatory Flexibility Act and promulgate federal regulations to carry out the functions and duties of the office. This would have been a significant expansion of the current reach of Advocacy's authority. Democrats do not support this effort because we believe it would dilute the mission of the Office of Advocacy.

Previous legislative proposals have attempted to combine the functions of the National Ombudsman and the Office of Advocacy into a single, independent office. The Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act have provisions relating to SBA's participation in the rulemaking activities of the federal government at two distinct phases: (1) during rule development and (2) after final rule promulgation (final passage).

Congress directed the Office of Advocacy to participate in the development of regulations that are likely to significantly affect small businesses. This is accomplished through the Small Business Advocacy Review Panel process (prior to rule proposal) and through comments on proposed regulations during the public notice and comment period.

To compliment the Office of Advocacy's efforts in the pre-proposal phase of rulemaking, Congress created the Regulatory Ombudsman to report on the enforcement activities of federal agencies as they relate to small businesses after a regulation is finalized. The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, directs the Ombudsman to work with each agency to ensure that small businesses are provided with a means to comment on the enforcement activity of that agency, keep the identity of the small business confidential, and rate agency responsiveness to small business concerns.

Democrats recognize that working with federal agencies a different stages of rulemaking necessitates a different type of relationship with the agency and different types of skills and resources. These functions need to be specialized in order to be effective and they are best kept to different parts of the Small Business Administration so they each can be guaranteed adequate attention. In addition, the combination of pre- and post-rule functions could create a conflict of interest within a single office—if enforcement problems arise regarding a particular regulation, it could be said that the pre-rule advocates should have corrected this problem at the pre-rule stage.

The funding levels provided in this legislation will enable the Office of Advocacy to move forward in its effort to improve and strengthen Advocacy's position and voice among the federal agencies. Committee Democrats believe these funds are necessary to support the Office of Advocacy's research functions to report small business trends, characteristics, and contributions to the economy.

In summary, Democrats support these targeted provisions to make the SBA Office of Advocacy more independent from the Administration and OMB. Having an independent Office of Advocacy is more important than ever with an Administration that places such emphasis on big businesses.

NYDIA M. VELÁZQUEZ.

