

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

MEMORANDUM

TO: Members, Subcommittee on Underserved, Agricultural, and Rural Development
FROM: Jared Golden, Chairman
RE: Subcommittee Hybrid Hearing: SBA Management Review: Office of Advocacy
DATE: April 6, 2022

The Committee on Small Business, Subcommittee on Underserved, Agricultural, and Rural Development will meet for a hybrid hearing entitled, “SBA Management Review: Office of Advocacy.” The hearing is scheduled to begin at **10:00 A.M. on Wednesday, April 6, 2022, in person in Room 2360 of the Rayburn House Office Building, and virtually via the Zoom platform.**

The Subcommittee will meet to examine the United States Small Business Administration’s (SBA) Office of Advocacy (Advocacy). SBA’s Office of Advocacy is an independent office within SBA responsible for collecting data relevant to the small business ecosystem and elevating the concerns of small businesses at the local, state, and federal levels. Members will have the opportunity to learn about Advocacy’s operations, responsibilities, and how Congress can better support its mission.

Witness

- Mr. Major Clark III, Deputy Chief Counsel for Advocacy, Small Business Administration, Washington D.C. (performing the non-exclusive functions and duties of the Chief Counsel position)

Background

Advocacy is the independent office within the SBA that advances the views and concerns of small businesses before Congress, the White House, federal agencies, federal courts, and state and local policymakers.¹ Established by Congress in 1976 through The Small Business Amendments of 1974, Advocacy’s mandate is to represent the interests of small business in the regulatory process, provide Regulatory Flexibility Act (RFA) compliance training to federal regulatory officials, produce and promote small business economic research to inform policymakers and other stakeholders, and facilitate small business outreach across the federal government.² Advocacy is led by the Chief Counsel for Advocacy who is appointed by the President and confirmed by the U.S. Senate. The Deputy Chief Counsel for Advocacy is currently performing the non-exclusive functions and duties of the position.

¹ Robert Jay Dilger, CONG. RSRCH. SERV., R43635, SBA Office of Advocacy; Overview, History, and Current Issues (2022) [hereinafter *Dilger*].

² *Id. See, e.g.*, The Small Business Amendments Act of 1974, P.L. 93-386.

Advocacy is budgetarily independent from the SBA. The Small Business Jobs Act of 2010 amended Advocacy's statutory authority to require that each budget submitted by the President include a separate statement of the amount of funding requested for Advocacy, and that those funds be designated in a separate Treasury account.³ The Act requires SBA to provide Advocacy with office space, equipment, an operating budget, and communications support.⁴

In FY 2021, Advocacy provided training to 290 officials at regulatory agencies and provided 17 public comment letters to 10 different agencies on a variety of proposals affecting small businesses.⁵ In addition, in FY 2021 Advocacy's legal team hosted 20 virtual roundtables to collect information from stakeholders.⁶

Economic Research

A core pillar of Advocacy's mission is to perform economic research, specifically the role of entrepreneurship in the economy and the examination of various issues impacting small businesses. This economic research is primarily performed by Advocacy's Office of Economic Research (OER).⁷ Recent reports include:

Small Business Finance FAQ

In February 2022, Advocacy released a Frequently Asked Questions (FAQ) document detailing a broad range of small business finance data.⁸ The document details information on small business financing including types and amounts of capital used by small businesses, the role of different lending options, and trends and characteristics of capital access by business owner demographic.

Some highlights from this report include that, in 2020, 37 percent of employer firms and 24 percent of non-employer firms sought financing.⁹ Small businesses are significantly more likely to utilize personal savings (74.7 percent) when establishing a start-up with 19 percent utilizing a bank loan.¹⁰ As of June 2020, total small business loans of \$1 million or less amounted to \$895 billion, with a majority of these loans coming from the SBA's Paycheck Protection Program (PPP).¹¹ However, Advocacy found that many small firms need significantly less capital to start their business with 24.1 percent of small firms requiring less than \$5,000.¹²

2021 Small Business Profiles for the States

Every year, Advocacy provides a snapshot of the nation's small businesses, delineated by each state. For 2021, the snapshots focus on small business dynamics and employment, specifically,

³ The Small Business Jobs Act of 2010, P.L. 111-240. *See, e.g.*, U.S. Small Bus. Admin., Office of Advocacy, *Background Paper Office of Advocacy 2017-2020*, (2021) [hereinafter *Advocacy Background*].

⁴ *Id.*

⁵ U.S. Small Bus. Admin., *FY2023 Congressional Budget Justification and FY2021 Annual Performance Report*, (2021) at 156.

⁶ *Id.* at 156.

⁷ *Advocacy Background*, *supra* note 3.

⁸ U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, *Frequently Asked Questions About Small Business Finance, 2022*, (Feb. 15, 2022), <https://advocacy.sba.gov/2022/02/15/frequently-asked-questions-about-small-business-2022/>.

⁹ U.S. Small Bus. Admin. Office of Advocacy, *Small Business Finance FAQ*, (February 2022).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

each state's number of small businesses, how many people they employ, number of jobs created, how many establishments opened or closed, industry concentration, demographics of small business owners, and small business exports.¹³

In total, Advocacy found that there are 32.5 million small businesses in the United States, representing 99.9 percent of all U.S. businesses.¹⁴ There are 61.2 million small business employees, representing 46.8 percent of all U.S. employees.¹⁵ The report also details that between March 2019 and March 2020, there was a small net increase in business establishment and employment.¹⁶ Of all small businesses by industry, most are concentrated in professional, scientific, and technical services (4.5 million), followed by other services (except public administration) at almost 3.7 million, and construction at almost 3.4 million.¹⁷

The 2021 report also states that 288,000 U.S. firms exported goods worth \$1.5 trillion in 2019.¹⁸ Of those firms, 97.4 percent were small and exported \$459.6 billion (31.6 percent).¹⁹ In addition, the total demographic breakdown of U.S. small business owners states that men and non-veterans make up the some of the largest subsections of small business owners with and without employees.²⁰ On December 29, 2021, Advocacy released a supplemental report with small business breakdowns for all 436 Congressional Districts.²¹ These profiles provide the total number of small employers and their industries, the number of workers employed by small businesses, and a map showing the share and distribution of self-employed workers across each district.²²

Economic Bulletin

On November 9, 2021, Advocacy released their bi-annual economic bulletin which examined how small businesses have recovered since the peak of the pandemic.²³ The report states that while self-employment and proprietors' income had historic declines in 2020, both experienced very quick recoveries in 2021.

Regulation

For more than 40 years, Advocacy has enforced the Regulatory Flexibility Act (RFA) and other laws to help small businesses.

¹³ U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, 2021 Small Business Profiles for The States, The District of Columbia, And the U.S., (Aug. 30, 2021) <https://advocacy.sba.gov/2021/08/30/2021-small-business-profiles-for-the-states-the-district-of-columbia-and-the-u-s/>.

¹⁴ U.S. Small Bus. Admin. Office of Advocacy, *2021 Small Business Profile-United States*.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, 2021 Small Business Profiles for Congressional Districts, (Dec. 29, 2021), <https://advocacy.sba.gov/2021/12/29/2021-small-business-profiles-for-congressional-districts/>.

²² *Id.*

²³ U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, *Small Business Economic Bulletin: November 2021*, (Nov. 9, 2021), <https://advocacy.sba.gov/2021/11/09/small-business-economic-bulletin-november-2021/>.

Regulatory Flexibility Act

The Regulatory Flexibility Act (as amended) requires federal agencies to determine if a rule will have a significant economic impact on a substantial number of small entities (SEISNE).²⁴ If the rule is projected to have a SEISNE, cabinet departments and independent agencies are required by the RFA to prepare a regulatory flexibility analysis at the time certain proposed rules and final rules are issued.²⁵ The analysis must include the reasons the regulation is being considered, the type and number of small entities to which the proposed rule will apply, the projected reporting, recordkeeping, and other compliance requirements, and any significant alternatives to the rule that would accomplish statutory objectives while minimizing the impact on small entities.²⁶

However, if the head of the issuing agency certifies that the proposed rule would not have a SEISNE, then an analysis is not required.

The RFA also requires federal agencies to publish a regulatory flexibility agenda each April and October in the Federal Register. These agendas list the regulations the agency expects to propose that are likely to have a SEISNE. Agencies must provide these agendas to the Chief Counsel. In addition, the Chief Counsel must report annually to the President and Congress on agency compliance with the RFA and is authorized to appear as *amicus curiae* in any action brought in a U.S. court for review.²⁷

Executive Order 13272

Executive Order 13272 (EO), “Proper Consideration of Small Entities in Agency Rulemaking”, was signed into effect on August 13, 2002, and requires federal agencies to make information publicly available on how they will comply with the RFA’s statutory mandates.²⁸ In addition, federal agencies are required to send Advocacy copies of any draft regulations that may impact a SEISNE prior to their publication in the Federal Register. Agencies are then required to consider Advocacy’s comments on the proposed rule and must address these comments in the final published rule. EO 13272 also requires Advocacy to notify federal agencies on how to comply with the RFA, report annually on federal agency compliance with EO 13272, and train federal regulatory agencies on RFA compliance.²⁹

The Small Business Regulatory Enforcement Fairness Act

In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA) to amend the RFA and help small businesses understand and comply with Federal regulations.³⁰ SBREFA created Small Business Advocacy Review (SBAR) panels that certain agencies must convene prior to proposing rules that would have SEISNE.³¹ Currently, the Consumer Financial Protection Bureau (CFPB), the Environmental Protection Agency (EPA), and the Occupational

²⁴ *Advocacy Background*, *supra* note 3.

²⁵ *Dilger*, *supra* note 1.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ U.S. DEPT. OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMIN., *Small Business Regulatory Fairness Act of 1996 (SBREFA)*, <https://www.osha.gov/smallbusiness/sbrefa>.

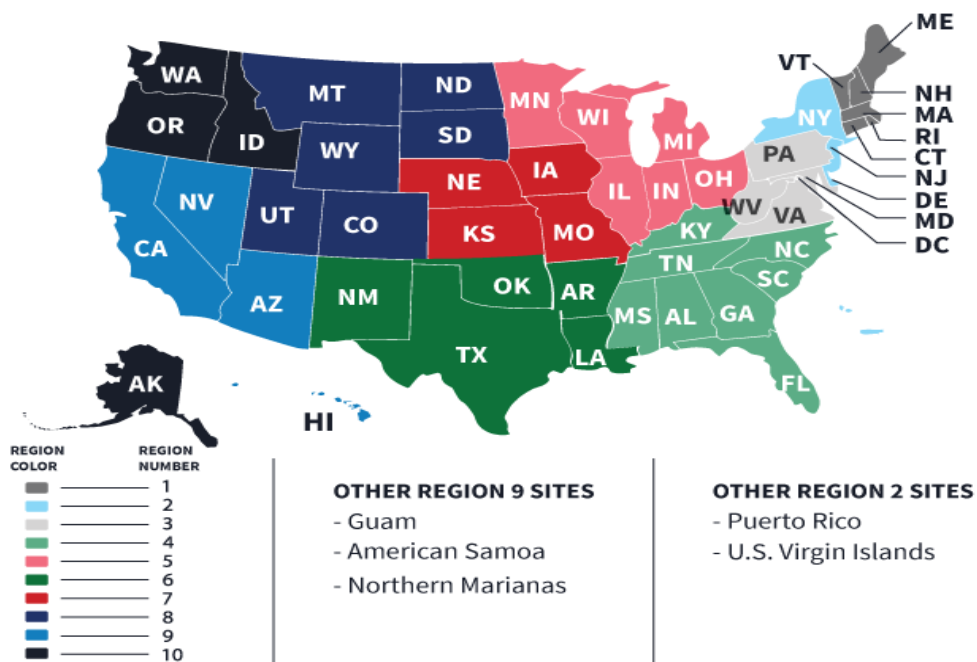
³¹ U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, *SBREFA*, <https://advocacy.sba.gov/resources/reference-library/sbrefa/>.

Safety and Health Administration (OSHA), are required to convene SBAR panels.³² Within 15 days of receiving a notification from these agencies, the Chief Counsel must identify individuals that are representative of affected small entities to collect advice and recommendations from regarding the proposed regulation.³³ These panels are made up of agency employees, the Chief Counsel for Advocacy, and the Administrator of the Office of Information and Regulatory Affairs from the Office of Management and Budget (OMB)³⁴. Within 60 days, the panel is to report on the comments received, their findings, and make the report public.³⁵

SBREFA also amended the RFA to require agencies to publish one or more small entity compliance guides to assist small entities complying with rules covered by the RFA. The guides are required to be posted in an easily identified location on the agency’s website and distributed to industry contacts.³⁶

Regional Outreach

Through Advocacy’s Office of Regional Affairs (ORA), Advocacy carries out its mission at the regional, state, and local levels. These advocates are located in each of the 10 federal regions across the country.³⁷



These regional advocates meet directly with small businesses and stakeholders to educate them on the mission of the Office of Advocacy and help them address their concerns regarding federal

³² U.S SMALL BUS. ADMIN. OFFICE OF ADVOCACY, *SBREFA*, <https://advocacy.sba.gov/resources/reference-library/sbrefa/>.

³³ Maeve P. Carey, CONG. RSRCH. SERV., IF11900, *The Regulatory Flexibility Act: An Overview*, (Aug. 16, 2021) [hereinafter *Carey*].

³⁴ U.S SMALL BUS. ADMIN. OFFICE OF ADVOCACY, *SBREFA*, <https://advocacy.sba.gov/resources/reference-library/sbrefa/>.

³⁵ *Carey*, *supra* note 33.

³⁶ *Id.*

³⁷ *Advocacy Background*, *supra* note 3.

government actions that affect their businesses. Regional advocates act as the bridge between SBA and small business communities across the country by performing extensive outreach and working as a two-way exchange of information between Main Street and the Federal government.

Conclusion

SBA's Office of Advocacy provides a voice for America's small businesses to be heard in the regulatory process. Advocacy works to ensure fairness in regulations and to relay the needs of America's small businesses to policymakers at the state, regional, and federal level. The economic analysis they perform provides valuable snapshots into the small business ecosystem to better inform the public and policymakers.