



**Testimony of**

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***United States House of Representatives***  
***Committee on Small Business***

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**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.

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**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.<sup>1</sup> 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.<sup>2</sup>

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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<sup>1</sup> Exec. Order No. 13,272, 67 Fed. Reg. 53,461 (Aug. 13, 2002).

<sup>2</sup> 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,<sup>3</sup> 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."<sup>4</sup> 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.<sup>5</sup>

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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<sup>3</sup> As of this hearing, President Biden has not named a nominee for the Chief Counsel for Advocacy.

<sup>4</sup> § 206, Public L. No. 94-305, 15 U.S.C. § 634f.

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.”<sup>8</sup>

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.<sup>9</sup> When the final rule is published, it must be accompanied by a final regulatory flexibility analysis (FRFA).<sup>10</sup> 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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<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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].

<sup>9</sup> 5 U.S.C. § 603.

<sup>10</sup> *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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> 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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<sup>11</sup> *Id.* § 605(b).

<sup>12</sup> 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/>.

<sup>13</sup> 5 U.S.C. § 609(b)(3).

<sup>14</sup> *Id.* § 609.

<sup>15</sup> *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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

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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<sup>16</sup> Exec. Order No. 13,272, 67 Fed. Reg. 53,461 (Aug. 13, 2002).

<sup>17</sup> Small Business Jobs Act, Pub. L. No. 111-240, 124 Stat. 2504 (2010).

<sup>18</sup> 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.

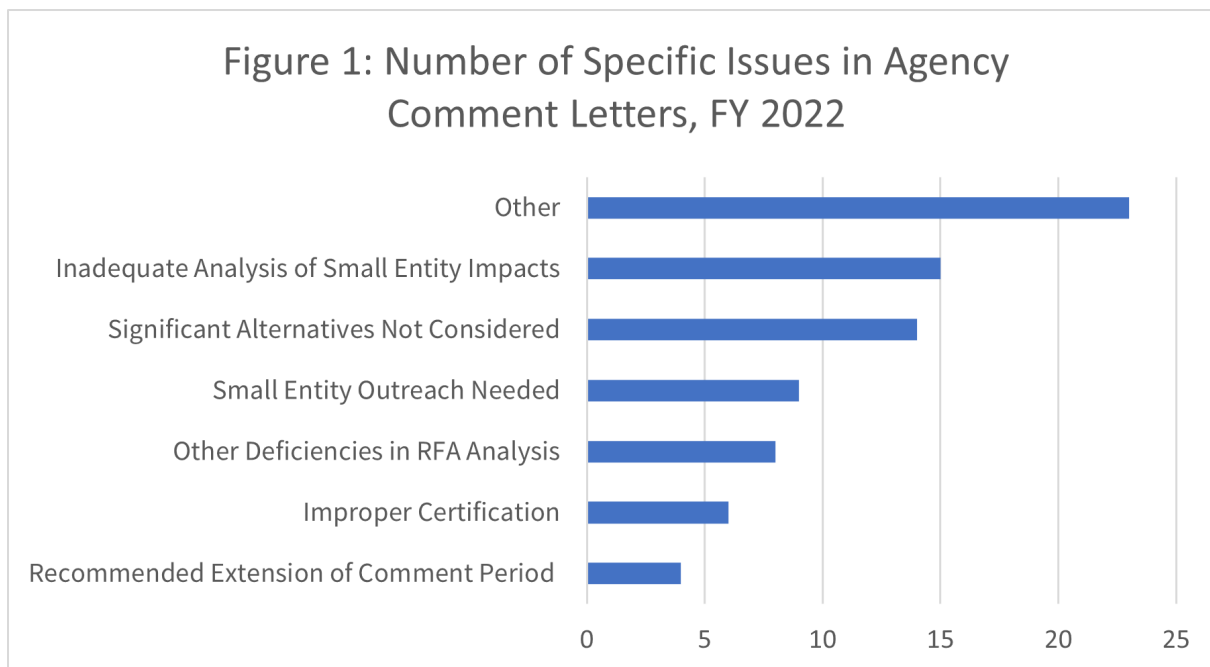


One of Advocacy’s most effective outreach strategies has been through roundtable events. In these roundtables, small businesses and their representatives discuss specific regulatory issues, in most cases with the federal agency present. Historically, Advocacy has mostly hosted these roundtables in Washington, 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.<sup>19</sup> 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.<sup>20</sup>

### **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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<sup>19</sup> 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.

<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup>

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<sup>21</sup> 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.

<sup>22</sup> 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 assessing the rule's impact on each type of affected small business.

<sup>23</sup> 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

<b>Date</b>	<b>Agency</b>	<b>Number Trained</b>
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	√	<a href="https://www.usda.gov/directives/dr-1512-001">https://www.usda.gov/directives/dr-1512-001</a>	√	√
Department of Commerce(a)	√	<a href="http://www.fisheries.noaa.gov/national/laws-and-policies/guidance-conducting-economic-and-social-analyses-regulatory-actions">www.fisheries.noaa.gov/national/laws-and-policies/guidance-conducting-economic-and-social-analyses-regulatory-actions</a>	√	√
Department of Defense	√	<a href="https://www.acquisition.gov/node/28713/printable/print">https://www.acquisition.gov/node/28713/printable/print</a>	√	√
Department of Education	X		√	n.a.
Department of Energy	√	<a href="http://www.energy.gov/sites/prod/files/gcprod/documents/eo13272.pdf">www.energy.gov/sites/prod/files/gcprod/documents/eo13272.pdf</a>	√	√
Department of Health and Human Services	√	FDA: <a href="https://www.fda.gov/industry/small-business-assistance/letter-proper-consideration-small-entities-agency-rulemaking">https://www.fda.gov/industry/small-business-assistance/letter-proper-consideration-small-entities-agency-rulemaking</a> CMS: <a href="https://www.cms.gov/Regulations-and-Guidance/Guidance/CMSSmallBusAdminOmbuds">https://www.cms.gov/Regulations-and-Guidance/Guidance/CMSSmallBusAdminOmbuds</a>	√	√
Department of Homeland Security	√	<a href="http://www.dhs.gov/publication/signed-regulatory-flexibility-act-executive-order-13272-memo-2004">www.dhs.gov/publication/signed-regulatory-flexibility-act-executive-order-13272-memo-2004</a>	√	n.a.
Department of Housing and Urban Development	√	<a href="http://www.hud.gov/program_offices/sdb/policy/sbrefa">www.hud.gov/program_offices/sdb/policy/sbrefa</a>	n.a.	n.a.
Department of the Interior	√	<a href="https://www.fws.gov/policy/library/rgeo12372.pdf">https://www.fws.gov/policy/library/rgeo12372.pdf</a>	√	x
Department of Justice	X		√	n.a.
Department of Labor	√	<a href="http://www.dol.gov/general/regs/guidelines">www.dol.gov/general/regs/guidelines</a>	√	√
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	√	<a href="http://www.transportation.gov/sites/dot.dev/files/docs/1979%20Regulatory%20Policies%20and%20Procedures.doc">www.transportation.gov/sites/dot.dev/files/docs/1979%20Regulatory%20Policies%20and%20Procedures.doc</a>	√	n.a.
Department of the Treasury (b)	√	Treasury: <a href="https://home.treasury.gov/about/general-information/orders-and-directives/td28-03">https://home.treasury.gov/about/general-information/orders-and-directives/td28-03</a> Internal Revenue Service: <a href="http://www.irs.gov/irm/part32/irm_32-001-005#idm140712272166000">www.irs.gov/irm/part32/irm_32-001-005#idm140712272166000</a>	√	√
Department of Veterans Affairs	√	<a href="http://www.va.gov/ORPM/Regulatory_Flexibility_Act_EO_13272_Compliance.asp">www.va.gov/ORPM/Regulatory_Flexibility_Act_EO_13272_Compliance.asp</a>	√	n.a.
Environmental Protection Agency	√	<a href="http://www.epa.gov/sites/production/files/2015-06/documents/guidance-regflexact.pdf">www.epa.gov/sites/production/files/2015-06/documents/guidance-regflexact.pdf</a>	√	√
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	√	<a href="http://www.cpsc.gov/Regulations-Laws--Standards/Rulemaking#The_Regulatory_Flexibility_Act">www.cpsc.gov/Regulations-Laws--Standards/Rulemaking#The_Regulatory_Flexibility_Act</a>	√	√
Equal Employment Opportunity Commission	√	<a href="http://www.eeoc.gov/eeoc/plan/regflexibilityact.cfm">www.eeoc.gov/eeoc/plan/regflexibilityact.cfm</a>	√	n.a.
Federal Acquisition Regulation Council	X	<a href="https://www.acquisition.gov/node/28713/printable/print">https://www.acquisition.gov/node/28713/printable/print</a>	√	n.a.
Federal Communications Commission	√	<a href="http://www.fcc.gov/sites/default/files/fcc-directive-1158.2.pdf">www.fcc.gov/sites/default/files/fcc-directive-1158.2.pdf</a>	√	√
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**

<b>SBREFA Panel Rule</b>	<b>Date Convened</b>	<b>Date Completed</b>	<b>Notice of Proposed Rulemaking</b>	<b>Final Rule Published</b>
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**

<b>SBREFA Panel Rule</b>	<b>Date Convened</b>	<b>Date Completed</b>	<b>Notice of Proposed Rulemaking</b>	<b>Final Rule Published</b>
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

<b>SBREFA Panel Rule</b>	<b>Date Convened</b>	<b>Date Completed</b>	<b>Notice of Proposed Rulemaking</b>	<b>Final Rule Published</b>
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

<b>SBREFA Panel Rule</b>	<b>Date Convened</b>	<b>Date Completed</b>	<b>Notice of Proposed Rulemaking</b>	<b>Final Rule Published</b>
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

<b>SBREFA Panel Rule</b>	<b>Date Convened</b>	<b>Date Completed</b>	<b>Notice of Proposed Rulemaking</b>	<b>Final Rule Published</b>
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

<b>Date Filed</b>	<b>Agency*</b>	<b>Topic</b>	<b>Citation to Rule</b>
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	<a href="https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM-2021-0083-0001.pdf">https://www.boem.gov/sites/default/files/documents/renewable-energy/BOEM-2021-0083-0001.pdf</a>
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	<a href="https://www.energy.gov/eere/wind/articles/doe-requests-inputs-inform-social-science-research-related-offshore-wind">https://www.energy.gov/eere/wind/articles/doe-requests-inputs-inform-social-science-research-related-offshore-wind</a>
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	<a href="https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT%20Fisheries%20Mitigation%20Guidance%2006232022_0.pdf">https://www.boem.gov/sites/default/files/documents/renewable-energy/DRAFT%20Fisheries%20Mitigation%20Guidance%2006232022_0.pdf</a>
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 <sup>1</sup>	62.7	62.7
Environmental Protection Agency	Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act <sup>2</sup>	7.9	7.9
	Unregulated Contaminant Monitoring Rule 5 (UCMR 5) <sup>3</sup>	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 <sup>1</sup>
Department of the Interior	Equity Action Plan <sup>2</sup>
Department of the Treasury, Financial Crimes Enforcement Network	Beneficial Ownership <sup>3</sup>
Environmental Protection Agency	EPA's Proposed TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances <sup>4</sup>
Federal Communications Commission	Supply Chain Security—Equipment Authorization Rule <sup>5</sup>
	Small Provider Exception for STIR/SHAKEN <sup>6</sup>
	Broadband Competition in Multi-tenant Environments <sup>7</sup>
Internal Revenue Service	Required Minimum Distributions <sup>8</sup>
<p>Sources:</p> <ol style="list-style-type: none"> <li>1. 86 Fed. Reg. 51970 (September 17, 2021).</li> <li>2. 86 Fed. Reg. 57848 (October 19, 2021).</li> <li>3. 87 Fed. Reg. 59498 (September 30, 2022).</li> <li>4. 86 Fed. Reg. 33926 (June 28, 2021).</li> <li>5. 86 Fed. Reg. 46644 (September 19, 2021).</li> <li>6. 87 Fed Reg. 3684 (January 25, 2022).</li> <li>7. 87 Fed Reg. 17181 (March 28, 2022).</li> <li>8. 87 Fed Reg. 10504 (February 24, 2022).</li> </ol>	

# Appendix H

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



### **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.*