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SMALL BUSINESS ADVOCACY IMPROVEMENT ACT OF 2003

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT & GOVERNMENT PROGRAMS

AND THE

SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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THE SMALL BUSINESS ADMINISTRATION OFFICE OF ADVOCACY

THE SMALL BUSINESS ADVOCACY IMPROVEMENT ACT OF 2003

Tuesday, April 1, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT
Washington, D.C.

The Subcommittees met, pursuant to call, at 2:01 p.m. in Room 2360, Rayburn House Office Building, Hon. W. Todd Akin, and Edward Schrock, [chairmen of the Subcommittees] presiding.

Chairman AKIN. The Committee will come to order.

Before we begin, I would like to say thanks to our different participants here, different members, and our guests, and I guess perhaps something that is on all of our minds, to recall the good people who are fighting for all of our freedom even today so that we can be here and deliberate and be involved in this great experiment in self-government that we all take part of.

The Office of Advocacy is the voice for small business in government. And through the efforts of the Chief Counsel, that is current Mr. Tom Sullivan, who is with us, the views, and concerns, and interests of small businesses are advanced before Congress, the White House, federal regulatory agencies, and federal courts. The Office of Advocacy performs an invaluable service, saving small business literally millions of dollars every year.

In an effort to increase the effectiveness of the Office of Advocacy, Mr. Schrock and I will be introducing the "Small Business Advocacy Improvement Act of 2003". This continues the effort that was begun some years ago by Missouri's Senator Kit Bond, and sometimes make reference to how a senior member he is, which he does not appreciate, and more recently by our Chairman Mr. Manzullo.

The legislation proposed to establish an independent line item for the Office of Advocacy in order to help establish the office's independence; it enables the President to appoint the office's General Counsel; and limits the Chief Counsel to serve only as long as the terms of the President by whom he or she was appointed.

I look forward to the testimony of Mr. Sullivan and the other witnesses as we seek to improve the ability of the Office of Advocacy to support American small business, which the job engine of the U.S. economy.

It is a cheerful topic that we are embarking on today just because, Mr. Sullivan, of the fantastic reputation that your office has already achieved, and we are very thankful for that.

With that, I would like to recognize my minority member, Mr. Gonzalez, for comments.

Mr. GONZALEZ. Thank you very much, Mr. Chairman. I do have a prepared statement, but in the interest of time and getting right to the testimony and the questions that will be following, I guess I wish just to express my own thanks and appreciation for Mr. Sullivan's presence here and the fine work that he is doing, and of course, the members of the two respective Committees that have the appropriate jurisdiction.

The question really comes down to independence, how do we achieve it. I think there is going to be some real basic questions that I know I would like to pose the counsel and to the other witnesses how we can achieve it in such a way that the best interests of all parties are actually served.

But in the final analysis, it really is in the best interest of small businesses throughout this country which happens to be in the best interest of this country.

Again, thank you very much, Mr. Chairman.

Chairman AKIN. Thank you. It is a pleasure.

And also, I would like to recognize my distinguished colleague, Mr. Schrock.

Chairman SCHROCK. Well, thank you, Mr. Akin. I think I will follow on the heels on Mr. Gonzalez. I had a very, very, very long opening statement, but you are not going to hear it.

I want to welcome Tom Sullivan. I noticed you said current Chief Counsel for Advocacy. That indicates he is going away. I hope that is not the case. So we are glad to have you here, and I am sure we will have some interesting questions for you later. Thank you.

Chairman AKIN. Thank you, Mr. Schrock.

And now our Chief Counsel of the Office of Advocacy. I had the pleasure of meeting Mr. Sullivan several weeks ago, and he had the pleasure of meeting my former home, the Missouri State Legislature, early this year. He recently testified there before the legislature in regard to our federal Reg Flex, which I happily support. And so for your comments, Mr. Sullivan.

Mr. SULLIVAN. Thank you, Chairman Akin and Chairman Schrock and Mr. Gonzalez.

In the interest of time, I would ask that I submit my formal statement for the hearing record, but then be able to summarize briefly before you this afternoon.

Chairman AKIN. Thank you. I am sure—we have gotten word that there is a vote at about three o'clock, so we are eager to keep things moving along, and I certainly appreciate the brief comments of my colleagues here.

Mr. SULLIVAN. Actually, I would like to summarize the statement, if I could.

Chairman AKIN. Please do.

Mr. SULLIVAN. Thank you, Mr. Chairman.

I would like to be brief; not that brief.

[Laughter.]

Mr. SULLIVAN. Just over a year ago—

Chairman AKIN. He was ready for questions.

[Laughter.]

STATEMENT OF THE HONORABLE THOMAS M. SULLIVAN, Chief Counsel, SMALL BUSINESS ADMINISTRATION, OFFICE OF ADVOCACY

Mr. SULLIVAN. Thank you, Mr. Chairman.

Just over a year ago I appeared before the Full House Committee to lend my support to similar legislation of what is going to be discussed today. It is still my belief that a budget line item is the best and most efficient way to ensure that the Office of Advocacy maintains its independence well beyond my tenure as Chief Counsel, and ensure that government continues to be accountable to small business through compliance with the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Act, and President Bush's Executive Order 13-272.

I am borrowing from last year's testimony when I say that the two bedrock principles that underline the Office of Advocacy's ability to represent small businesses effectively are independence and flexibility.

Advocacy's accomplishments and challenges are documented in our annual report to Congress that was completed just about a month ago, and I would also like to submit a copy of that annual report for this hearing record.

Chairman AKIN. It will be submitted.

Mr. SULLIVAN. Our flexibility and independence have allowed us unprecedented access to rules in the earliest stages of the rulemaking process. This result of early intervention is often the delay, removal or alteration of otherwise unnecessary or burdensome regulations.

Our regulatory intervention efforts resulted in a cost savings of $21 billion in fiscal year 2002 alone.

Last night when I was cramming for this afternoon's hearing I noticed that my predecessor, Jerry Glover, came before the Committee last year, and explained the return on investment of the Office of Advocacy by explaining that in Jerry Glover's tenure as Chief Counsel for every dollar spent they recognized a return of $800.

I am pleased to report that last year's cost savings of $21 billion in foregone regulatory costs breakdown to a return on investment that for every dollar spent running our office, we saw a return of $2,712.

Chairman AKIN. Do you sell stocks?

[Laughter.]

Mr. SULLIVAN. If you pay taxes, then you are buying what we do.

One year ago President Bush stood before hundreds of our countries most successful women entrepreneurs just down the street at the Reagan International Center. He rolled out his small business plan. He committed to removing regulatory barriers that stifle job growth. The President is counting on my office to lead that effort, and the cost savings that we have already realized are a good start.

Focusing our efforts in Washington is not enough. As part of our mandate to make legislative and policy proposals for eliminating excess or unnecessary regulations on small business, the Office of

Advocacy has started a nationwide initiative to pursue implementation of regulatory flexibility at the state level.

And as the Chair recognized, I have traveled to Jefferson City, Missouri, and am working with state legislator in Missouri and around the country so that they can realize the same types of cost savings that my office has realized here in Washington, D.C.

Getting down to the budget process, really that is the focus of today's hearing, a conundrum exists, and that that conundrum may threaten the future of advocacy and the important role that it plays.

Under the current budget process the Chief Counsel must rely on budget decisions of the SBA administrator. Now, this Administrator, Hector Baretto, is one of the Office of Advocacy's strongest supporters. His budget decision reflect the President's priorities and the critical role that our office helps in fighting for small business.

However, a day may come when future SBA administrators and Chief Counsels do not get along as well, and the current budget process is a dangerous one because the Office of Advocacy's budget is too easily pillaged when administration priorities change.

A budget line item for the Office of Advocacy would certainly help address the problems in that conundrum and a line item would provide assurance to small entities that they can continue to count on the Office of Advocacy as a strong and independent voice on their behalf.

That concludes my summary, and I am happy to answer any questions that the Subcommittees may have.[The statement of Mr. Sullivan follows:]

Chairman AKIN. I appreciate your testimony, and I think that is really the question before us is a question of how do we maintain that independence and somebody that is out there trying to make sure that as we do our rules and regulations that we are doing it in a way that does not create just tangles of red tape and everything.

Along those lines, I guess my question would be, my understanding is is that your work is with new pieces of legislation and new rules and regulations that are being written as opposed to things that are already existing, and that the ombudsman works more on the stuff that is already here.

Is that something where we really should be combining two functions of government together, or is there enough work to keep both of you busy? And what do you see in terms of structure there? What is going to be best for our small businesses?

Mr. SULLIVAN. The Chairman correctly identifies the respective roles of my office and the Office of Ombudsman. Basically, my office is the before, working with agencies to make sure they treat small business fairly before the finalize rules and regulations. The Office of Ombudsman looks at what happens once the ink is dry, these rules are being enforced, and want to bring to the head of agencies' attention any unfair treatment in the enforcement of those rules and regulations.

I think you also correctly identify that there is plenty of work for both of our offices to do, but the distinction that is before the Committee now is our office's independence and merging the two

present the same type of conundrum where the ombudsman's office reports directly to the SBA administrator, and does officially represent administration policy and how the rules and regulations are being enforced.

Our office, to the contrary, can only speak on behalf of small business, and we feel as though that independence works best with the before and after scenario that works currently.

I do need to add though that we have enhanced our ability to look at rules that are already on the books. We entered into a formal arrangement with the head of the White House Regulatory Office, John Graham, and have looked at rules that are on the books, and are now working with the agencies to look at over 267 rules, regulations and guidance documents that should be revised; 30 of which should be revised because of their specific impact on small business.

And so we have gone beyond simply looking at the rules in the pipeline, and are looking at rules that are on the books that should be removed because small businesses are treated unfairly.

Chairman AKIN. That is interesting. I did not know that you had made that additional progress, and thank you.

Just one other quick question, and then I need to allow Mr. Udall to ask a question, if you have a question, or Mr. Gonzalez.

Just roughly how many employees do you have and the overall size of your operation?

Mr. SULLIVAN. Right now we have slots for 47 people in my office. That includes 37 officials in Washington, D.C. that are broken down largely in a regulatory arena, they are attorneys, and a research arena, who are economists. There are 10 throughout the country. In your home state, for instance, Wendall Bailey, we are honored to have Wendall Bailey as our regional advocate out in Missouri. And we have in each of the 10 regions, we do have a slot for regional advocates, and they are intended to be the eyes and ears for our office to help us prioritize on what issues are most important to small business.

Chairman AKIN. Thank you very much.

Mr. Udall, did you have a question? Do you want to go?

Mr. UDALL. Yes. And Mr. Chairman, could I put my statement in the record, my opening statement.

Chairman AKIN. It will be submitted.

Mr. UDALL. Thank you very much.

And my question has to do with the amicus curiae authority that you have in the disputes that are going on between the Department of Justice and your office. I mean, how can we make sure that you are really an independent voice in the courts for small business? What is your opinion on that?

Mr. SULLIVAN. My opinion is that from the budget process that is one way to bolster our independence. When it comes to better independence in the courts, I think that that is a discussion that we will continue to have with the Subcommittees and the full Committees.

There have been legislative concepts in the past that view giving our office more authority in the legal arena, and we are excited about that, but focusing from a legislative perspective now on the budget line item approach, and working with an executive order

that does not get us to court, but does give more strength to the operations of our office.

So the simple answer to Congressman Udall is we would like to work with the Committee to look at those options to bolster our independence in addition to bolstering the independence from a budget perspective, which is primarily the focus of my testimony this afternoon.

Mr. UDALL. But at this point you are not supporting any particular approach with regard to the courts?

Mr. SULLIVAN. That is accurate. We have not looked at legislation being drafted in the 108th Congress and saying this will bolster our legal authority from amicus curiae.

Mr. UDALL. Thank you, Mr. Chairman.

Chairman AKIN. Thank you. Mr. Schrock.

Chairman SCHROCK. Thank you, Mr. Chairman.

Tom, thank you for coming today. It is good to see you here. It is also good to see Giovanni Coratolo from the Chamber, and Andrew Langer from NFIB who were three participants in a round table I did a few weeks ago that I thought was very beneficial, so I am glad you are all here today participating.

Let me just give you a quick story. I have been meeting with some small business people. I met with a businesswoman from Virginia Beach that I have known for quite a long time. And you talk about fairness, two things, she mentioned a lot of things, but two of them that got my attention was that big business, if they have business lunches, they are allowed to write off 100 percent of what they spend. Small businesses are allowed to only write off 50 percent. She does not get that, I do not get that either.

She also said that OSHA showed up on her doorstep a couple of weeks ago, and walked in and said that they wanted to see a particular document, and they said, gosh, the lady that does that went to a dental appointment, she will be back in 45 minutes. They said, we do not care, we want to see it now or else.

So in the 45 minutes they tore the office apart, could not find it. This other lady walked in and found it in a heartbeat.

That kind of stuff is absolute nonsense, and somehow we have got to try to put a stop to that. And we just hear stories like that over and over again, and I continue to hear those every time I meet with somebody.

Tom, some would argue that an independent line item might make your office an easy target for retributions. Mr. Udall, I think, kind of alluded to that.

Do you think that is true? How would you respond to that?

Mr. SULLIVAN. I would respond by clarifying to the Subcommittees that a line item absolutely makes our office more of a target, and that is a deliberate move, I think, on behalf of the Subcommittees and the full Committees.

And the reason I say that it makes us more of a target, it I mean it in a positive way because the way our—

Chairman SCHROCK. You scared me there for a minute.

[Laughter.[

Mr. SULLIVAN. I mean from a positive bulls eye and the excitement that you get when you hit the cork playing darts, not the other targets that we talk about.

I point that out because our office's legislative mandate, our priorities that we have to take in law say that we have to take the direction directly from small business. No matter what we do in my office small business has to ask us to get involved. And by making our budget process subjected more directly to the review by this Subcommittee, by the review of the Appropriations Committee, it makes us more directly responsible to the small business community.

Chairman SCHROCK. Okay. So if we come to you, it is different than when a small business does? A small business comes to me like I just came to you with those two things. It is better from Mrs. Wood to come to you than it is for me?

Mr. SULLIVAN. Mr. Schrock, we actually think that it is best both ways.

Chairman SCHROCK. Okay.

Mr. SULLIVAN. We consider our clients small business, bit I mean that in an expansive rather than a restrictive manner, that the Committees in the House and the Senate that represent small business. Every member of Congress who goes home will go home in a few weeks on recess, and visit small business, and brings back to my office things that we should be involved in. They are absolutely the client base that we respond to as well as the folks that you mentioned: Allen Neece, Andrew Langer and Giovanni Coratolo.

I am honored to consider them friends and colleagues, and I consider it a compliment that I know all of them personally because we insist on that interaction to give my office direction.

Chairman SCHROCK. Great. What other tools do you think are necessary to make you and your office more effective?

Mr. SULLIVAN. In the last year since I have had the honor of being in this position, the biggest bang for the buck that we have gotten is the President's leadership.

I mean, for the President to announce his small business plan and turn directly to the Office of Advocacy and say, "I will give you an executive order that will help small business?"

And then in August after going to Waco, Texas, signing that executive order and telling our office that it is not enough to criticize agencies, but you have to get into agencies and actually train them on how to do a better job considering their impact on small business. That tool, that pulpit for agencies to do a better job, because that is their boss telling them to do that in the executive order, has been tremendously effective and will continue to be effective.

The other effective tool in our arsenal to achieve regulatory cost savings for small business is all of you. And when the President tells his agencies to report how they are going to do a better job considering small business, and they have responsibility of filing those reports with us and with you, and they do not, sometimes the oversight functions that you all are engaged with loosen that knot, so to speak, and actually get better responses.

So I by all means view this as a three-pronged partnership with the President, my office, and this Committee to make sure that we are all going to try to take steps to help small business.

So I would say that the constant interaction we have with this Committee and the wonderful staff members who all of you have

have is a tremendous tool, and I am going to do everything I can to keep that interaction alive and working.

Chairman SCHROCK. And I hope you will not hesitate to come to us at any time.

Thank you, Mr. Chairman.

Chairman AKIN. Thank you, Mr. Schrock.

And Mr. Gonzalez.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

Mr. Sullivan, you have 47 people on the staff; is that right? Of those 47, how many are attorneys?

Mr. SULLIVAN. I have the—

Mr. GONZALEZ. Formal legal training of some sort.

Mr. SULLIVAN. If you will excuse me for one moment, I am going to lead back to Davit Voight in my office and actually get count if Mr. Gonzalez would like.

Mr. GONZALEZ. Fine.

Mr. SULLIVAN. Thank you. David advises me that there are approximately 16 attorneys on staff. I should also clarify to Mr. Gonzalez that there are 47 slots.

Mr. GONZALEZ. Okay.

Mr. SULLIVAN. And I make a particular point of saying that because one of those slots actually is the regional advocate for this area that is not filled yet.

Mr. GONZALEZ. Okay.

Mr. SULLIVAN. So 16 of those slots are attorneys.

Mr. GONZALEZ. Would you say that your entity with the SBA is different from any other, and in this respect, whether it is ombudsman or anything, is that there is more of a legal take on this?

You are obviously general counsel for advocacy, and that there is a relationship there, and one which requires probably greater training in the law, obviously if you are going to have 16 attorneys out of those particular slots. And I would like to focus in on that particular and very unique relationship that you have as basically the lawyer for small business, and that is the way I view you and your office in essence, going through the complexity of the regulatory system, what we enact, and of course, the consequences on how we can and do business in America.

I would like to make that distinction, so I ask you, in essence, who is your client? If you are an advocate, for whom do you advocate?

Mr. SULLIVAN. I would like to clarify at least kind of how I try to approach the attorneys on my staff, and that is not to make a distinction of greater or less legal training from the lawyers who are working for David Javgan, who is SBA's general counsel, but more of kind of a counsellor role in the traditional counseling sense of what a lot of the attorneys are trained to do, at its most simple sense. The attorneys in our office connect small businesses with federal regulators. That is at the most basic sense of what we do in order for the agencies to comply with the mandates of the Regulatory Flexibility Act. So in that sense there is more of a main street education than a law school education.

You had followed your observation, I think, with kind of a question about the training. If you could repeat that question with my understanding, I could probably best answer.

Mr. GONZALEZ. What does your office lend itself to individuals who would have greater training in the way of regulatory scheme and such from a legal standpoint?

Mr. SULLIVAN. Oh, you had asked about who we consider our clients to be?

Mr. GONZALEZ. And then who is your client if you are an advocate?

Mr. SULLIVAN. Our clients have to be small businesses, and I will share with you kind of how we operate in our office, and that is basically where someone comes to me and says, Tom, the Federal Communications Commission is not doing a good job considering their impact on small business before they finalize a rule.

My first question is always who is asking for us to get involved, and generally the attorneys in my office say, well, these small business groups represented by the Chamber of Commerce and NFIB, NSBU, there is different interest groups, or even some of the small business owners themselves who have interacted with Tayl Phillips, for instance, who covers your part of the country, Mr. Gonzalez. And at that point we try to connect those small businesses into the process.

So the answer to your question is who our clients are are small business. They range in their sophistication of the issues depending on the particular issue. For instance, there are small business owners who regularly talk with our office on Clean Air Act regulations that EPA is considering. These folks who are small business owners and produce small engines, some produce chemicals, possess a far greater engineering and legal sophistication than even some of the professionals at the Environmental Protection Agency.

And then on the other end we have small businesses who own nursing homes do not have any sophistication other than they are remarkable professionals they have in caring for the elderly, who do not know what it means when OSHA puts out 100-page document on ergonomics.

And we then walk very carefully with them step by step on what OSHA is trying to do, and then get back to OSHA to say you are going about it the wrong way. Here is a small business owner who knows about caring for the elderly. Build their common sense into the final legal document that constitutes a final rule.

So that is how we cover the spectrum of who we consider our clients to be.

Mr. GONZALEZ. And the last observation, I do not know if I have a real question, it is just that I could not agree more that to assure the independence that is required in order for you to be that advocate, which is very unique if you think in the scheme of things, we are going to have to start off with the purse strings, and make sure—you indicated, of course, you know, you are a target either way. It is just the lesser of a target, and getting more people involved, and to assure that type of independence.

I know we have inquired other ways of doing it, and that is questions obviously for the future, and that I would like to engage you in informally with you or members of your staff is what else can we do. If we can achieve this, which we are not real sure but hopefully we will, what will be the next step. And thank you for your testimony.

Mr. SULLIVAN. Thank you, Mr. Gonzalez, and you have my commitment to engage in either formal or informal dialogue to see how we can do best by small business.

I wrote down, I think, at the beginning that that is ultimately our goal that you clarified in your opening statement, and that is, how can we ensure what is absolutely a unique office within the entire government, not only SBA, how do we maintain that independence and work towards even more independence to ultimately help small business.

Chairman AKIN. Thank you, Mr. Sullivan.

In the interest of time I am going to finish up with the first panel and call the second panel up now, if we could, please. That would be Giovanni Coratolo, Allen Neece and Andrew Langer.

Good afternoon, gentlemen. In the interest of time, I am going to just introduce you quickly, and let each of you proceed with your testimony, and then I am going to open things up for questions. I think we have got somewhat limited schedule here this afternoon, so I thought maybe we would go a little faster if we went that route.

And Mr. Coratolo, am I getting that more or less close for—

Mr. CORATOLO. That is close.

Chairman AKIN. —a beginner?

Mr. CORATOLO. That is great.

Chairman AKIN. Thank you. You are the Director of Small Business Policy for the U.S. Chamber of Commerce, and the U.S. Chamber of Commerce is an underlying membership of 3 million members, 96 percent of which are small businesses.

Mr. CORATOLO. Yes, sir.

Chairman AKIN. And so we are delighted to welcome you today.

STATEMENT OF GIOVANNI CORATOLO, DIRECTOR, SMALL BUSINESS POLICY - ECONOMIC POLICY DIVISION, UNITED STATES CHAMBER OF COMMERCE; ACCOMPANIED BY ALLEN NEECE, CHAIRMAN, SMALL BUSINESS LEGISLATIVE COUNCIL; ANDREW LANGER, MANAGER, REGULATORY POLICY, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES

STATEMENT OF GIOVANNI CORATOLO

Mr. CORATOLO. Well, thank you, Chairman Akin, Chairman Schrock, and Ranking Member Udall and Ranking Member Gonzalez. It is a pleasure to be front of you.

I am Giovanni Coratolo, Director of Small Business Policy for the U.S. Chamber of Commerce. And the Chamber commends the Subcommittees on having this hearing to explore the ways to improve the Office of Advocacy and create a stronger voice for our nation's 24 million small businesses. And I am going to try to summarize this because I have a written statement that is for the record.

Over the past decade the importance of small businesses to the foundation of economic growth and prosperity has been unprecedented. As economic statistics confirm, maintaining a healthy environment for small business to proliferate contributes greatly to raising our standards of living.

Unfortunately, as we have seen the growing importance and the vitality and stability of small business, we have also seen federal

agencies continue to propose regulations that impose disproportionate burdens on the smaller employers. The cumulative cost of compliance with federal regulations can be formidable for many small business, and in some instances it may be fatal.

As the proliferation of regulations affecting small business have increased over the years, so too has the Chief Counsel's responsibilities under RFA, SBREFA, Executive Order 12-866, and the just recently Executive Order of 13-272.

We have a growing necessity of a strong independent small business advocate with the Executive Branch of government armed with the tools to work effectively on behalf of small businesses.

Even with the resources of the U.S. Chamber of Commerce, it is a daunting task to try to review all the regulations that agencies issue that have an impact on small business.

Let me turn to some of the legislative proposals that can strengthen the office because that is why we are here.

First, a specified line item for funding for the office within the President's budget. In order to have a Chief Counsel that can provide a strong independent voice for small business separate line item funding is a must. Funding for the office must be directly related to the checks and balances of the budget process and not subject to internal political pressures of any federal agencies in pet projects.

In conjunction with this, the responsibilities and duties of the host agency to provide support, such as phones, maintenance, office space, IT support, must be spelled out in order to provide a financial firewall between the two budgets.

Second, provisions for continuity of leadership for the office during the changes of administration. Having the Chief Counsel continue serving for a specified length of time during a transition period reduces the likelihood of gaps in the leadership in the office.

As we have seen recently in the past, vacancies in the position could have a negative impact in the momentum and morale within the office. Without a Chief Counsel in charge, the direction and resolve of the office is compromised.

The regulatory process does not take a vacation when the office is vacant, and small businesses run the risk of not being properly represented.

Third, there is a—we certainly want to give the office the power and authority to make a difference. There is a quirk in RFA and SBREFA that was handed down in the NAAQS case that actually did not, and that is the National Ambient Air Quality Standards case that did not give deference to the office's amicus curiae brief.

The office, there should be legislation introduced, and I am not sure that this would be the legislation for it, but there should be something introduced that makes the Office of Advocacy the agency responsible for making sure other agencies live up to the responsibilities under Chapter 6, Title V, which is Reg Flex.

Also, we feel that another purpose of the Office of Advocacy that has not been stated here today is economic research. We find that when Congress knows of the impact that regulations have on small business and that they know the contribution small business make toward the economy they make better regulations and they make better legislation.

So the Office of Advocacy provides a wealth of economic research data that allows us to make better decision as policy experts, and it allows you to make better laws.

So that is something that we would like to see continue as a sub line item for research. There is an existing line item for economic research. We would like to see that continue so we can have some handle on it.

In conclusion, the Chamber strongly encourages legislation that will provide independence, and we thank you very much for allowing us to testify here today.

Chairman AKIN. Thank you, Mr. Coratolo, with just six seconds to spare. That is pretty good timing.

And let us move ahead with your testimony, Mr. Neece, please.

STATEMENT OF ALLEN NEECE

Mr. NEECE. Thank you. Maybe, Mr. Chairman, he would yield me six seconds.

[Laughter.]

Mr. CORATOLO. Yield the balance.

Mr. NEECE. Yield the balance of your time.

Mr. Chairman, and Mr. Chairman, and members of the Committee.

I am Allen Neece. I am the elected Chairman of the Small Business Legislative Council which is an association of associations consisting of 70 industry-specific professional and trade organizations representing small businesses. We operate by consensus, and we are concerned exclusively with small business issues as opposed to more broad-based issues. In other words, we do not spend a lot of time in foreign policy and other areas.

We are delighted to have been invited to testify here today. And Mr. Chairman, I have a prepared statement, and I would ask that it be submitted for the record.

Chairman AKIN. Without objection.

Mr. NEECE. That being the case, I will try to confine my remarks to about two minutes.

By way of background, I have had the pleasure of working in the public policy arena for about 35 years, addressing only small business issues. I happened to be with the Senate Small Business Committee when the enabling legislation for advocacy was enacted. I was involved with confirmation of the first advocate, Milton Stewart, who was a giant and mentored a lot of people who still work for Tom Sullivan in advocacy. So I have been around advocacy and its function for a long time.

And in that capacity and on behalf of LBLC, I want to say we strongly endorse and support the measure that you indicated you are about to introduce, last year known as the Bond-Kerry bill. I guess this year over on the Senate side may soon be known as the Snowe-Kerry bill. We support the line item. We think that will greatly enhance advocacy's independence within SBA, and will strengthen their hand as they work and advocate on behalf of small business throughout the rest of the federal government.

Advocacy performs the most important function that there is for small business, far and above any other agency. Lots of other agencies may help small business, but they may also hurt. Advocacy

only helps, and they have a terrific track record. Tom Sullivan is doing exception work, and we strongly endorse what he has been doing. He is really a model advocate, and we strongly endorse his testimony.

There is one other item that we would urge your consideration, and that is that when there is a change of administrations, that the then serving advocate consider to serve until such time as the next administration would nominate his or her successor.

There was a period some years ago when one administration waited three and a half years into the administration's tenure before nominating and sending up a nomination for an advocate. That is certainly not germane to the current situation. But if you are going to address this one issue, we would urge that you address the other one.

The last point is we hope you keep the bill clean. Do not add other ancillary provisions in there. We recognize that lots of other members and other organizations think that advocacy could be strengthened and improved maybe in some other areas, but we are realists. The political realities are from our perspective is this bill needs to be simple and clean to enhance its probability of passage.

Legislation has been pending both before the House and the Senate in the last Congress, and we all were waiting with abated breath, but we are still here talking about.

Thank you very much, Mr. Chairman, Mr. Chairman.

Chairman AKIN. Thank you, Mr. Neece, appreciate your testimony.

And now Mr. Langer.

STATEMENT OF ANDREW LANGER

Mr. LANGER. Thank you. Chairman Akin, Chairman Schrock, Mr. Udall and Mr. Gonzales.

I want to thank you very much for the opportunity to appear before the Subcommittees once again. It is my pleasure to be here representing the National Federation of Independent Business and talk about making the SBA's Office of Advocacy more independent.

Just for a little background, the National Federation of Independent Business has 600,000 members nationwide. We have members in every state in the union, and we represent the full panoply of small businesses that are out there. We reflect generally the census statistics on small businesses. Our average member has five to seven employees, and 80 percent of our members have fewer than 10 employees in their business.

As you can imagine, as I have testified before, small businesses are obviously very different than big businesses. The regulatory costs are higher for our members than other businesses to the tune of, according to the Office of Advocacy's own research, roughly $7,000 per employee per year. And advocacy is doing a stellar job on trying to reduce that number, and I want to talk briefly about that.

I mean, the numbers really do speak for themselves. Under Tom Sullivan's watch, $21 billion in savings last year to small businesses. I mean, that is an incredible number, staggering. That saving is passed on to our members so they can continue to be the en-

gines for economic growth and recovery that this nation desperately needs.

The enactment of the Memorandum of Understanding between Tom's office, Mr. Sullivan's office and the Office of Information and Regulatory Affairs is almost unprecedented, and will go a long way towards strengthening the role of advocacy in dealing with not just the regulations that are coming down the pipeline, but regulations that are currently on the books, and I will talk about that in a moment.

Oh, if I can just digress for a moment, and say that I have much lengthier remarks, and I would hope that they would be entered into the record.

Chairman AKIN. Without objection.

Mr. LANGER. Thank you.

In our opinion, further independence can only strengthen advocacy's role. The fact is that it could be insulated, as Mr. Sullivan himself has testified, from political game playing in the administration itself, the fact is that it would encourage and strengthen its bedrock principles of being incredibly flexible in dealing with the problem that small businesses face, and it would ensure that it has access to greater resources.

The fact is the Office of Advocacy can certainly use greater resources, in our opinion. The burdens that businesses face today are only, frankly, getting worse as regulations increase.

There are ever increasing numbers of regulations on the books, and giving advocacy greater resources, frankly, would allow them to do that job of trying to trim away the regulations that are already there. The fact is that they are dealing with problems that we bring up every day from our members, and our members are dealing with myriad problems, some of which have nothing to do with one another, and they come at them from all directions.

You know, we are asked from time to time what one regulation is most problematic for our members, and the fact is there is not one. Our members are getting it from all ends.

Chairman Schrock talked about a business in his district having an OSHA representative show up demanding a document that they just could not find for 45 minutes. We have had an example of a member calling us up saying that OSHA wanted to fine them for having an improper toaster in their business. I have got members calling me about fishing regulations, and problems with scientific studies there. I have got members calling about economic census problems and forms that they have gotten that are 15 pages long.

And the fact is that when I think about those issues the people that I turn to immediately are the team that Tom has working for him; people like Susan Howell, and people like Kevin Bromberg, and people like Charlie Moraska. These are people that I deal with on a regular basis, and who go to the bat for our members time and time again, and I could think of nothing better than making that organization more independent and strengthening it.

We believe that a line item is the right first step. We think that it will do the best to protect it immediately, and then we could talk about how to change things afterwards.

I want to sum up by saying that the NFIB appreciates the opportunity to share its concerns with Congress. With costs of regulation

being such a high priority for our 600,000 members, we are glad to have the Office of Advocacy working so hard to help them. They are dogged, they are relentless. The time has come to strengthen their ability to provide much needed assistance.

Thank you once again, and I look forward to any questions that you might have.

Chairman AKIN. Thank you, Mr. Langer.

I have just one, and most of your testimony is right along the same lines, and you are suggesting that we need to give the independence and the flexibility to this office so they can really do their job without looking over their shoulder.

I guess one, there is different ways you could try to accomplish that structurally. One of them might be that you could create an independent commission or something like that as opposed to an independent line item. I guess the FTC or the SEC has an independent commission. That would be a possible approach. Apparently you prefer the line item over that other kind of approach.

And then I guess the other question I have is, when you do create a line item, you know, the President or OMB could just line the thing out as well. So you have chosen one way. You know, what is the balance if you consider those other alternatives? And that question is for any of the three of you or all three, however you want to do it.

Mr. CORATOLO. Mr. Chairman, I will take a crack at that. As far as the commission goes, it is a step in the wrong direction. We feel that the advantage that advocacy has is it has flexibility to work quickly and decisively within the administration at the earliest stages of the regulatory process.

You create a commission, you triple the costs needed to produce that commission, you expand government, and you slow down the process. A commission, in my understanding, would have majority as well as minority views on how to progress as far as regulatory process, so you would not get decisions made with the ease and flexibility that the current office has.

More importantly, with the commission you lose the ability to work within the administration based on the Separation of Powers Act. So I mean you really lose all the good things that advocacy has on its side right now.

As far as the independent line, you know, when you tell the story that advocacy has, it is easy to sell and defend that budget. We took the existing line item, which is only for economic research several years ago, and by telling the story of the Office of Advocacy we were able to increase that line item almost 35 percent based on that good story the advocacy had. Thank you.

Mr. NEECE. Mr. Chairman, the idea of a commission is not new. It has been debated for the last 35 years, including back in the days with the first advocate. And the truth of the matter is there are some merits to a commission, and this is an issue that you are addressing, in my opinion, that there are a lot of grays and there are not that many black and whites.

But from my personal perspective in talking with Frank Swain and Milton Stewart and Tom, our existing advocate, and Jerry Glover at great length about this issue, at the end of the day, and I was one of those as a staffer who wanted the advocate to be as

independent as possible, so in effect he could figuratively tell the president to drop dead on a policy issue.

But the reality is you cannot do that no matter how much—it does not matter what your political persuasion is, and what administration is in power. You need the support of the president because that advocate one, two, three, maybe four times during the course of a four-year administration is going to have to go to the well, and they are going to have to go to the White House, and they are going to have to ask for some help, and in my opinion, only the White House can make that cutting edge difference.

If you are a commission, at the end of the day after yo have used the bully pulpit, and you cannot sway that agency to change their position, the only recourse you have is litigation.

And if you are one agency, and that occurs every once in awhile between agencies, or they get caught up in litigation by a third party where they end up being on different sides, I think you wear advocacy down. They do not have the deep pockets, and you could litigate until the cows come home, but I do not think in the final analysis advocacy will prevail. And if advocacy does not prevail, small business did not prevail.

So I think you need to give them as much independence with the budget short of cutting them loose and letting them adrift where they are swimming in a river all by themselves. There is more to it than that, but I think that is all we need for the moment.

Chairman AKIN. I think you have answered my question. Unless you have an opposition position.

Mr. LANGER. No, I do not have anything to add on the issue of the commission. I agree with my colleagues entirely.

Just on the issue of the potential for having the office zeroed out, I think, (a) that is a risk that I would be willing to take on this. I think that any president or Office of Management and Budget so foolhardy as to zero out the Office of Advocacy would be immediately met with, you know the hue and cry from the small business community which again is the engine of this economy, and I do not think any president is going to ignore that, frankly.

Chairman AKIN. Thank you very much.

Mr. Udall, did you have a question?

Mr. UDALL. Sure, Mr. Chairman. Thank you.

In your view, and this is really all three of you, I guess, in your view what is the gravest problem facing the Chief Counsel for Advocacy in the absence of a line item in appropriations or the D.C. Circuit's decision in the American Trucking Association case where the court stated that opinions of Chief Counsel for Advocacy on agency compliance with RIFRA is are not entitled to any weight?

So which one of those do you see as the biggest problem and what is the way to fix it?

Mr. NEECE. We both gave long-winded answer.

Mr. LANGER. Yes. No, you guys did fine. I would like to—I think it is important to ensure that independence, but I would like to speak to the issue of deference for a moment.

In light of the issue of the Chevron case many, many years ago, which allows that agency opinions are supposed to be given weight, I think that absolutely there needs to be a legislative fix giving the Office of Advocacy a similar amount of deference.

The fact is that as we weigh cost and benefits of regulation there has got to be someone out there speaking for the costs in terms of these things. When you get professional civil servants who have never run a business, never been out in the business world who really do not understanding the real world impacts of what they are regulating and what they are doing, it is essential for that voice to be given equal weight or similar weight in court cases.

But I still think that giving it its independence through a line item is of paramount importance, but, boy, that deference issue would be a great one to have.

Mr. UDALL. Now, Mr. Langer, you are saying that we should do that legislatively then.

Mr. LANGER. I think you have to do it legislatively.

Mr. UDALL. You have to do it legislatively.

Mr. LANGER. Now, understand, I am not speaking as a lawyer here because I am not a lawyer. But I have worked on enough environmental issues and worked with enough environmentalers in the past to understand the issue of deference and the issue the court has given it, and I do not think that courts are going to pay attention to it unless it does come down legislatively. I think it has to be that way.

Mr. UDALL. Thank you very much.

Do you other two have any comments? Okay, thank you.

Chairman AKIN. Mr. Schrock.

Chairman SCHROCK. Andrew, you are absolutely right what you said. In fact, I think something we learned during the round table was that there are agencies out there creating regulations in case something happens in the future.

Mr. LANGER. Sure.

Chairman SCHROCK. Which just exacerbates an already very difficult problem.

Let me ask all of you, what happens to Tom's office if this legislation is not passed?

Mr. NEECE. Well, it is business as usual. I mean, from my perspective there is no great calamity here. What this is this is insurance. This is prophylactic. We have long sought a means by which advocacy is assured of a proper line item budget. That was not the case—I will be very specific—that was not the case in the last administration because the budget the way it now operates is the SBA administrator determines, they are the determinant, the administrator's office determines what advocacy will have in terms of what is then submitted to OMB.

There is no direct correspondence with OMB. Tom Sullivan or Jerry Glover or whoever it might be is completely out of the loop.

In the last administration, when times get tough, and they often do and they are right now, SBA gets squeezed in its budget, and the SBA administrator looks around and says, all right, where is the soft underbelly, where can I cut a few dollars here as we gird our loins for battle and try to get more money, but in the meantime I have got to find resources for all these other programs that we deliver.

And the one who is really defenseless is the advocate, and the advocate does not come up here and talk directly with the appro-

priations, with State, Justice, Commerce. He is supportive of the president's budget.

So at the end of the day if the SBA administrator does not give sufficient resources, the advocate is out of the look. That is where we—it is pretty simple. We simply want to correct that so the SBA when they send over their budget the advocate's line item in that proposal to OMB has not been touched in any way, shape or form by the administrator.

Chairman SCHROCK. Okay.

Mr. LANGER. If I can just add to that briefly.

Chairman SCHROCK. Sure.

Mr. LANGER. I mean one need only look at the Office of Information and Regulatory Affairs over at the Office of Management and Budget, which is another entity that I—whose mission I support wholeheartedly, their budget since they were formed has pretty much—their staff has been cut, they have never been nearly as strong as they were when they were first founded, and that, to me, is the risk that we run with the Office of Advocacy.

They are doing similar jobs on a parallel track, both of which are out there to protect the best interests of every day American who are working hard to keep this economy going, and my fear is that some day, again as the gird their loins for battle, that the Office of Advocacy gets cut.

Chairman SCHROCK. The bottom line is it needs to be passed.

Mr. LANGER. Yes.

Chairman SCHROCK. Thank you, Mr. Chairman.

Chairman AKIN. Thank you, Mr. Schrock.

And Mr. Gonzalez.

Mr. GONZALEZ. Thank you, Mr. Chairman.

Ranking Member Nydia Velazquez last year would hold once a month a round table breakfast, and we would have from different private sectors representatives. I think you all may be familiar and participated, or some members did for sure. And what was always the forefront was regulatory relief and the costs and the burden that it places in doing business.

When it was all said and done, it really was not being addressed prior to the adoption of any regulation, and it was not being done afterwards save and except for the work of the Office of Advocate.

Who else—the first part of the question is, is there anyone else? If Tom does not do it, and I think Mr. Langer said no one looks at the cost side within this whole scheme other than Tom's office, that is the first thing.

The other concern is, and I am not real sure, in past we have not been successful in this particular endeavor. I am not absolutely certain why. Is there going to be an argument made that by having a separate line item, budget item for this particular office, that somehow you are doing something that is fundamentally changing that relationship?

In essence, you are repealing a law that creates this particular entity within the SBA, and within the authority and with management of SBA, because I am just anticipating any arguments.

And then if we do not do this, and everything remains exactly as it is, is a commission something that we should be looking to as an improvement over what we have now?

Mr. CORATOLO. I can answer some of that.

Mr. GONZALEZ. Yes, sir.

Mr. CORATOLO. If you really look at the grand scheme of things as to regulatory reform, you have to really go way back into 1980, at the inception of the Regulatory Flexibility Act. And as it has transpired, Office of Advocacy was initiated in 1976, Reg Flex in 1980, SBREFA strengthened Reg Flex, but there was a whole scheme of different parts that were interrelated. And all that advocacy actually orchestrates and makes complete the puzzle of regulatory—as far as the regulatory nature of agencies and what they have to do and comply in making sensitive their regulations to small business.

So having advocacy, advocacy is the key. There is no other agency other than OIRA, and now we have a relationship between advocacy and OIRA on how they handle the small business regulations, which even strengthens that. It is an incremental step. As we have seen with the Executive Order 13-272, everything tends to be incrementally done as far as strengthening small businesses' representation in front of the agencies.

With that being said, having a line item for advocacy is the next incremental step in making sure that small businesses are correctly represented in front of the agencies. I do not think it is a radical change. I think it is an incremental step. A commission would be a radical change in the wrong direction in my opinion.

Mr. NEECE. Mr. Gonzalez, I have one thing to add to that.

The precedent has already been set in the Small Business Act. The inspector general is funded in a manner by which we are recommending you fund advocacy. The IG sends his budget to the administrator, it does not matter what that figure is it is included in the budget that the administrator then sends to OMB. The administrator has no discretion to add or subtract to the number given him by the IG, and that is what we are suggesting you do with advocacy.

Mr. LANGER. I do not have anything to add to what my colleagues have said.

Mr. GONZALEZ. Thank you very much.

Chairman AKIN. If that is all the questions that we have, then I would like to thank, first of all, Mr. Sullivan, and then Mr. Coratolo, and Mr. Neece, and Mr. Langer for your time, and for my fellow colleagues, and with that we adjourn.

[Whereupon, at 3:01 p.m. the Subcommittees were adjourned.]

A P P E N D I X

OPENING STATEMENT
1 APRIL 2003

SUBCOMMITTEE CHAIRMAN W. TODD AKIN
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT & GOVERNMENT PROGRAMS

SBA OFFICE OF ADVOCACY
"SMALL BUSINESS ADVOCACY IMPROVEMENT ACT OF 2003"

Good afternoon.

Before we begin, I would like to take a moment to thank our men and women in uniform for their service and sacrifice in their efforts to liberate the people of Iraq and protect this nation from further terrorist attack. I'd like us all to remember that the soldiers, sailors, marines and airman of the United States military guard and protect our freedom everyday, and make it possible for us to assemble in this room in peace.

The Office of Advocacy is the voice for small business in government. Through the efforts of the Chief Counsel – currently Mr. Tom Sullivan – the views, concerns and interests of small business are advanced before Congress, the White House, federal regulatory agencies and federal courts. The Office of Advocacy performs an invaluable service, saving small business literally millions of dollars every year.

In an effort to increase the effectiveness of the Office of Advocacy, Mr. Schrock and I will be introducing the "Small Business Advocacy Improvement Act of 2003". This continues and effort begun some years ago by Missouri's senior Senator Kit Bond and more recently by our Chairman Mr. Manzullo.

The legislation proposes to:

- Establish and independent line-item for the Office of Advocacy, in order to help establish the offices independence.
- Enables the President to appoint the office's General Counsel .

- Limits the Chief Counsel to serve only as long as the term of the President by whom he or she was appointed.

I look forward to the testimony of Mr. Sullivan and the other witnesses as we seek to improve the ability of the Office of Advocacy to support American small business, which is the job engine of the U.S. economy.

Statement of Ed Schrock
Chairman
Subcommittee on Regulatory Reform and Oversight
Committee on Small Business
United States House of Representatives
Washington, DC
April 1, 2003

Chairman Akin, I am delighted to be hosting this hearing with you on the Small Business Administration's Office of Advocacy. I have had the pleasure of working with our current Chief Counsel for Advocacy, Tom Sullivan, on a number of occasions.

I can say that the small business community, as represented by a number of small business groups and trade associations, believes that the Office of Advocacy is doing a tremendous job in helping to save small businesses money and save them from unnecessary regulatory burdens.

From the home builders to the florists, from micro businesses to small manufacturers, they all seem to agree that the Office of Advocacy is a necessary safeguard for small businesses. And they strongly support making the office more independent. I am pleased to support the concepts of the legislation that we are discussing today for more budgetary independence, continued cooperation with the Office of the Ombudsman, and greater oversight of agency compliance with regulatory flexibility statutes. I welcome the comments of the Chief Counsel today along with our other witnesses. And I look forward to working with Chairman Akin, Chairman Manzullo, and other members of this committee to see that legislation is enacted in this Congress.

Office of Advocacy

Testimony of

Thomas M. Sullivan
Chief Counsel for Advocacy
U.S. Small Business Administration

Before the

Subcommittee on Workforce, Empowerment and Government Programs

and the

Subcommittee on Regulatory Reform and Oversight

U.S. House of Representatives
Committee on Small Business

On

The Small Business Office of Advocacy Improvements

April 1, 2003
2:00 P.M.

Chairman Akin, Chairman Schrock and Members of the Subcommittees, good afternoon and thank you for the opportunity to discuss ways to strengthen and improve the Office of Advocacy. Just over one year ago, I appeared before the full committee to lend my support to similar legislation. It is still my belief that a budget line item is the best and most efficient way to ensure that our office's independence will last well beyond my tenure as chief counsel, and ensure that government continues to be accountable to

small business through compliance with the Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement Fairness Act (SBREFA), and Executive Order 13272.

I am borrowing from my March 2002 testimony when I say that the two bedrock principles that underlie the Office of Advocacy's ability to represent small businesses effectively are independence and flexibility. The office is able to present the views of small entities to lawmakers and policymakers independent of the views of the U.S. Small Business Administration (SBA) and the Administration. The office has broad statutory authority, which gives it the flexibility to be both reactive and proactive on matters of concern to small entities.

Holding Government Accountable to Small Business

Advocacy's accomplishments and challenges are documented in our annual RFA report to Congress. I would like to submit a copy for this hearing record. Our flexibility and independence have allowed us unprecedented access to rules in the earliest stages of the rulemaking process. The result of this early intervention is often the delay, removal or alteration of otherwise unnecessary or burdensome regulations. Our regulatory intervention efforts resulted in a cost savings of $21 billion in fiscal year 2002 alone.

The $21 billion in cost savings exceeded even my expectations and are attributable to both my office's involvement and the President's leadership in holding government accountable for how it affects the small business community. One year ago

President Bush stood before hundreds of our country's most successful women entrepreneurs, down the street at the Reagan International Trade Center, and rolled out his small business plan. He committed to removing regulatory barriers that stifle job growth. The President is counting on my office to lead that effort, and the cost savings already realized are a good start.

On August 13, 2002, President Bush signed Executive Order 13272, titled "Proper Consideration of Small Entities in Agency Rulemaking." The Executive Order strengthens the Office of Advocacy and promotes greater federal agency compliance with the RFA. Under the Executive Order, Advocacy is required to, among other things, notify agencies of the requirements of the RFA, review the RFA policies and procedures of all federal regulatory agencies for adequacy, and train all federal agencies on RFA compliance. Our office is well under way in the effort to meet the President's small business priorities. We have published our own draft guidance on RFA compliance, we have reviewed the federal agency RFA policies and procedures that have been submitted to us, and we are in the process of soliciting outside contractors to help us implement the training requirement.

Focusing our efforts here in Washington is not enough. As part of our mandate to make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations on small business, Advocacy has started a nationwide initiative to pursue implementation of regulatory flexibility at the state level. To accomplish this, the Office of Advocacy is promoting model state RFA legislation through our Regional Advocates.

We have one Regional Advocate in each of the ten SBA regions. They are my office's "Main Street reality check." Our Regional Advocates take the pulse of Main Street small businesses every day and make sure that we stay on track here in Washington, DC. Their interaction with governors, state legislators, and small business leaders in the states provide a perfect liaison for our model bill initiative.

A December 2002 study by Advocacy highlighted the status of small business friendly laws and regulations in each state. Advocacy has used the report as a roadmap to help state leaders learn how they may benefit from RFA legislation. I am pleased to report that at least nine states have introduced RFA legislation to date as a result of our initiative.

Research to Create Greater Awareness of Small Business Contributions

Advocacy continues to publish vital small entity research to help guide legislators and policymakers, and to increase recognition of the important role that small entities play in the U.S. economy. Advocacy is working toward establishing research-based focus groups to promote entrepreneurial academic research. We expect the long-term result of this initiative will be to increase the base of scholars researching issues concerning small business. In addition to our outreach efforts, a stream of innovative and timely research continues to be produced by our own economists and outside contractors. The true value of these reports, though, is in their usefulness to our constituents, including each of you. I am pleased to share with you that these reports are often cited by

government officials as well as private sector representatives in a number of venues—the press, journal articles, and elsewhere. Moreover, the academic community has been eager for this research, as evidenced by conference presentations and publication requests. For example, one contractor's research paper on bank lending to small businesses will be presented at an upcoming conference at the Federal Reserve Board of Chicago, and research from Advocacy's economists is being considered for publication in professional journals.

Advocacy's Budget Process

None of the above would be possible without the flexibility to react and shift resources based on the changing needs of small entities and the economy. Moreover, none of it would be possible without an independent voice to say what is right or wrong about government policies or regulations. The long-term viability of our office depends on preserving our unique statutory mandate.

Yet a conundrum exists that may threaten the future of Advocacy and the important role it plays. Under the current budget process, the chief counsel must rely on the budget decisions of the SBA Administrator. To put it more bluntly, each year, the chief counsel must go hat-in-hand to SBA's Administrator for a portion of SBA's overall budget appropriation.

I am pleased to report that the current SBA Administrator, Hector Barreto, is one of our strongest supporters. His budget decisions reflect the President's priorities and the critical role our office plays in helping small business. However, a day may come when future SBA administrators and chief counsels do not get along as well. The current budget process is a dangerous one because the Office of Advocacy's budget is too easily pillaged when administration priorities change.

When you examine the statutory mandate of my office and the authority we have to defend small business, it becomes obvious why our office is independent. The Office of Advocacy is supposed to be critical of government that treats small business unfairly. SBA is a regulatory agency. And my office treats SBA the same as we do the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Department of Transportation (DOT), the Internal Revenue Service (IRS), and the other agencies. We make sure that SBA adequately considers their impact on small business before they finalize rules (the basic requirement of the RFA and SBREFA). The system is flawed when the Office of Advocacy's budget is determined by a part of government we hold accountable for compliance with the RFA.

Budget Line-Item

A budget line-item for Advocacy would certainly help address the problems identified above. A line-item would provide assurance to small entities that they can

continue to count on the Office of Advocacy as a strong and independent voice on their behalf.

Last year, in my testimony to the full Committee, I registered my strong support for S. 395. That particular bill, introduced by Senator Kit Bond, cleanly and simply used a line-item approach to bolster Advocacy's independence. As I stated last year, this approach would be preferable to language that creates an altogether separate budget process specific to the Office of Advocacy. In other words, Advocacy would have a line-item just as SBA's Office of the Inspector General currently has. Advocacy currently has a line-item for its economic research budget. The line-item (which has come and gone over the years in both report and statutory language) has "protected" the funds from possible reductions and enabled our office to plan its research activities with greater certainty.

Working with the Office of the National Ombudsman

The Office of Advocacy and SBA's Office of the National Ombudsman are partners in the fight to reduce regulatory burdens—Advocacy generally dealing with regulations before they are implemented, and the Ombudsman dealing with instances of excessive or unfair enforcement once regulations are already on the books. On March 20, 2002, Advocacy signed a memorandum of understanding (MOU) with the Ombudsman. In that MOU, we each pledged the highest degree of cooperation and Advocacy agreed to

offer the services of its Regional Advocates in planning the Ombudsman's regional fairness board hearings.

Michael Barrera and I have a terrific relationship. I would strongly encourage the continuation of an MOU even as administrations change.

The Structure of the Office of Advocacy

I would not encourage legislative attempts to alter the structure of the Office of Advocacy or expand/alter the ability of the chief counsel to hold office. While I certainly appreciate the efforts of Congress to increase the stature or tenure of the chief counsel and other employees of the office, I believe that including such language complicates the goal of independence, which may be achieved cleanly through a budget line-item.

This concludes my prepared testimony. Thank you again for this opportunity to testify today. I would be happy to address any questions you may have, including questions on other ways to improve the Office of Advocacy not mentioned in my testimony.

Statement of the U.S. Chamber of Commerce

ON: **IMPROVING THE OFFICE OF ADVOCACY**

TO: **JOINT HEARING OF THE SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT AND THE SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS OF THE HOUSE COMMITTEE ON SMALL BUSINESS**

DATE: **APRIL 1, 2003**

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 94 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

Statement on
THE SMALL BUSINESS OFFICE OF ADVOCACY IMPROVEMENT HEARING
In a joint hearing before the
HOUSE SMALL BUSINESS COMMITTEE
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT
and
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS
for the
U.S. CHAMBER OF COMMERCE
by
GIOVANNI CORATOLO
April 1, 2003

Chairman Schrock and Chairman Akin, Ranking Members, members of the Committee, I am Giovanni Coratolo, Director of Small Business Policy for the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. Over ninety-six percent of the Chamber members are small businesses with fewer than 100 employees. The Chamber commends the Subcommittee on Regulatory Reform Oversight and the Subcommittee on Workforce, Empowerment and Government Programs for its dedication and interest in having this joint hearing to explore ways to improve the Office of Advocacy and create a stronger voice for our nation's 24 million small businesses.

Over the past decade the importance of small businesses to the foundation of economic growth and prosperity has been unprecedented. As economic statistics confirm, maintaining a healthy environment for small businesses to proliferate contributes greatly to raising our standard of living. Small enterprises and startups are the seed corn for our future economic prosperity.

Unfortunately, as we have seen the growing importance in the vitality and stability of small business, we have also seen federal agencies continue to propose regulations that impose disproportionate burdens on smaller employers. The cumulative cost of compliance with federal regulations can be formidable for many small businesses and, in some instances, it may be fatal.

According to a recent study on the impact of federal regulation on small firms by W. Mark Crain and Thomas D. Hopkins[1], the business sector hardest hit by existing government regulations are small businesses employing fewer than 20 employees. They face an annual regulatory burden of $6,975 per employee, a burden nearly 60 percent above that of their larger counterparts. What is particularly disturbing, is that compared to a 1995 study, regulatory burdens continue to climb to the detriment of smaller firms.

In 1980, Congress passed the Regulatory Flexibility Act (RFA)[2] in an attempt to mitigate the impact of federal rulemaking on small entities. This law required federal agencies to be mindful of the burdens their rulemaking imposed on small businesses and encouraged agencies to explore alternatives to alleviate those burdens without compromising their policy objectives. In 1996 the RFA was amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)[3] to expand the duties of the Office of Advocacy and, among other things, required the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) to conduct outreach small business panels on the impact of proposed rulemaking.

Since the establishment of the Office of Advocacy in 1976, the Chief Counsel for Advocacy has played an integral role in orchestrating effective representation of small entities in the regulatory process. As the proliferation of regulations affecting small businesses have increased over the years, so too has the Chief Counsel's responsibilities under RFA, SBREFA, Executive Order 12866[4] and the just recently issued Executive Order 13727[5]. We have seen the growing necessity to have a strong independent small business advocate within the executive branch of government armed with the tools to work effectively on behalf of small business within the administration. With a well defined mission and the proper funding, the Chief Counsel can have a profound impact on the regulatory process.

In many cases, the ability to interact with an agency in the earliest stages of rulemaking can nip a problem in the bud before an agency becomes staunchly committed to a concept that would have dramatically negative consequences for small businesses. Understanding unintended consequences of a regulation before it goes into effect will help protect small business before potentially flawed rules are published. Having a strong independent Office of Advocacy representing small businesses in the rulemaking process ultimately results in less work for the agencies, better rulemaking and a stronger, robust small business community capable of better expanding jobs and economic vitality.

Now let me turn to several legislative proposals that can strengthen the Office.

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[1] W. Mark Crain and Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms. Report to the U.S. Small Business Administration*, RFP No. SBAHQ-00-R-0027, July 5, 2001.
[2] The Regulatory Flexibility Act, PL 96-354,94 Stat. 1164 (5 U.S.C. sec. 601 et seq.).
[3] The Small Business Regulatory Enforcement Fairness Act, PL 104-121.
[4] Executive Order 12866, 58 Fed. Reg. 51,735 (1993).
[5] Executive Order 13727, 67 Fed. Reg. 53,461 (2002).

First, a specified line item for funding for the Office within the President's Budget. In order to have a Chief Counsel that can provide a strong independent voice for small business, separate line item funding is a must. Funding for the Office must be directly related to the checks and balances of the budget process and not subject to the internal political pressures of federal agency initiatives and pet projects. In conjunction with this, the responsibilities and duties of the host agency to provide support such as phones, maintenance, office space, IT support and services, must be spelled out in order to provide a financial firewall between the two budgets.

Second, provisions for continuity of leadership for the Office during changes of administrations. Having the Chief Counsel continue serving for a specified length of time during a transition period reduces the likelihood of gaps in the leadership of the Office. As we have seen recently and in the past, vacancies in the position can have a negative impact in the momentum and morale within the Office. Without a Chief Counsel in charge, the direction and resolve of the Office is compromised. The regulatory process does not take a vacation when the Office is vacant and small businesses run the risk of not being properly represented.

Third, giving the Office the power, authority and tools to make a difference in the regulatory process. With the passage of the RFA and its broadening under the SBREFA, small businesses were given expanded rights in dealing with federal agencies both in the rule making process and the regulatory enforcement environment.

The U.S. Chamber of Commerce endorsed the passage of these small business provisions and applauds Executive Order 12866 and 13727, but agency adherence to these laws has been inconsistent. Congress always intended for the Office of Advocacy to be the "watchdog" for agency compliance.

Unfortunately, in a recent appeals court decision[6] involving the National Ambient Air Quality Standards issued by the Environmental Protection Agency, Advocacy's views expressed in an amicus curiae brief concerning the agency's adherence to requirements of the RFA were not given deference. Also, many federal agencies have not lived up to their responsibilities under Chapter 6, Title 5 of the United States Code.

The Chamber holds that any legislation to improve the Office of Advocacy should have unequivocal language to correct this technicality in SBREFA that questions the role of Advocacy as the agency responsible for determining federal agency compliance under the RFA. There should be no doubt that the Chief Counsel is directly in charge of evaluating agency performance and compliance under Chapter 6, Title 5 of the United States Code.

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[6] WHITMAN v. AMERICAN TRUCKING ASSNS., INC. (99-1257) 175 F.3d 1027 and 195 F.3d 4

Fourth, providing the Chief Counsel with adequate funds to commission economic research projects involving areas of concern to small business. We feel that much can be gained by the research that Advocacy performs on behalf of small business. When Congress and policy makers better understand the role that small enterprises play in our economy or the impact that their decisions have on the vitality of smaller employers, they become more sensitive to the concerns of the small business community. The Chamber would encourage the continuation of the existing line item for economic research as a subset of the total funding line item for Advocacy. This way there can be no doubt as to the amount Congress will allocate toward this important function of the Chief Council's office.

In conclusion, the Chamber strongly encourages legislation that will provide improvements to the Office of Advocacy that incorporates the suggestions we have made here today. To assure the best chances of passage this Congress, we would hope for introduction of a narrowly constructed bill. This is a perfect opportunity to incrementally strengthen the Office of Advocacy and Chief Counsel's position.

The Chamber appreciates the opportunity to comment on these important changes for small business. We especially applaud the Committees' interest in having this hearing. Thank you again Chairmen, Ranking Members and members of the Committee.

SMALL BUSINESS
LEGISLATIVE
COUNCIL

TESTIMONY OF ALLEN NEECE
CHAIRMAN OF THE SMALL BUSINESS LEGISLATIVE COUNCIL
FOR THE
HOUSE SMALL BUSINESS COMMITTEE
SUBCOMMITTEES ON REGULATORY REFORM AND OVERSIGHT
AND
WORKFORCE EMPOWERMENT AND GOVERNMENT PROGRAMS
ON THE OFFICE OF ADVOCACY
APRIL 1, 2003

On behalf of the Small Business Legislative Council (SBLC), I would like to thank both Chairmen Schrock, and Akin for holding this joint hearing on an issue of great importance to the small business community. I am Allen Neece, the Chairman of the SBLC. SBLC is a permanent, independent coalition of 70 trade and professional associations that share a common commitment to the future of small business. Our members represent the interests of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, tourism and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views.

Congress has recognized the important role of the Office of Advocacy and has repeatedly designated the Office to perform specific tasks, such as measure the direct costs and other effects of government regulation on small businesses, make legislative and non-legislative proposals (such as file amicus curiae briefs) for eliminating excessive or unnecessary regulations of small businesses, monitor and report on the implementation of the Regulatory Flexibility Act (RFA), conduct research on small business trends, maintain economic statistics on small business growth, and prepare issue materials for the three previous White House Conferences on Small Business. In 1996, Congress added a major new responsibility by directing the Office of Advocacy to monitor and participate in the implementation of the Small Business Regulatory Enforcement and Fairness Act (SBREFA).

The Office of Advocacy is also the federal government's primary provider of small business statistics. These statistics — on job creation, business start-ups, etc. — have

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helped lawmakers and small business supporters measure the health of the independent sector over the years. Congressional efforts to expand the Office of Advocacy's responsibilities, such as proposing that IRS regulations be included under the SBREFA panel process, would of course place an even greater demand on Advocacy's resources and create a need for an increase in the office's budget.

On August 14, 2002, President Bush signed Executive Order 13272 entitled "Proper Consideration of Small Entities in Agency Rulemaking." The Executive Order broadly expanded the Office of Advocacy's authority and responsibility in the regulatory process.

The Executive Order requires all agencies to establish procedures and policies to give better consideration of small entitles in their rulemakings. The Executive Order's aim is to promote compliance among the agencies with the RFA. Agencies are required to thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations as provided by the RFA.

Agencies have to issue written procedures and policies to make sure that the impact of draft rules on small organizations will be considered. Agency heads were required to submit their written procedures and policies to the Chief Counsel for the Office of Advocacy at the Small Business Administration (SBA), which is expected to have a large role in advising agencies in performing reviews consistent with the RFA.

The Executive Order also calls for agencies to give ample notice to the Office of Advocacy when any draft rules may have a significant economic impact on a substantial number of entities. That notification will be made when agencies submit a draft rule to the Office of Management and Budget's Office of Regulatory Review Operations or, if that is not required, at a reasonable time prior to publication of the rule by the agencies.

In the past efforts to pass legislation creating an independent Office of Advocacy failed. This time around we believe the House and Senate Small Business Committees should try another route and only consider an Advocacy bill that is narrow in focus and addresses only a few key issues.

A legislative proposal must take into consideration the implementation of the Executive Order. In order to ensure the full implementation of the Executive Order, the Office of Advocacy requires a level of budgetary independence from the SBA. One way to achieve some structural independence is to establish a separate line-item for the salary and benefits of the Office of Advocacy. Currently, these expenses are covered under the SBA's general budget. A budget line-item for the entire office, however, would give the Office of Advocacy the tools it needs to carry out its mission of keeping the federal government's regulatory tendencies in check. I would encourage this Committee to pattern the line-item after the SBA's Inspector General's Office.

Even with line-item authority the Chief Counsel for Advocacy there is no assurance the office will have sufficient personnel resources, particularly given the addition burden

placed on it by the Executive Order. If that is the case, then the Office of Advocacy will have to do more with less. And while I am on the subject of the Chief Counsel doing more with less, I would like to take this opportunity to praise the current Chief Counsel, Tom Sullivan, for doing an outstanding job. As I like to say: "He has fire in his belly for small business."

There is one other issue the legislation should address and that has to do with the continuity of the Chief Counsel's Office. Some administrations in the past have left the Office of Chief Counsel vacant for too long a period of time. One President, for example, waited four and half years before appointing a Chief Counsel. These hiatuses harm small businesses by exposing them to costly and unnecessary regulation because the Office of Advocacy becomes effectively dormant. Much like an ambassador, or federal attorney, the Chief Counsel should be able to serve until he or she is replaced.

Some may advocate that an Office of Advocacy bill contain language that would strengthen the RFA or address recent court rulings affecting Advocacy's role in the regulatory process. Although these matters are very important, we suggest the Committee address these issues in a separate legislative vehicle. Again, SBLC believes that narrowing the scope of the bill will increase its chances for passage.

In conclusion, addressing the Office of Advocacy personnel needs is one of SBLC's top legislative priorities. We consider it important because it is the one thing Congress can do to provide long-term regulatory relief for small businesses, especially in light of the promise of Executive Order 13272.

Thank you again for holding this hearing, I will be happy to answer any of your questions.

S4584

Testimony of Andrew M. Langer,
Manager, Regulatory Policy
National Federation of Independent Business
on
The impact of Regulation on Small Business

Before the United States House of Representatives
Committee on Small Business
Subcommittee on
Workforce Empowerment and Government Programs and
Subcommittee on Regulatory Reform and Oversight

Joint Hearing
Tuesday, April 1, 2003

Chairman Akin, Chairman Schrock and Members of the Committees:

It is my pleasure to be testifying here today before the Committee on Small Business' Subcommittees on Regulatory Reform and Oversight and on Workforce, Empowerment and Government Programs on the subject of the independence of the Small Business Administrations Office of Advocacy. I am here representing the National Federation of Independent Business, the nation's largest organization of small business owners. NFIB has 600,000 members, and is represented in each of the fifty states. NFIB represents small employers who typically have five employees and report gross sales of around $350,000 per year. Our average member nets $40,000 to $50,000 annually..

We believe it is important to distinguish the type and size of businesses NFIB represents. Too often, federal policy makers view the business community as a monolithic enterprise that is capable of passing taxes and regulatory costs onto consumers, without suffering negative consequences. For small business this is not the case. NFIB members are not publicly traded corporations; they are independently owned and operated. They do not have payroll departments, tax departments or attorneys on staff.

Being a small business owner means, more times than not, you are responsible for everything—taking out the garbage, ordering inventory, hiring employees, and dealing with the mandates imposed upon your business by the federal, state and local governments. That is why simple government regulations, particularly when it comes to the paperwork they generate, are so important. The less time our members spend with "government overhead," the more they can spend growing their business and employing more people.

Growing businesses lead to job creation, which is one of the major roles small business plays in our national economy. Small business is the leader in job creation because it is the embodiment of the entrepreneurial spirit. Small firms with fewer than 500 employees employ 52 percent of the non-farm private sector work force as of 1998, and are responsible for 51 percent of the private sector business share of the nation's gross domestic product.

From 1994 to 1998, about 11.1 million new jobs were added to the economy. Small businesses with 1-4 employees generated 60.2 percent of the net new jobs over this period and firms with 5-19 employees created another 18.3 percent. It is because small businesses have such deep impact on employment and the national economy that we feel it is critical that the policies you shape account for the impact the law will have on small business.

As you hopefully know, unreasonable government regulation, especially onerous paperwork burdens, continues to be a top concern for small businesses. Regulatory costs per employee are highest for small firms, and our members consistently rank those costs as one of the most important issues that NFIB ought to work to change.

This is why the Office of Advocacy at the Small Business Administration is so important. Advocacy is one of the first lines of defense that NFIB's members, and small business in general, have to fight against the ever-increasing encroachment of federal regulations in their lives.

Office of Advocacy – Doing a Great Job

First and foremost, I would like to first of all praise the job that Advocacy, and its current Chief Counsel, Thomas Sullivan, have been doing. Counsel Sullivan and his staff have been nothing short of dogged in their pursuit of a thorough assessment of the burden faced by small businesses, and have been relentless in finding ways for that burden to be reduced. Advocacy has a team of passionate professionals on staff, committed to protecting the interests of those entities that are the engine of this economy.

The economic research that Advocacy produces has been enormously helpful in my work. Under the leadership of Dr. Chad Moutray, their Chief Economist, this team continues to offer timely studies that are essential to our own analyses of economic impacts. Especially helpful has been the research program's regular studies of the regulatory impact on small firms, the most recent of which was published in 2001.

As I am fond of saying, the people at Advocacy "get it". They not only understand how small businesses are different, as those at the SBA generally do or ought to, but they also understand that these businesses need the extra voice, and how to make that voice heard.

Why Independent?

It is NFIB's opinion that the Office of Advocacy's ability to serve the interests of small businesses can only be strengthened by further independence. As the minority members of the small business committee said last year, "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."[1] A more independent Office of Advocacy can be better insulated from the mutability that can plague a Chief Counsel's ability to best represent the interests of small business when he finds himself at cross purposes with other agencies who might not share his commitment to such relief.

Furthermore, a more independent office also has its flexibility strengthened as well—flexibility in hiring the right staff, flexibility in working with the stakeholder community, and flexibility in dealing with the day-to-day issues which can sometimes require a rapid response. Chief Counsel Sullivan himself in previous testimony has called flexibility one of two "bedrock principles" which underlie the office.[2]

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[1] "Democratic View of HR 4231", May 3, 2002, http://www.house.gov/smbiz/democrats/ourviews/view050301b.htm

[2] Prepared Testimony of Thomas Sullivan, Chief Counsel for Advocacy, before the House Committee on Small Business, March 20, 200. http://www.house.gov/smbiz/hearings/107th/2002/020320/sullivan.html

Finally, independence will help to ensure that the Office of Advocacy has access to the resources it needs to perform its functions, not just on par with its brother agencies, but better (as it has to be). Much in the same way that political independence would help to ensure that an office which, in keeping with its mandate to be a voice for small business within government, may not find itself in agreement with other agencies, being financially independent would help to see that the office would not be penalized monetarily for taking an unpopular stance on issues of import.

Independent In What Way?

NFIB believes that, at a minimum, steps must be taken to give the Office of Advocacy greater control over its own monies, by granting the office a separate line item in the annual budget. A separate line would underscore the administration's commitment to a small business voice in government. It would do this by forcing the SBA Administrator and the Office of Management and Budget to specifically enumerate the resources they believe are necessary to carry out the office's mission, without having it buried within the details of the general SBA budget.

A separate line item would also increase the ability of Congress to exercise oversight responsibilities regarding Advocacy's discharge of its duties. While times right now are very friendly toward Advocacy's duties politically, in times when various parties are not as friendly, such greater oversight abilities would be essential in ensuring that small business interests are being adequately protected by the office.

Furthermore, a separate line item allows those who benefit the most from the work of the Office of Advocacy to work diligently to ensure that the office is sufficiently funded.

There is also the possibility that the Office of Advocacy be taken out from under the Small Business Administration, and established as its own entity—in the manner of a regulatory "inspectors general" office focusing on all executive branch agencies. There are a number of merits to these proposals, but without a more firm picture, I am hesitant to comment.

Why Not A Commission?

On the other hand, we are able to voice our reluctance to support making the Office of Advocacy an independent commission. Besides being politically untenable as a proposal, the end result would be an organization that would carry little weight. Unless the commission were to have such powers and staff as to make it workable, it would be unable to effectively assert its interests or discharge its duties with any sort of force or effect. But in order to give a commission those powers, Congress would make the organization so unwieldy as to neutralize one of the "bedrock principles" outlined by Chief Counsel Sullivan, namely flexibility.

The only thing of merit in the proposal for a commission would be that the Chairman and members of such a group could be appointed and hold office independent of a hostile

administration. However, in our opinion, this benefit is not outweighed by the potential costs to small business.

Conclusion

The NFIB appreciates the opportunity to share its concerns with Congress. With the cost of regulation being such a high priority for our 600,000 members, we are glad to have the Office of Advocacy working so hard to help them. The time has come to strengthen their ability to provide much needed assistance.

Thank you once again, and I look forward to any questions you might have.

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