

SMALL BUSINESS ADVOCACY IMPROVEMENT ACT OF 2003

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JUNE 18, 2003.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. MANZULLO, from the Committee on Small Business,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1772]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 1772) to improve small business advocacy, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 8, line 18, strike the closing quotation marks and the last period.

Page 8, after line 18, insert the following:

“(3) Each such budget shall also include a statement indicating whether the proportion of the funds requested for the Office of Advocacy when compared to the funds requested for the Small Business Administration has increased, decreased, or stayed the same relative to the proportion of the amount appropriated for the Office of Advocacy for the previous fiscal year when compared to the amount appropriated for the Small Business Administration for the previous fiscal year.”.

PURPOSE OF LEGISLATION

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

BACKGROUND AND NEED FOR LEGISLATION

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

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

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

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

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

SUMMARY OF LEGISLATION

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

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

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

Independence of the Office of Advocacy is contingent upon needed resources which in the past have been diminished in the executive branch budgetary review process administered by the OMB. To ensure that such resources are provided, the Chief Counsel is required to transmit to the President annually estimated expenditures and proposed appropriations for the Office of Advocacy with a concurrent submission to the Committee on Small Business of the U.S. House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, and the Committees on Appropriations of the House and Senate.

The legislation would permit the appointment of one Principal Deputy Chief Counsel. The bill also defines the duties of regional advocates, one in each of the ten Federal regions. The Small Business Administration is required to provide adequate office space, equipment, and personnel to the Office of Advocacy.

The Chief Counsel is specifically required to report to the President and Congress, at least annually, concerning federal agency compliance with the Regulatory Flexibility Act. The legislation reauthorizes the Office of Advocacy for a 3-year period, i.e., \$10,000,000 for fiscal years 2003 and 2004, \$12,000,000 for fiscal year 2005, and \$14,000,000 for fiscal year 2006.

COMMITTEE ACTION

In the 108th Congress, the Subcommittee on Workforce Empowerment & Government Programs and Regulatory Reform & Oversight held a hearing on April 1, 2003. They received testimony from the incumbent Chief Counsel for Advocacy and others on the

continued importance of greater independence for SBA's Office of Advocacy. On April 11, 2003 Congressman Todd Akin (R-MO) and Congressman Ed Schrock (R-VA) introduced H.R. 1772 which was referred to the Committee on Small Business. The Committee met to consider the bill on June 4, 2003, at which a quorum was present. Ms. Velázquez offered an amendment to the bill concerning a budget statement of proportional changes to the budgets of the Office of Advocacy and the Small Business Administration. The Committee views this as not an additional burden on OMB because the President's budget request already contains comparisons between last year's actual funding level versus the current request. The amendment was agreed to and the bill was reported favorably by voice vote without objection.

In the 107th Congress, the Committee held two hearings on this topic, one on March 12, 2001, and another on March 20, 2002. Both hearings were directed at receiving testimony and reviewing draft legislation as to how to strengthen and make the Office of Advocacy more independent. Following these hearings, the bill then known as H.R. 4231 was introduced by Congressman Donald A. Manzullo (R-IL) for himself and Congresswoman Nydia M. Velázquez (D-NY) on April 16, 2002, and was referred to the Committee on Small Business. On April 17, 2002, the Committee on Small Business met to consider the bill. There were no amendments. The bill was ordered favorably reported by voice vote. The bill was taken up on the House floor under suspension of the rules on May 21, 2002 and was agreed to without objection. No action was taken in the Senate.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation. There was no recorded vote taken in connection with ordering H.R. 1772 reported.

COMMITTEE OVERSIGHT FINDINGS

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

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

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

STATEMENT OF CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the cost estimate for H.R. 1772 from the Director of the Congressional Budget office as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 13, 2003.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1772, the Small Business Advocacy Improvement Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Melissa E. Zimmerman.
Sincerely,

BARRY B. ANDERSON
(For Douglas Holtz-Eakin, Director.)

Enclosure.

H.R. 1772—Small Business Advocacy Improvement Act of 2003

H.R. 1772 would increase the amount authorized to be appropriated under current law for the Office of Advocacy within the Small Business Administration (SBA). The Office of Advocacy researches and assesses the effects of federal programs on small businesses and issues recommendations based on those findings.

CBO estimates that implementing H.R. 1772 would cost \$6 million in 2004 and \$32 million over the 2004–2008 period, assuming appropriation of the authorized amounts. H.R. 1772 would not affect direct spending or receipts.

H.R. 1772 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1772 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit). Based on information from the SBA, CBO estimates that the Office of Advocacy will spend about \$9 million in 2003. However, under current law, only \$1 million a year is authorized to be appropriated for the office for future years. H.R. 1772 would increase the authorization of appropriations for the office to \$10 million in 2003 and 2004, \$12 million in 2005, and \$14 million in 2006. Estimated outlays are based on historical spending patterns.

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
Spending for SBA's Office of Advocacy:						
Under Current Law:						
Authorization Level ¹	9	1	1	1	1	1
Estimated Outlays ¹	9	1	1	1	1	1
Proposed Changes:						
Authorization Level ²	1	9	11	13	0	0
Estimated Outlays ²	0	6	10	12	3	1
Spending for SBA's Office of Advocacy:						
Under H.R. 1772:						
Estimated Authorization Level ¹	10	10	12	14	1	1

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
Estimated Outlays ¹	9	7	11	13	4	2

¹The 2003 level is the estimated spending of the Office of Advocacy in that year.

²CBO assumes that the legislation will be enacted near the end of fiscal year 2003 and will not affect spending for this year even though the bill would authorize the appropriation of an additional \$1 million for 2003.

Intergovernmental and private-sector impact: H.R. 1772 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated prepared by: Federal costs: Melissa E. Zimmerman; impact on state, local, and tribal governments: Victoria Heid Hall; impact on the private sector: Cecil McPherson.

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

FEDERAL MANDATES STATEMENT

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

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1994 requires the report of any committee on a bill or joint resolution to include a statement of the extent to which the bill, or joint resolution is intended to preempt state, local, or tribal law. Except to the extent the Office of Advocacy is a federal entity, the Committee states that H.R. 1772 does not preempt any state, local, or tribal law.

CONSTITUTION AUTHORITY STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

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

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

The short title is the “Small Business Advocacy Improvement Act of 2003.”

Section 2. Findings and purpose

Expresses the findings of Congress with respect to the Office of Advocacy and the purposes for the legislation.

Section 3. Appointment of Chief Counsel for Advocacy

The Chief Counsel for Advocacy is to be appointed by the President, with the advice and consent of the Senate, without regard to political affiliation and solely on the grounds of fitness to perform the duties of the office. An individual may not be appointed who was employed by the Small Business Administration during the 5-year period preceding the date of such individual's appointment. A Chief Counsel may remain in office, at the pleasure of the President, until a successor is nominated, but in no instance longer than one year from the end of the President's term.

Section 4. Primary functions of the Office of Advocacy

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

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

Section 5. Additional functions

This section adds three additional functions to be performed by the Office of Advocacy which are: (1) maintain economic database and make information available to the Administrator of the Small Business Administration and to Congress; (2) carry out the responsibilities of the Chief Counsel under the Regulatory Flexibility Act; and, (3) maintain a memorandum of understanding with the Small Business and Agriculture Regulatory Enforcement Ombudsman concerning cooperation between the Ombudsman and the Office of Advocacy in assisting small businesses resolve issues involving federal agencies. All too often, people are confused between the two roles of these offices. Generally, the Office of Advocacy intervenes on behalf of small business prior to the adoption of a final regulation. The SBA Ombudsman intervenes on behalf of small businesses after a regulation has been adopted to insure the application and enforcement of a regulation is fair and reasonable to all parties. This MOU clarifies the two roles and establishes procedures by which to refer small business complaints that would be better handled by the other office.

The Chief Counsel is required to transmit to the Office of Management and Budget (OMB), the Committee on Small Business of the U.S. House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, and the Committees on Appropriations of the House and Senate the estimated expenditures and proposed appropriations for the Office of Advocacy. Further, each budget of the United States Government shall include a separate statement of the amount of appropriations requested for the Office of Advocacy. Each budget will also include a statement of proportionality between increases or decreases in the overall Small Business Administration budget versus the Office of Advocacy line item.

Section 6. Principal Deputy Chief Counsel and regional advocates

The Chief Counsel may appoint one person to serve as Principal Deputy Chief Counsel. The Chief Counsel may also appoint 10 regional advocates, one in each of the Standard Federal Regions, as appropriate. The duties of the regional advocates shall include: (1) furthering the research efforts concerning small businesses; (2) interfacing with federal agencies that regulate or do business with small businesses; (3) in coordination with the Small Business and Regulatory Enforcement Ombudsman, assisting the functioning of regional small business fairness boards, including, where requested, helping small businesses helping to resolve matters that are the subjects of complaints made to such boards with respect to adverse Federal agency action; (4) assisting and disseminating information about programs and services that help small business concerns; and, (5) performing such other duties as the Chief Counsel may assign.

Section 7. Overhead and administrative support

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

Section 8. Reports

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

Section 9. Authorization for appropriations

The amounts authorized to be appropriated are \$10,000,000 for fiscal year 2003 and 2004, \$12,000,000 for fiscal year 2005. and \$14,000,000 for fiscal year 2006.

Section 10. Conforming amendments

This section makes conforming amendments as required by changes in this Act to strengthen and improve the Office of Advocacy. First, this section moves the Rural Tourism Training Program from the Office of Advocacy to the SBA so the mission of the office is not encumbered by this initiative more properly housed within the SBA.

Second, this section codifies the requirement for the Office of Advocacy and the SBA's Ombudsman to maintain a Memorandum of Understanding between each office.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

ACT OF JUNE 4, 1976

(Public Law 94-305)

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

* * * * *

TITLE II—STUDY OF SMALL BUSINESS

ESTABLISHMENT

SEC. 201. (a) There is established within the Small Business Administration an Office of Advocacy. [The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.]

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

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

(d) *An individual serving as Chief Counsel on the date of the expiration of any term of the President may not continue to serve as Chief Counsel for more than 1 year after such date unless such individual is reappointed after such date by the President, by and with the advice and consent of the Senate. The preceding sentence shall not apply in the case of the expiration of a term of an individual holding the office of President if such individual is elected to the office of President for a term successive to such term.*

STUDY

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

(1) * * *

* * * * *

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

(7) evaluate the efforts of Federal agencies, business and industry to assist [minority enterprises] *small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and con-*

trolled by women, and small business concerns owned and controlled by veterans;

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

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

* * * * *

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

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

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

DUTIES

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

(1) * * *

* * * * *

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

(5) enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small busi-

nesses, and information on how small businesses can participate in or make use of such programs and services[.];

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

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

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

(b)(1) For each fiscal year, the Chief Counsel shall transmit the Office of Advocacy's appropriation estimate and request to the Office of Management and Budget, the Committee on Small Business of the House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

(2) Each budget of the United States Government submitted by the President shall include a separate statement of the amount of appropriations requested for the Office of Advocacy.

(3) Each such budget shall also include a statement indicating whether the proportion of the funds requested for the Office of Advocacy when compared to the funds requested for the Small Business Administration has increased, decreased, or stayed the same relative to the proportion of the amount appropriated for the Office of Advocacy for the previous fiscal year when compared to the amount appropriated for the Small Business Administration for the previous fiscal year.

STAFF AND POWERS

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

(1) * * *

* * * * *

(b)(1) The Chief Counsel may appoint 1 individual to serve as Principal Deputy Chief Counsel.

(2) The Principal Deputy Chief Counsel shall be paid at an annual rate not less than the minimum rate, nor more than the maximum rate, for the Senior Executive Service under chapter 53 of title 5, United States Code.

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

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

(1) assist in examining the role of small business in the economy of the United States by identifying academic and other research institutions that focus on small business concerns and

linking these research resources to research activities conducted by the Office of Advocacy;

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

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

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

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

ASSISTANCE OF GOVERNMENT AGENCIES

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

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

REPORTS

SEC. 206. **【**The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. Not later than one year after the date of enactment of this title, he shall transmit to the Congress, the President and the Administration, a full report containing his findings and specific recommendations with respect to each of the functions referred to in section 202, including specific legislative proposals and recommendations for administration or other action. Not later than 6 months after the date of enactment of this title, he shall prepare and transmit a preliminary report on his activities.**】** *(a) Not less than annually, the Chief Counsel shall submit to the President, the Committee on Small Business of the House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Government Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives, and the Administrator of the Small Business Administration a report on agency compliance with chapter 6 of title 5, United States Code.*

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

(c) The reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or executive de-

partment for any purpose prior to transmittal to the Congress and the President.

AUTHORIZATION

SEC. 207. There are authorized to be appropriated [not to exceed \$1,000,000] \$10,000,000 for fiscal years 2003 and 2004, \$12,000,000 for fiscal year 2005, and \$14,000,000 for fiscal year 2006 to carry out the provisions of this title. Any sums so appropriated shall remain available until expended.

* * * * *

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

SEC. 311. RURAL TOURISM TRAINING PROGRAM.

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

* * * * *

SECTION 30 OF THE SMALL BUSINESS ACT

SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

- (a) * * *
- (b) SBA ENFORCEMENT OMBUDSMAN.—
 - (1) * * *
 - (2) The Ombudsman shall—
 - (A) * * *

* * * * *

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

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

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

* * * * *

ADDITIONAL VIEWS

Congress created the Office of Advocacy (Advocacy) in 1976 to serve as the independent voice for small business within the federal government and to measure the cost of federal regulations on small businesses. Advocacy works to reduce the burdens that federal regulations impose on small firms, conduct economic research on the impact of policies on small businesses, and publish data regarding contributions of small businesses to the American economy.

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

IMPEDIMENTS TO INDEPENDENCE

While the SBA and the Chief Counsel both share the goal of helping small businesses flourish, the current structure often creates conflicting interest between the two. Advocacy, by statute, is an entity within the SBA. As such, it is dependent for its budget as well as offices, human resources, and tech support. Since SBA has a limited budget to operate all of its programs, Advocacy must compete against other deserving priorities to receive its allocation. While it may seem that having an effective Advocacy would clearly be a priority, this is not always the case because of the unique nature of its role.

An Office of Advocacy that is effective can sometimes mean that it reveals the inefficiencies of federal agencies. Some view its role as a critic of regulatory bodies as an obstacle to the president's agenda. When these agencies issue regulations, Advocacy must act on behalf of small businesses to ensure their needs are considered. The Chief Counsel can make the work of agencies difficult and, as such, creates incentives for an administration to limit Advocacy's ability to perform its role.

Since Advocacy is located within SBA and the SBA Administrator (Administrator) is responsible for carrying out the president's agenda, the Administrator may have the incentive and capability to limit the ability of Advocacy to perform its designated functions. Because of their shared budget and resources, the Administrator is in the best position of all the agencies to create impediments for Advocacy. In fact, there is a growing body of evidence that over the years in both Democratic and Republican Administra-

tions, numerous instances exist where SBA Administrators have taken/withheld resources from Advocacy to supplement shortfalls within the SBA as a whole. Whether it be staffing, travel budget or slow turnaround on new employee processing, the end result is that Advocacy's already scarce resources are further depleted. This lack of resources makes the job of the Chief Counsel that much more difficult.

In an effort to create an independent Advocacy, another major concern is interference from OMB. OMB is charged with setting the president's budget and policy priorities. It has one of the greatest incentives to limit Advocacy's effectiveness since the Chief Counsel's primary responsibility is to provide a second view of regulations overseen by OMB. Advocacy's role makes it a target of OMB. Any changes designed to create a more independent Advocacy must address OMB's ability to reduce Advocacy's funding. If this influence is not accounted for, OMB could use budgetary pressure to dictate the role that Advocacy serves and compromise the needs of small businesses.

The current budget structure has limited OMB's ability to exert undue influence on Advocacy. The Chief Counsel's budget is protected from OMB cuts since his/her budget is subsumed in the budget of the SBA. Additionally, whereas all other federal agency reports are subject to review by the OMB, reports issued by Advocacy are not subject to review. This has allowed Advocacy to air its concerns without censorship from the administration. These safeguards have been critical in making sure that Advocacy can perform its role without fear of retribution from OMB.

Given Advocacy's unique charges that allow it to operate, in part, outside the auspices of the executive branch and that it promotes a Socratic approach which increases scrutiny during the regulatory process, it is frequently the target of interference from these two entities within the administration. This interference limits Advocacy's ability to fulfill its designated mission as the true independent voice of small businesses. It is this uniqueness that requires the need to safeguard Advocacy so that it can be truly independent.

H.R. 1772

The Small Business Advocacy Improvement Act of 2003, H.R. 1772, is similar to previous legislative proposals in past Congresses where the line item is the primary vehicle to create a more independent Advocacy. However, a line item in and of itself will not achieve an independent office. Under the proposal, Advocacy will have a separate line item and submit its budget request to OMB and Congress concurrently. Advocacy will remain in the SBA building and rely on the SBA for office space, human resources etc. Under H.R. 1772, the OMB will not have the authority to determine Advocacy funding as part of the president's budget submission to Congress. The functions of Advocacy remain basically the same and the bill makes some technical corrections to the Small Business Act to conform to previous legislative changes.

With the changes made in this bill, if safeguards are not added, Advocacy will not be able to perform its stated goals. The bill increases the scrutiny and profile of Advocacy, but offers no protec-

tions to the aforementioned concerns with the SBA and OMB that are associated with this heightened role. The mere addition of a line item will expose the Chief Counsel to interference by the OMB while ensuring no greater protections from a meddling Administrator, and could also undercut funding to other small business programs.

SBA Administrator and Advocacy under H.R. 1772

While Advocacy will have its own budget, under Section 7 of H.R. 1772, Advocacy will continue to rely on the SBA Administrator for administrative support. One of the primary reasons for creating this legislation was to remove the influence of a meddling SBA administrator. This bill fails to adequately protect Advocacy from the SBA Administrator siphoning funds.

If H.R. 1772 were adopted, Advocacy would still be dependent on SBA for office space, human resources, information technology and other service vital to operation. The Administrator could charge Advocacy rent for the space used, as well as for the staff support that SBA would provide. In addition, what would more than likely occur—even if services were not charged for (which is highly unlikely)—is a system where the quality of office space used and the staff support provided by SBA would decline. Advocacy may be seen as a “free rider” causing such services to be slow and subpar, thus limiting its ability to serve as a small business representative in the regulatory process.

SBA PROGRAM FUNDING AND ADVOCACY UNDER H.R. 1772

An unintended consequence of this legislation is that it could hurt programs designed to assist small businesses. While the bill increases the funding for Advocacy, it fails to address the reality that these costs may come from other budgetary cuts. Due to a lack of safeguards in H.R. 1772, Advocacy could affect, and likely reduce, funding for other SBA programs.

Because of the correlation between the SBA and Advocacy, a president seeking to cut budget costs will likely look to SBA programs to provide additional funding for the Chief Counsel’s office. This could translate into further cuts to the already dwindling funds for SBA programs. As a result, funding for such programs as Small Business Development Centers (SBDCs), Service Corps of Retired Executives (SCORE), and Women’s Business Centers (WBCs) could be used to provide adequate funding for Advocacy.

In an attempt to add some transparency in the budget process, an amendment was adopted by the Committee. It makes any moves by the administration to divert funding from valuable SBA programs more obvious. It requires the president, as part of his/her budget submission, to include a statement as to whether Advocacy funding has remained the same compared to the SBA budget. While this amendment makes cuts more apparent, it still does not prevent the administration from meddling nor does it guarantee that Congress can restore such funds without cuts to small business programs.

If an administration underfunds Advocacy, there may be an attempt by Congress to rectify these shortfalls during the appropriations process. This inevitably would result in lawmakers who wish

to restore Advocacy funding to look at the SBA and its programs for offsets. This reality is based on the fact that to make spending changes in the appropriations process, an amendment must have dollar for dollar offsets that have equivalent “spend-rates” and outlays. Historically, the account that has been under the greatest attack for SBA shortfalls is the agency’s salaries and expenses (S & E) account.

Transferring funds from the S & E account would be viewed as seemingly harmless and would be the main target as an offset to transfer funds to Advocacy. The reality is that many SBA programs designed to assist low-income and minority populations receive funds from the S & E account—and should funds be taken from this portion of the SBA’s budget—this would probably translate into further cuts to these programs.

OMB and Advocacy under H.R. 1772

H.R. 1772 is also going to increase the exposure of Advocacy to OMB influence. Currently, while OMB has a great deal of input in determining overall agency funding levels in the budgetary process, it is not involved in determining agency spending priorities. This provides protection from an administration seeking retribution for a Chief Counsel that is overly active. The bill, however, fails to address the ability of Advocacy to request and receive funding without interference from OMB. The line item created under Section 5(b) of the legislation could create a situation where Advocacy would see its independence negatively impacted by the increased amount of influence that OMB could exert.

Section 5(b) of the bill that creates the line item places Advocacy funding in direct control of OMB. It would require the Chief Counsel to go to OMB regarding all funding needed. This structure allows OMB to exert a high degree of influence on Advocacy—the only entity that has the power to criticize the OMB’s actions. This could have a chilling effect on Advocacy’s independent voice.

In the 107th Congress, Democrats on the Small Business Committee attempted to rectify this problem as part of legislation to create an independent Advocacy. The legislation included a section that called for direct submission of the Advocacy budget to the president without review by the OMB. By requiring the direct submission, OMB would not have the authority to exact retribution on what it deemed as a problematic Advocacy. This provision, designed to protect the independence of Advocacy, was passed unanimously out of Committee, but was struck out by the Republican leadership prior to the bill being brought to the House floor.

H.R. 1772 offers no protections from the OMB. Under the bill, the Chief Counsel could one day criticize OMB and the administration’s policies and then the next day, have to go to the very entity it criticized to request funding. This structure would, at a minimum, create a perceived, if not direct, connotation that lack or underfunding of Advocacy was a result of its opposition to the OMB/administration’s position.

CONCLUSION

The Committee Democrats strongly support the goal of providing Advocacy with a stronger voice. At the same time, it is important

to ensure that Advocacy stays true to its core mission of helping small businesses and entrepreneurs. H.R. 1772 remains far from the mark and must be considered only a start. The Committee has spent many years trying to find ways to achieve an independent Advocacy and this approach fails to consider the pressures from the OMB and the SBA.

This Committee has previously considered the creation of Advocacy as an independent commission to alleviate concerns over a meddling administration. As a commission, Advocacy could have its own budget, office space, and human resources. The commission proposal was a means to solve the problem of an administration using budgetary and other tools to apply pressure on Chief Counsels. This solution addresses problem areas that H.R. 1772 does not.

While the bill passed out of the Committee by voice vote, it was not without objections and controversy. Democratic Members of the Committee expressed concerns over the bill in its current form. They were worried that the efforts of the Chief Counsel could be compromised by budget concerns and interference from both the OMB and the SBA.

To have a truly independent Advocacy, any legislative proposal must ensure that the Chief Counsel can carry out his/her duties without interference from the SBA Administrator or the OMB. Under H.R. 1772, Advocacy may be no better off in terms of finances from a meddling SBA Administrator than the status quo. Passing this legislation, which makes mere cosmetic changes, is poor public policy and sets a dangerous precedent.

As the forces preventing Advocacy from becoming independent are strong, so must the measures designed to ensure its independence. A line item is clearly not enough to prevent interference from the SBA and the OMB. If there issues are not resolved in the final version of the bill, this legislation should not be passed into law.

NYDIA M. VELÁZQUEZ.

