

Report to Senate and House Appropriations Committee:
Advocacy Follows GAO's Recommendations

February 2015

Advocacy Mission

For decades, our nation has recognized the importance of small businesses as generators of innovation, employment, economic growth, and competition in the U.S. economy. The need for policies that support the development, growth, and health of small business led to the creation in 1976 of the Office of Advocacy, an independent office within the SBA.

Advocacy's mission is to encourage policies that support the development and growth of American small businesses by:

- Fostering two-way communication between the small business community and other stakeholders, including federal policymakers and regulatory agencies.
- Engaging early in federal agencies' regulatory development process to advocate for reducing the regulatory burden on small businesses and providing Regulatory Flexibility Act (RFA) compliance training to federal agencies and regulatory development officials; and
- Producing research that documents the vital role of small businesses in the economy, informs policymakers and other stakeholders of the impact of federal regulations on small businesses, and explores the variety of issues of concern to the small business community.

Advocacy Background

The RFA is the primary legal tool that gives small businesses a voice in the rulemaking process. The RFA establishes in law the principle that government agencies must analyze the effects of their regulatory actions on small entities—small businesses, small nonprofits, and small governments—and consider alternatives that would minimize the economic burden on small entities while still achieving their regulatory objectives. Advocacy has the responsibility of overseeing and facilitating federal agency compliance with the RFA.

Since it was enacted in 1980, the RFA has been strengthened by legislation and executive orders including:

- **The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).** SBREFA provided for judicial review of agency compliance with key sections of the RFA. It also established a requirement that certain agencies (currently the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Consumer Financial Protection Bureau) convene panels whenever they are developing a rule for which an initial regulatory flexibility analysis (IRFA) would be required.
- **Executive Order 13272.** Signed by President Bush in August 2002, E.O. 13272 requires Advocacy to notify the leaders of the federal agencies from time to time of their responsibilities under the RFA. The executive order also requires Advocacy to

provide training to the agencies on how to comply with the law and to report annually on agency compliance. The executive order also requires that the agencies provide notice to

- **The Small Business Jobs Act of 2010.** This legislation codified the requirements of early notification and written responses previously included in E.O. 13272.

During the Obama Administration, an executive order and accompanying memo provided more support of Section 610 of the RFA, which requires agencies to review existing regulations periodically to determine whether they are still justifiable.

- **Executive Order 13563, Improving Regulation and Regulatory Review.** E.O. 13563 imposed on the executive agencies new requirements of heightened public participation, consideration of overlapping regulatory requirements and flexible approaches, and ongoing regulatory review. E.O. 13563 was accompanied by a presidential memorandum, Regulatory Flexibility, Small Business and Job Creation.
- **Presidential Memorandum, Regulatory Flexibility, Small Business and Job Creation.** This memo reminded the agencies of their responsibilities under the RFA, directed them "to give serious consideration" to reducing the regulatory impact on small business through regulatory flexibility, and to explain in writing any decision not to adopt flexible approaches.
- **Executive Order 13610, Identifying and Reducing Regulatory Burdens.** On May 11, 2012, President Obama issued Executive Order 13610, which established regulatory review as a rulemaking policy, and also established public participation as a key element in the retrospective review of regulations. E.O. 13610 also established as a priority "initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small business" and ordered the agencies to "give consideration to the cumulative effects" of their regulations.

With this emphasis on the principles of regulatory review and sensitivity to the special concerns of small businesses in the rulemaking process, federal agencies have increased their efforts to comply with the RFA. The Office of Advocacy, consistent with its statutory mission, provides assistance and guidance to the agencies in achieving this compliance.

Advocacy Follows GAO's Recommendations

In July 2014, the Government Accountability Office (GAO) released a report entitled, *Office of Advocacy Needs to Improve Controls Over Research, Regulatory, and Workforce Planning Activities*. The Office of Advocacy reviewed GAO's recommendations and has addressed all concerns.

GAO Recommendations

GAO recommended the following in their report:

“To improve Advocacy’s system of internal control, and help to provide reasonable assurance that the office is meeting its mission, GAO recommends that the Chief Counsel of Advocacy take the following five actions:

- Strengthen the accountability of its research activities by taking the following two actions:
 - Enhance its peer review policies and procedures by including written guidance on selecting peer reviewers and documenting all steps of the peer review process—whether a peer review occurred and how and to what extent peer reviewer comments were addressed.
 - Develop policies and procedures that reflect the federal information quality guidelines on retaining data for influential studies, and when not retaining data, taking additional steps to substantiate the quality of information disseminated.
- Strengthen the accountability of its regulatory activities by developing policies and procedures to ensure that key elements of that work—such as sources of input for comment letters and roundtable discussions—are consistently documented.
- Coordinate with SBA officials who oversee website administration to comply with Advocacy’s roundtable policy to make information on the events—agendas, presentation materials—publicly available on its website so that its regulatory activities are more transparent to the public.
- Improve its workforce planning efforts to be better prepared to meet its future workforce needs by incorporating succession planning.”

Advocacy’s Response to GAO Recommendations

GAO Recommendation: Enhance its peer review policies and procedures by including written guidance on selecting peer reviewers and documenting all steps of the peer review process—whether a peer review occurred and how and to what extent peer reviewer comments were addressed.

Advocacy has formalized criteria for determining the type and level of information review that should be assigned to a research product. More specifically, Advocacy has refined and clarified

its external peer review process to memorialize criteria for reviewer selection and further standardize the method of evaluation with which peer reviewers are asked to comply. Advocacy agrees with GAO that these steps will strengthen our ability to provide robust and quality economic research for small businesses and policymakers.

GAO Recommendation: Develop policies and procedures that reflect the federal information quality guidelines on retaining data for influential studies, and when not retaining data, taking additional steps to substantiate the quality of information disseminated.

Advocacy continues to document and clarify policies and procedures to determine which Advocacy research products should be considered “influential” according to OMB’s Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies. In addition, the office has drafted written internal policy guidelines that further clarify when information quality checks are needed.

GAO Recommendation: Strengthen the accountability of its regulatory activities by developing policies and procedures to ensure that key elements of that work— such as sources of input for comment letters and roundtable discussions—are consistently documented.

Advocacy updated its policies and procedures to ensure that sources of input for comment letters and roundtable discussions are consistently documented. Advocacy has implemented a more detailed internal system to compile and record small business views used in regulatory comment letters. Roundtable information continues to be an important source of input and Advocacy’s internal system now includes instruction on maintaining that information.

GAO Recommendation: Coordinate with SBA officials who oversee website administration to comply with Advocacy’s roundtable policy to make information on the events—agendas, presentation materials—publicly available on its website so that its regulatory activities are more transparent to the public.

The Office of Advocacy homepage now has a link to the list of Advocacy’s regulatory roundtables and agendas starting in January 2015. Due to disability compliance issues with the website, presentation materials will continue to be available upon request.

GAO Recommendation: Improve its workforce planning efforts to be better prepared to meet its future workforce needs by incorporating succession planning.

The Chief Counsel for Advocacy has been given special public law hiring authority which enables him or her to add and remove staff in a manner that is conducive to fulfilling human resource demands and subject matter expertise when needed. Advocacy recognizes the need and value in utilizing succession and workforce planning in conjunction with its strategic planning. Therefore, an Advocacy Succession Plan is now in place to assist senior management in planning for the future and enables employees to understand the goals and opportunities within the office.