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Office of Advocacy**Memorandum**

To: Heads of Executive Agencies
General Counsels
Agency Regulatory Staff

From: Thomas M. Sullivan, Chief Counsel for Advocacy

Date: March 29, 2002

Subject: Memorandum of Understanding Between the Office of
Advocacy and the Office of Information and Regulatory
Affairs

On March 19, 2002, President Bush announced an historic memorandum of understanding (MOU) between the Office of Advocacy at the U.S. Small Business Administration (Advocacy) and the Office of Information and Regulatory Affairs at the Office of Management and Budget (OIRA). The purpose of the MOU is to ensure that Advocacy and OIRA work closely together to ensure that small business issues, particularly as they relate to disproportionate regulatory burden, are addressed as early as possible in the regulation writing process. The MOU is part of the President's overall small business agenda that gives small businesses the support they need to continue to drive this nation's economy. A copy of the MOU is attached for your convenience and the President's agenda is fully outlined in the following Web site, <http://www.whitehouse.gov/infocus/smallbusiness>.

What the MOU does do:

- Fosters an information sharing process between Advocacy and OIRA during the executive review process.
- Helps ensure that agencies make a good faith effort to comply with the Regulatory Flexibility Act (RFA). Failure to comply may result in a recommendation by Advocacy to OIRA to issue a "return letter."
- Provides for RFA compliance training opportunities for Federal agencies.

- Requires Advocacy and OIRA to act expeditiously on urgent matters related to health, safety, environmental and homeland security.
- Requires Advocacy to issue guidance on RFA compliance.

What the MOU **does not** do:

The MOU should not in itself create additional burden for Federal agencies. If Federal agencies are complying with the RFA, and considering less burdensome regulatory alternatives that fit within the agency's policy objectives, then it is likely that no additional work will be required by the agencies. In the near future, the President will be issuing an Executive Order to place further emphasis on the importance of regulatory reduction for small entities.

Advocacy maintains a Web site containing industry-based small business data, all official Advocacy comment letters, guidance on how to comply with the RFA (which will be updated in the coming months), and the text of several relevant laws such as the RFA, the Administrative Procedure Act, the Paperwork Reduction Act, etc. The Internet address is <http://www.sba.gov/advo>.

If you have any questions or concerns regarding the MOU or the RFA, please feel free to contact Shawne Carter McGibbon, Director of Interagency Affairs for the Office of Advocacy at 202-205-6945, or at shawne.carter@sba.gov.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION
AND
THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS,
OFFICE OF MANAGEMENT AND BUDGET**

I. BACKGROUND

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) and the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA) recognize that small entities (including small businesses, non-profit organizations and small governmental jurisdictions), as defined in 5 U.S.C. § 601, often face a disproportionate share of the Federal regulatory burden compared with their larger counterparts. Advocacy and OIRA further recognize that the best way to prevent

unnecessary regulatory burden is to participate in the rulemaking process at the earliest stage possible and to coordinate both offices to identify draft regulations that likely will impact small entities.

Inasmuch as Advocacy and OIRA share similar goals, the two agencies intend to enhance their working relationship by establishing certain protocols for sharing information and providing training for regulatory agencies on compliance with the Regulatory Flexibility Act (RFA) and various other statutes and Executive orders that require an economic analysis of proposed regulations.

II. PURPOSE

The purpose of this Memorandum of Understanding (MOU) between Advocacy and OIRA is to achieve a reduction in unnecessary regulatory burden for small entities. This initiative also is intended to generate better agency compliance with the RFA and other statutes and Executive orders requiring an economic analysis of proposed regulations.

III. AUTHORITY

This agreement is under the authority of 15 U.S.C. § 634(a) et seq., 5 U.S.C. § 601 et seq., Executive Order 12866, as amended, and other relevant provisions of law.

IV. OBJECTIVES

To the extent consistent with Advocacy and OIRA authority, Advocacy and OIRA agree to accomplish the following objectives:

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- a. Establish an information sharing process between Advocacy and OIRA when a draft rulemaking is likely to impact small entities.
- b. Establish Advocacy guidance for Federal agencies on the requirements of the RFA.
- c. Establish training for Federal agencies on compliance with the RFA.

V. SCOPE

Nothing in this MOU shall be construed to limit or otherwise affect the authority of the Office of Advocacy as established in 15 U.S.C. § 634a et seq. or the authority, management or policies of OIRA.

VI. RESPONSIBILITIES

a. Advocacy

1. During OIRA's review of an agency's rule under Executive Order 12866, OIRA may consult with Advocacy regarding whether an agency should have prepared a regulatory flexibility analysis. Advocacy will designate staff by issue and/or agency to facilitate such discussions. If OIRA is uncertain as to small business impact or RFA compliance, OIRA may send a copy of the draft rule to Advocacy for evaluation.

2. If Advocacy's discussions with an issuing agency do not result in an acceptable accommodation, Advocacy may seek the assistance of OIRA during the regulatory review process under Executive Order 12866 and may recommend that OIRA return the rule to the agency for further consideration.

3. Advocacy will monitor agency compliance with the RFA by reviewing the semi-annual regulatory agenda and the analyses that agencies publish in the *Federal Register*. Similarly, Advocacy will review the regulatory flexibility analyses that agencies provide directly to Advocacy. If Advocacy finds that a rule does not comply with the RFA, Advocacy will raise these concerns with OIRA.

4. Advocacy shall provide OIRA with a copy of any correspondence or formal comments that Advocacy files with an agency concerning RFA compliance.

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5. Advocacy will develop guidance for agencies to follow on how to comply with the RFA.

6. Advocacy will organize training sessions for Federal agencies on how to comply with the analytical requirements of the RFA.

b. OIRA

Consistent with OIRA's responsibility to ensure adequate interagency coordination, OIRA shall endeavor to do the following:

1. During OIRA's prepublication review of an agency's rule pursuant to Executive Order 12866, OIRA will consider whether the agency should have prepared a regulatory flexibility analysis. If Advocacy has a concern in this regard, OIRA will provide a copy of the draft rule to Advocacy. In addition, upon request, OIRA may, as appropriate, provide Advocacy with draft proposals and accompanying regulatory analyses.

2. If, in the judgment of Advocacy or OIRA, an agency provides an inadequate regulatory flexibility analysis, or if an agency provides a rule with an inadequate certification pursuant to section 605 of the RFA, OIRA may discuss and resolve the matter with the agency in the context of the regulatory review process under Executive Order 12866. Where OIRA deems it appropriate, OIRA may return a rule to the agency for further consideration.

3. If Advocacy or OIRA are concerned about an information collection requirement contained in a rule which OIRA is reviewing under the Paperwork Reduction Act, OIRA may discuss and resolve the matter with the agency.

4. OIRA will endeavor to provide assistance, as appropriate, at the request of Advocacy in support of its development of guidance for agencies to follow in complying with the RFA and its training sessions on the analytical requirements of the RFA.

c. Joint Advocacy-OIRA Responsibilities

For rulemakings and information collection requests related to urgent health, safety, environmental, and homeland security matters, Advocacy and OIRA shall

endeavor to cooperate and discuss their concerns in an expeditious manner.

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VII. TERM

This MOU shall take effect on the date of signature of both parties, and will remain in effect for three years, at which time it may be renewed by mutual agreement of Advocacy and OIRA.

VIII. AMENDMENT

This MOU may be amended in writing and at any time by mutual agreement of Advocacy's Chief Counsel or his/her designee and the Administrator of OIRA or his/her designee.

XI. TERMINATION

Either Advocacy or OIRA may terminate this MOU upon 90 days advance written notice.

X. POINTS OF CONTACT

Points of contact for this MOU are as follows:

For Advocacy:

Thomas M. Sullivan
Chief Counsel
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U.S. Small Business Administration
409 Third Street, SW
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For OIRA:

Dr. John D. Graham
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MESSAGE: RE: Memo to Agency Heads and Agency GC's

Did you know that in fiscal year 2001 the SBA-

- backed more than \$16.5 billion in financing to America's small businesses?
- approved more than 50,000 loans totaling almost \$12.2 billion?
- invested \$4.5 billion in small businesses through its venture-capital program?
- provided more than 48,000 loans totaling approximately \$1 billion to disaster victims for residential, personal-property and business loans?
- gave management and technical assistance to an estimated 1.3 million entrepreneurs through its resource-partner program?
- responded to almost a quarter million telephone and e-mail inquiries at the SBA Answer Desk?

Did you know that America's 25million small businesses-

- employ more than 58 percent of the private workforce,
- generate more than 51 percent of the nation's gross domestic product?
- are the principal source of new jobs?

Contact us at:

1-800-U ASK SBA

www.sba.gov

answerdesk@sba.gov

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