

Chairman Spencer Bachus
Ranking Member Steve Cohen
House Committee on the Judiciary
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Washington, DC 20515

June 27, 2013

Re: Hearing on the "Regulatory Flexibility Improvements Act of 2013"

Dear Chairman Bachus and Ranking Member Cohen:

The Center for Effective Government (formerly OMB Watch), an independent, nonpartisan public policy organization working to establish and defend effective health and safety standards, requests that the following comments be included in the record of the legislative hearing held June 28, 2013, on the "Regulatory Flexibility Improvements Act of 2013."

The Regulatory Flexibility Improvements Act would expand the authority of the Office of Advocacy in the Small Business Administration, inappropriately increasing its role in the regulatory process across multiple agencies and into decisions beyond its expertise and mandate. We strongly urge the Committee to reject the bill.

The Office of Advocacy Inappropriately Represents the Interests of Large Corporations

Last year, staff at the Center for Effective Government conducted an investigation into the activities of the Office of Advocacy at the Small Business Administration, an office charged with ensuring federal agencies comply with the Regulatory Flexibility Act. In January 2013, we published a [report](#)¹ documenting the Office of Advocacy's interference in three scientific (not regulatory) decisions, about which its staff had no expert knowledge. Documents obtained through the Freedom of Information Act show the Office acted at the behest of large corporate interests or trade associations dominated by them – not small businesses.

Our investigation revealed that the Office of Advocacy has no policies and procedures in place to identify what the small business interest is in a particular regulatory issue; whether that issue will be adequately represented without the Office of Advocacy's involvement; and how to determine what position to take when various small businesses have competing interests in a regulatory decision.

¹ *Small Businesses, Public Health, and Scientific Integrity: Whose Interests Does the Office of Advocacy at the Small Business Administration Serve?*, Center for Effective Government (January 2013), available at <http://www.foreffectivegov.org/files/regs/office-of-advocacy-report.pdf>.

Instead, the Office relied almost exclusively on talking points provided by trade associations dominated by large chemical companies and their lobbyists.

The Office's activities questioning scientific assessments of the risks of cancer represented an unwarranted expansion of its jurisdiction, and these efforts to weigh in on toxic hazards could threaten important health programs designed to inform the public and agencies about health risks.

We recommended that Congress exert more oversight over the Office of Advocacy. There have been few hearings examining its activities or questioning how it determines what small businesses' interests are. In fact, our investigation showed that the issues the Office involves itself in and the positions it advocates seem to be the result of corporate and trade association lobbying and the personal predilections of its staff, rather than any systematic discussion with representatives of small businesses.

A GAO Investigation of the Office of Advocacy is Underway

As a result of our investigation, Senator Lautenberg, in his capacity as Chair of the Senate Appropriations Subcommittee on Financial Services and General Government, requested that the Government Accountability Office investigate the Office of Advocacy's activities. That investigation is ongoing.

The Regulatory Flexibility Improvements Act would significantly expand the Office of Advocacy's authority and influence in the rulemaking process, effectively making the office a new super-regulator. It would be premature to increase the Office's authority before the GAO investigation is complete. After the GAO investigation has been completed, we recommend that Congress conduct oversight hearings on the activities of the Office of Advocacy.

Further Evidence Emerging of Other Inappropriate Relations with Large Corporate Interests

The Center for Effective Government staff is currently reviewing additional documents from the Office of Advocacy received in response to several recent Freedom of Information Act requests. Documents show that the Office's environmental roundtables have been attended by representatives from General Electric and the Koch Companies Public Sector, companies that are clearly not small businesses.

E-mails show that the Office frequently corresponded with the Koch Companies (owners of Georgia-Pacific – a big company with a two-decade history of fighting formaldehyde regulation) on EPA's rules for Formaldehyde Emissions Standards for Composite Wood Products while the rules were still undergoing interagency review. During OMB review of the formaldehyde rule, the Office of Advocacy sought out big business views on scientific questions. Other documents suggest that the Office of Advocacy leaked EPA documents pertaining to arsenic to big business representatives.

The RFIA Would Further Obstruct Rulemaking and Should Be Opposed

The RFIA would give corporate interests an even greater advantage in the regulatory process than they already have. The Chief Counsel of the Office of Advocacy would be able to preview proposed rules



before they are published and have increased opportunities to intervene in the rulemaking process. Current law requires only a few select agencies to submit draft rules to small business review panels, but this bill would expand these preview opportunities to all agencies. The bill would also expand the number of regulations that would be required to undergo small business panel review.

RFIA would give the Office of Advocacy the power to write regulations governing *all* agencies' compliance with the Regulatory Flexibility Act. The Office is a taxpayer-funded voice for business interests and is not required to consider the public health or environmental goals of other agencies, so allowing it to interfere in health and safety rules across all federal agencies is particularly troubling.

There is simply no reason for Congress to expand the role of the Office of Advocacy. Our investigation shows it has worked to supplement the extensive lobbying efforts of corporate interests that seek to block important public protections. These interests have adequate resources to do so themselves. In this era of fiscal austerity, government-subsidized lobbying assistance to the largest corporations in America is completely unjustified.

The Regulatory Flexibility Improvements Act would undermine the implementation of health and safety rules mandated by current law; it would expand the authority and reach of an agency whose practices and independent judgment are already under scrutiny; and it would unnecessarily divert public resources needed elsewhere. This bill is unwise and unsound and should be rejected.

Sincerely,



Katherine McFate
President and CEO
Center for Effective Government

