U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
REGULATION • RESEARCH • OUTREACH

October 7, 2025

VIA ELECTRONIC SUBMISSION

The Honorable Rand Paul
Chairman
U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Gary Peters
Ranking Member
U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable James Comer
Chairman
U.S. House Committee on Oversight & Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert Garcia
Ranking Member
U.S. House Committee on Oversight & Government Reform
2106 Rayburn House Office Building
Washington, DC 20515

The Honorable Joni Ernst
Chair
U.S. Senate Committee on Small Business & Entrepreneurship
428A Russell Senate Office Building
Washington, DC 20510

The Honorable Edward Markey
Ranking Member
U.S. Senate Committee on Small Business & Entrepreneurship
428A Russell Senate Office Building
Washington, DC 20510

The Honorable Roger Williams
Chairman
U.S. House Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515

The Honorable Nydia Velázquez
Ranking Member
U.S. House Committee on Small Business
2069 Rayburn House Office Building
Washington, DC 20515

Ms. Jill Naamane, Director
Financial Markets and Community Investment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Statement of Actions Taken in Response to GAO Report Number GAO-25-106950, *Regulatory Flexibility Act: Improved Policies for Analysis and Training Could Enhance Compliance*

Dear Chairman Paul, Ranking Member Peters, Chairman Comer, Ranking Member Garcia, Chair Ernst, Ranking Member Markey, Chairman Williams, Ranking Member Velázquez, and Director Naamane,

In early 2023, GAO received a request from the House Committee on Small Business to "review agencies' implementation of RFA." I write today to explain how such a review should have been conducted, explain what a proper review would have found regarding RFA compliance, and to respond to recommendations appearing in GAO's April 2025 report on this subject.

In the RFA's "Congressional Findings and Declaration of Purpose," its authors criticize "**the failure to recognize** differences in scale and other aspects of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity" [emphasis added].[1] The failure to recognize continues. As Chief Counsel for Advocacy, I find, as a proper review would find, that:

- A particularly **frequent agency practice has been to unlawfully certify** important rules as not having a significant economic impact on a substantial number of small entities.
    - In true Orwellian fashion, sixty-five percent of the rules that Biden Administration agencies deemed both "significant" and having priority for congressional review ("major") were nonetheless said to lack significant effects on small entities or otherwise not require consideration of effects on small entities.
    - Regulatory costs of at least $100 billion were to be imposed on small businesses without acknowledgement by Biden Administration regulators of their magnitude.
    - The Biden Administration's Environmental Protection Agency (EPA) failed to publish even a single final regulatory flexibility analysis until Fiscal Year 2024, despite the exceptional significance of its rules to small entities and its extraordinary rulemaking obligations to them.
    - Improper and unlawful certifications are a pathway to capricious enforcement actions against small entities.
- With only a handful of exceptions, agencies failed to adhere to 5 U.S.C. § 602(b)'s requirement to share Regulatory Flexibility agendas with the Office of Advocacy (Advocacy). Supported by this unlawful behavior, **regulators ambush small businesses with proposals to increase regulatory costs** by hundreds of billions of dollars and deprive them of their rights to fully participate in rulemaking processes.
- The GAO has developed a track record of **whitewashing RFA noncompliance**, a pattern that continues with its April 2025 response to the House Committee's request.

A proper review would examine all federal rulemaking agencies, particularly when the review is conducted by an office (GAO) that serves as Congress' inbox for rules from all agencies. Instead, the April 2025 GAO report selects agencies for consideration, with little regard for which agencies are known to most burden small entities. A proper review would be finished in weeks or months, giving the President the opportunity to take corrective action before even more damage was done to small entities. Instead, the GAO response to the House Committee took at least two years, allowing the Biden Administration to wrap up a regulatory agenda that cost our

[1] Regulatory Flexibility Act, Pub. L. No. 96-354, § 2(a)(4), 5 U.S.C. § 601 note.

country more than $5 trillion.[2] A proper review would have consulted qualified and knowledgeable experts. Instead, GAO admits that it lacks the expertise to assess economic significance, which is a critical analytical requirement of the RFA.

A. Improper Certification

A.1. Major rules are routinely self-contradictory regarding their economic significance

Regulators designate rules as "major" based the magnitude of its economic effects as assessed by the Office of Information and Regulatory Affairs. Although economic significance to the economy (Executive Order 12866) and to small businesses (RFA) are not synonymous, as a matter of principle they ought to be closely related. After all, small businesses contribute almost half of the economy's production and employ almost half of its workforce.[3] A valuable metric of the RFA compliance is therefore the degree of overlap between major rules and the rules that example small entity effects (SEEs).

On my first day as Chief Counsel for Advocacy, I submitted a report to President Trump and the U.S. Congress providing data on widespread abuse of certification under 5 U.S.C. § 605(b) that is well suited for calculating the amount of overlap.[4] Table 1 below summarizes the results of merging that data with the 419 Biden Administration final rules shown on GAO's web site as received from regulators as major rules under the Congressional Review Act.[5]

Sixty-five percent of major rules do *not* consider small entity effects (SEEs). 49 points of the 65 percent are rules with certifications under the RFA. Another 15 points claim an RFA exemption. A handful of rules do not even bother mentioning the RFA.

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[2] *See* Casey B. Mulligan, *Biden–Harris Regulations Cost the Average Family Almost $50,000*, COMM. TO UNLEASH PROSPERITY, (July 2024), https://committeetounleashprosperity.com/wp-content/uploads/2024/07/240724_CTUP_BidenHarrisRegulations_Doc.pdf; U.S. ENV'T PROT. AGENCY, RECONSIDERATION OF 2009 ENDANGERMENT FINDING AND GREENHOUSE GAS VEHICLE STANDARDS: DRAFT REGULATORY IMPACT ANALYSIS app. B at 33-62 (July 2025), https://www.regulations.gov/document/EPA-HQ-OAR-2025-0194-0086.

[3] Kathryn Kobe & Richard Schwinn, SMALL BUSINESS GDP 1998-2014, U.S. SMALL BUS. ADMIN, OFF. OF ADVOC., (Dec. 2018), https://advocacy.sba.gov/wp-content/uploads/2018/12/Small-Business-GDP-1998-2014.pdf; U.S. SMALL BUS. ADMIN, OFF. OF ADVOC., 2025 SMALL BUSINESS PROFILE: UNITED STATES (2025), https://advocacy.sba.gov/wp-content/uploads/2025/06/United_States_2025-State-Profile.pdf.

[4] For those rules that genuinely have no meaningful effect on small businesses, small government entities, or non-profits, the RFA provides a pathway to avoid "unnecessary analyses" of effects of the rule on small entities. That pathway begins with "certif[ying] that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. § 605(b).

[5] On the same day as submitting the report, I provided the public the underlying data on final rules promulgated by the Biden Administration, pursuant to the 2018 OPEN Government Data Act. *See* U.S. Small Bus. Admin., *Biden Rules Certified Under RFA Report and Data*, https://data.sba.gov/dataset/biden-rules-certified-under-rfa-data-code-json-file (last updated Aug. 6, 2025).

Table 1. Most Major Rules Do Not Consider Small-Entity Effects

Rule category	Count	Percent
SEEs considered	145	35%
SEEs not considered	274	65%
RFA is not even mentioned	6	1%
Certified	204	49%
RFA exemption claimed	64	15%
All Major Rules	**419**	**100%**

Notes: The sample is all final rules published in the Federal Register during the Biden Administration and deemed major for the purposes of the Congressional Review Act, except "correction" rules. Three rules claiming RFA exemption and indicating no significant economic impact on a substantial number of small entities (SISNOSE) are counted as exempt but not certified.

Clearly many of these major rules are contradicting themselves. Especially, at least 204 rules acknowledge significance for the economy yet assert no SISNOSE.

Take the Biden Administration's 2021 withdrawal of "Independent Contractor Status Under the Fair Labor Standards Act (FLSA)."[6] Withdrawing the independent contractor status rule imposes concrete compliance obligations on small businesses, including requiring them to analyze worker classification using the complex "economic reality" test, which demands legal consultation, significantly increased paperwork, and recordkeeping. The rule itself admits that over 5.9 million small firms must incur "regulatory familiarization" costs but dismisses these as minimal without accounting for additional costs associated with misclassification risk, potential back pay, penalties, and legal expenditures. All these costs disproportionately burden small entities lacking dedicated compliance departments. In the 2025 Small Business Regulations Survey, small businesses identified the Independent Contractor rule among the most costly and time-consuming regulations.[7]

Another example is the National Labor Relations Board's "Standard for Determining Joint Employer Status"[8] that would all but eliminate the most common business model in the U.S. retail sector: franchising. It would dramatically broaden the standard for joint-employer status to include reserved or indirect control, not just exercised or direct control. This means small businesses operating under common business models now face greatly increased legal uncertainty, exposure to collective bargaining obligations, and mutual liability for NLRA violations. All of this drives up compliance costs, legal fees, and risks of litigation.

The Joint Employer rule text itself repeatedly acknowledges burdens in the form of anticipated legal review, consultation costs, and heightened scrutiny of business relationships, but then dismisses as 'indirect' or speculative, despite being concrete, foreseeable, and disproportionately

[6] 86 Fed. Reg. 24303 (May 6, 2021).
[7] NAT'L SMALL BUS. ASS'N, NSBA SMALL BUSINESS REGULATIONS SURVEY 9 (July 2025), https://fec11adc-66e0-48fe-98d2-c262a0be523e.usrfiles.com/ugd/fec11a_d132369606b34957a0262d7d8eca561b.pdf.
[8] 88 Fed. Reg. 73946 (Oct. 27, 2023).

challenging for small entities compared to larger firms. This rule would have required small businesses to evaluate and possibly rewrite their franchise, third-party contracts (like subcontracts) in relation to employees, to minimize the risk of having joint liability. Yet the NLRB only estimates costs of $150 for small employers.

Small entities are even more common in healthcare sectors due to the prevalence of non-profit providers, which in many cases are small entities regardless of employee count as long as they are not the dominant provider in their industry. Small entities can easily be put out of business if sanctioned for failing to follow rules from the Department of Health and Human Services (HHS). Yet leadership at the HHS, and especially the Centers for Medicare and Medicaid Services (CMS), routinely certifies major rules. An example is the 2021 Covid-vaccine mandate for healthcare workers,[9] which was one of the most disruptive rules for healthcare providers ever issued by CMS. Another example is the 2024 rule[10] that required nursing homes to hire more staff, which would put many nursing homes out of business.[11] This rule was significant enough to get the attention of President Trump and Congress,[12] but purportedly not significant enough for CMS to conduct a regulatory flexibility analysis. Ironically, another major-yet-certified regulatory action was focused on the Regulatory Flexibility Act itself. It was a withdrawal of the rule issued by Secretary Azar and President Trump institutionalizing the RFA section 610 review process at CMS and elsewhere in the Department of Health and Human Services.[13]

Many more examples of certification abuse are available in the May 2024 report "Regulatory Flexibility Act Report: Agencies' Noncompliance with the RFA" from the House Committee on Small Business[14] and in a longer report on agency-by-agency compliance with the RFA that will be released by my office.

A.2. Regulatory costs of at least $100 billion were to be imposed by the Biden Administration on small entities without acknowledgement by regulators of the magnitude of those costs

President Biden's Environmental Protection Agency (EPA) promulgated three "EV mandate" rules as having no SISNOSE.[15] The rules would essentially require vehicle manufacturers to produce one electric vehicle for every internal-combustion engine (ICE) vehicle that it sold in the U.S., even in the heavy-duty truck category. These rules acknowledged that vehicle prices

[9] Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61613 (Nov. 5, 2021).
[10] Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting, 89 Fed. Reg. 40876 (May 10, 2024).
[11] See also U.S. Small Bus. Admin, Off. of Advoc., Comment Letter on Proposed Rule to Require Minimum Staffing Standards for Long-Term Care Facilities (Nov. 2, 2023), https://advocacy.sba.gov/wp-content/uploads/2023/11/Comment-Letter-Minimum-Staffing-Requirements-for-Long-Term-Care-Facilities.pdf.
[12] Pub. L. No. 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One Big Beautiful Bill Act.
[13] Withdrawing Rule on Securing Updated and Necessary Statutory Evaluations Timely, 87 Fed. Reg. 32246 (May 27, 2022).
[14] HOUSE COMM. ON SMALL BUS., REGULATORY FLEXIBILITY ACT (RFA) REPORT: AGENCIES' NONCOMPLIANCE WITH THE RFA (2024), https://smallbusiness.house.gov/uploadedfiles/05.22.2024_-_house_committee_on_small_business_rfa_report.pdf.
[15] Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74434 (Dec. 30, 2021); Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles. 89 F. Reg. 27842 (Apr. 18, 2024); Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles-Phase 3, 89 Fed. Reg. 29440 (Apr. 22, 2024).

would ultimately increase by an average of at least $2,000, and even more for the ICE vehicles that vehicle-buyers strongly prefer. With 14 million Schedule C businesses owning at least one vehicle, and most of those owning two or more,[16] the three rules would impose costs on small businesses on the order of $50 billion to $60 billion.

Advocacy estimates at least $50 billion in small entity costs would come from the combination of Consumer Financial Protection Bureau's (CFPB's) January 14, 2025 rule "Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information,"[17] the aforementioned 2024 CMS nursing-home staffing rule, the EPA's 2023 Waters of the United States rule,[18] the 2024 EPA rule "Procedures for Chemical Risk Evaluation under the Toxic Substances Control Act (TSCA),"[19] and the aforementioned 2023 NLRB Standard for Determining Joint Employer Status.

None of these rules reasonably quantified the small-entity costs, despite having an average small-entity cost on the order of $10 billion. Although economic significance under the RFA is not an exact synonym for economic significance under Executive Order 12866 (roughly $1 billion in net present value), assuming that the RFA threshold is more than 10 times greater is arbitrary, absurd, and usurps the statutory rights of small entities.

A.3. Biden's Environmental Protection Agency failed to publish even a single FRFA until Fiscal Year 2024

Taken together, EPA rules have monumental significance to small entities. This is why Congress imposed on EPA special and extraordinary rulemaking obligations. Namely, EPA must convene a Small Business Advocacy Review Panel (SBREFA Panel) before proposing rules that its Administrator cannot certify will not have a SISNOSE.[20] The Panel must gather input from small entity representatives (SERs) and issue a report with findings and recommended regulatory alternatives for EPA's consideration. Only the Chief Counsel for Advocacy, in consultation with others, may waive the Panel requirement.[21] In effect, Biden's EPA leadership usurped this authority by falsely certifying rules as having no SISNOSE.[22] It also missed opportunities for small business feedback that would have improved the rules. GAO's April 2025 report failed to mention 5 U.S.C. § 609(e) and relegated the important fact of zero EPA FRFAs to its footnote 107 (sic).

A.4. Improper and unlawful certifications are a pathway to capricious enforcement actions against small entities

Regulatory flexibility analyses published in the Federal Register are a mechanism for small entities to be aware that new rules apply to them and that compliance will meaningfully affect

[16] U.S. ENV'T PROT. AGENCY, *supra* note 2, at 24.
[17] 90 Fed. Reg. 3276 (Jan. 14, 2025).
[18] Revised Definition of "Waters of the United States"; Conforming, 88 Fed. Reg. 61964 (Sept. 8, 2023).
[19] 89 Fed. Reg. 37028 (May 3, 2024).
[20] 5 U.S.C. § 609.
[21] *Id.* § 609(e).
[22] A certified rule is not required to include a regulatory flexibility analysis and thereby not required to have been informed by a SBREFA panel. EPA leadership publishes final rules without final regulatory flexibility analyses (FRFAs) either by certifying them or asserting that the rule is exempt from notice and comment requirements.

their operations. Lacking such analyses, as certified rules typically do, makes it extraordinarily difficult for small entities to discern from the rule itself whether and how they must adjust their operations.[23]

Furthermore, a 605(b) certified final rule is not required to publish a final regulatory flexibility analysis and therefore not required to publish a small entity compliance guide (SECG) that would "explain the actions a small entity is required to take to comply with a rule or group of rules."[24] Unless the agency voluntarily publishes a SECG, small entities are left on their own to become aware and discern what they are supposed to do.

I am unaware of a SECG published for CMS's 2021 Covid-vaccine mandate for healthcare workers or its 2024 nursing-home staffing rule, to name a few. Nevertheless, enforcement of the vaccine mandate was vigorous.[25] CMS, among others, routinely issues sanctions against small entities for violating rules that purportedly have no SISNOSE.

B. With only a handful of exceptions, agencies fail to adhere to 5 U.S.C. § 602(b)'s requirement to share regulatory flexibility agendas with the Office of Advocacy.

Section 602(b) of the Regulatory Flexibility Act requires "each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any."[26] This provision ensures that Advocacy can review planned rulemakings early in the process and prepare for meaningful engagement by regulated small entities when that stage of the rulemaking process arrives. GAO's April 2025 report does not mention this requirement, let alone compliance with it.

As I explained in my August 2025 report, compliance with 5 U.S.C. § 602(b) has been low. Upon arriving at Advocacy, I learned that nobody remembers the last time that an agency complied, with the exceptions of the Small Business Administration and the Federal Communications Commission.

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[23] My August 4, 2025 report to President Trump and Congress, and the data asset supporting it, flag certified rules that included FRFAs. They were a small minority of certified rules.
[24] Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104-121 § 212, 110 Stat. 857, 858 (1996) (codified at 5 U.S.C. § 601 note).
[25] Memorandum from Directors of the Quality, Safety & Oversight Group and Survey & Operations Group, Centers for Medicare & Medicaid Services, to State Survey Agency Directors (Oct. 26, 2022), https://www.cms.gov/files/document/qs0-23-02-all.pdf
[26] 5 U.S.C. § 602(b).

C. GAO is accumulating a track record of whitewashing RFA non-compliance

C.1. GAO reports on major rules

Each rule submitted to Congress as major under the Congressional Review Act is received by GAO and reviewed for compliance with various statutes, including the RFA. For each major rule, GAO publishes a letter reporting its findings. It is extremely rare for any of those letters to indicate non-compliance with the RFA, even for the rules that are most absurdly certified. There is no public record of GAO asking agencies, or itself, how economically significant rules routinely have no SISNOSE.

C.2. GAO's audit was too narrow to be accurate

The concealment of improper and unlawful behavior by regulators continues in GAO's April 2025 report. It cherry-picks parts of the RFA for analysis. The report fails to mention the essential section 602(b) that requires regulators to keep, through the Office of Advocacy, small businesses apprised of their regulatory agenda. The report fails to mention SECGs. The report fails to note how improper and unlawful certification by EPA, CFPB, and OSHA are used to dodge SBREFA panel requirements, thereby depriving small entities of their rights and squandering opportunities to craft a better rule.[27]

C.3. A fictional basis cannot serve as a "factual basis" under the RFA

Perhaps GAO would contend that its role, or the RFA itself, is not analytical and that falsely and absurdly certifying no SISNOSE is nonetheless following procedure. This would be an excessively selective reading of the law. For one, false and absurd assertions cannot have a "factual basis," which GAO agrees is part of the plain text of the RFA. Anyone comparing rules "against RFA requirements" (April 2025 report, highlights page) must acknowledge that the text of **the RFA requires certifications to be built on a foundation of truth**. A fictional basis would be contrary to the law. Anyone unwilling or unable to separate fact from fiction is unqualified to assess section 605(b) certifications for compliance with the RFA.

Second, GAO could have looked at how Congress edited 5 U.S.C. § 605(b) to change from requiring "a succinct statement explaining the reasons for such certification" to requiring "a statement providing the factual basis for such certification." Third, the linking in the statute of compliance guides to FRFAs is further proof that that Congress did not intend rules that are meaningful to small entities to be certified as having no SISNOSE. Fourth, federal courts have remanded rules back to agencies for failing to provide a truthful certification.[28] Given that these cases preceded the modern era of extraordinary regulatory overreach, we should expect future cases on this matter to further clarify that analysis of small entity effects is a serious requirement set forth by the RFA.

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[27] An extraordinarily diligent and astute reader of the April 2025 GAO report might, upon reaching the 107th footnote indicating how EPA failed to publish even a single FRFA, compare the finding with the full RFA and realize how EPA avoided convening SBREFA panels. By contrast, a forthright report on RFA compliance would make the finding a headline item.

[28] Associated Fisheries of Maine v. Daley, 127 F.3d 104 (1st Cir. 1997); S. Offshore Fishing Ass'n v. Daley, 995 F. Supp. 1411 (D.Fla. 1998).

C.4. The Role of Training

The whitewashing continues in GAO's April 2025 report by highlighting a purported lack of training by the Office of Advocacy as the reason for RFA non-compliance. I have made my career in teaching and learning. My students have risen to the highest levels of academia, government, industry, and the military due to their skills and talents. I eagerly embrace the training functions of the Office of Advocacy.[29] I have personally helped regulators prepare and write economic analysis, especially initial regulatory flexibility analyses. My staff has too. This kind of supervised on-the-job experience is often the best kind of training.

The RFA sometimes raises interesting and subtle questions, and my office is actively engaged in helping agency employees answer those questions well.[30] However, as I have repeatedly shown, asserting falsehoods is the fundamental problem. It is not a subtle problem. Telling the truth is more than a mere "recommendation" from the Office of Advocacy. It is a plain requirement of the RFA.[31]

C.5. Cost-reducing regulatory actions raise subtle questions under the RFA

The requirement of a factual basis for a certification is part of the RFA's explicit textual requirements. At the same time, the RFA is less explicit about what should be done regarding rules that reduce or eliminate compliance costs for small entities. On one hand, 5 U.S.C. § 605(b) refers to a "significant economic impact" without distinguishing adverse "impact" from favorable impact. On the other hand, where sections 603 and 604 refer to "minimize the significant economic impact," the RFA seems to refer to only adverse impacts. While Advocacy believes that clear guidance regarding analyses of deregulatory actions can be understood from a holistic view of RFA, I appreciate that this is a more involved legal and economic reasoning process than we have for rules that increase costs.[32]

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[29] I reviewed the "Recommendation 5" in your April 2025 report. In that regard, Advocacy reviewed its RFA training program to strengthen its effectiveness and address GAO Recommendation 5. Advocacy has developed and implemented policies and procedures to provide training to agencies on RFA compliance and track their involvement. Also note that the Office of Advocacy trained more than 530 participants in fiscal year 2025: a new record for the office. None of the participants were from the GAO, despite Advocacy's invitation and GAO's eagerness to opine on the training.

[30] I reviewed the "Recommendation 6" in your April 2025 report. In that regard, on September 19, Advocacy met with OMB to discuss modifying its performance goal on RFA training so that training is consistently provided widely across government (78 agencies issued final rules during the Biden Administration that were either certified or indicated as RFA-exempt), especially to the agencies most in need. According to our discussion, Advocacy will be developing an updated performance metric with OMB to incorporate into Advocacy's FY27 budget justification.

[31] The Office of Advocacy should not be put in the position of looking away from RFA noncompliance to secure the cooperation of regulators needed to achieve OMB-training objectives, and it will not be while I am Chief Counsel.

[32] *See* U.S. SMALL BUS. ADMIN. OFFICE OF ADVOCACY, A GUIDE FOR GOVERNMENT AGENCIES: HOW TO COMPLY WITH THE REGULATORY FLEXIBILITY ACT (Aug. 2017), https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf. With that said, a fictional basis always and everywhere fails to be a factual basis. That principle alone is enough, without any adjudication of the RFA's language between sections 603, 604 and 605, to see as unlawful any rule that falsely claimed cost reductions as the basis for its certification.

C.6. GAO is not transparent

GAO has not been fully transparent on the topic of RFA compliance. GAO did not publish the letter from the House Committee on Small Business to "review agencies' implementation of RFA" that initiated its audit. Further, GAO did not publish its "spreadsheet-based data collection instrument," even after Advocacy reminded it that "Advocacy does not have access to the sample rules…" (Appendix X of GAO's April 2025 report). GAO should provide the public with these materials.

D. Conclusions

With only a few exceptions, costs imposed by major rules are an even bigger deal for small entities than they are for the larger economy. Certifying such rules as having no significant economic impact on a substantial number of small entities is based in fiction and thereby plainly unlawful. By improperly and incorrectly concluding that these rules were RFA compliant, GAO has been part of depriving small entities of their statutory rights, exposing them to capricious enforcement actions, and in just four years clearing a path for a hundred billion dollars in small-entity costs.[33]

GAO's audit adopted methods at odds with the law and almost always incapable of recognizing the RFA violations that routinely occur. Among other things, sections 602(b), 609(e), and SECGs should have been within scope of any reasonable reply to the House Committee's request. Without transparency on the scope of the congressional request and GAO's rules analysis, the only rational response of the public to GAO's April 2025 report is to ignore every one of its assertions of RFA compliance.

While future reports from the Office of Advocacy will provide further analysis of the extraordinary frequency of false certifications, the body of my letter by itself rigorously establishes its conclusions. Footnotes 29 and 30 contain Advocacy's statement of actions taken in response to GAO Report Number GAO-25-106950.

If you have any questions or require additional information, please contact me or Stephanie Fekete, Director of Interagency Affairs, at (202) 205-6888 or stephanie.fekete@sba.gov.

Sincerely,

//signed//

Casey B. Mulligan
Chief Counsel
Office of Advocacy
U.S. Small Business Administration

[33] To be clear, GAO's opinions are not binding on the Executive Branch because GAO is an instrumentality of the Legislative Branch. The harm from GAO's improper and incorrect conclusions is that they obscure Congress' understanding of the content of executive branch rules, which might affect its exercise of authority under the Congressional Review Act and other oversight functions.

Copy to: The Honorable Russel Vought
Director
Office of Management and Budget