U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
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Testimony of

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Committee on Small Business

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Topic:	A Voice for Small Business: How the SBA Office of Advocacy is Cutting Red Tape

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration is an independent voice for small business within the executive branch. Appointed by the President and confirmed by the U.S. Senate, the Chief Counsel for Advocacy directs the office. The Chief Counsel advances the views, concerns, and interests of small businesses before Congress, the White House, federal agencies, federal courts, and state policy makers. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional advocates and an office in Washington, DC, support the Chief Counsel's efforts.

For more information on the Office of Advocacy, visit https://advocacy.sba.gov/.

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Chair Williams, Ranking Member Velázquez, and Members of the Committee on Small Business: I am honored to be here today on behalf of the Office of Advocacy (Advocacy) to present testimony about Advocacy's role in cutting red tape for small businesses. The views in my testimony do not necessarily reflect the views of the Administration or the Small Business Administration (SBA).

Today's hearing is about cutting red tape, and that mission depends on getting the fundamentals right: regulators must honestly identify when rules will significantly affect small entities, analyze those effects, and consider less burdensome alternatives as Congress required in the Regulatory Flexibility Act (RFA). As the RFA watchdog, the Office of Advocacy is positioned to help ensure that agencies follow both the letter and the spirit of those statutory safeguards so that small businesses are not ambushed by avoidable paperwork, compliance costs, and enforcement risks.

This testimony draws on my recent report, "Unlawful Disregard for Small Business Regulatory Burdens," which examines thousands of Biden-era final rules that agencies certified as having no significant economic impact on a substantial number of small entities under 5 U.S.C. § 605(b). The report evaluates the lawfulness and prevalence of certifications (not the merits or policy objectives of the underlying rules). It explains how unsupported or fictional certifications can impede oversight while leaving small entities to shoulder burdens that were never candidly analyzed. The report's central relevance to cutting red tape is straightforward: when agencies evade or short-circuit the RFA's small-business safeguards, red tape grows in the dark; when those safeguards are enforced, red tape is more likely to be identified early and reduced.

I. The Urgency of Cutting Red Tape

According to a widely cited statistic, the Biden Administration made almost 1,200 new rules that cost the nation more than $1.8 trillion combined.[1] But that does not count another 11,000 rules with zero acknowledged costs. A more accurate cost estimate would be almost

[1] *See* Dan Goldbeck, Am. Action F., *The Biden Regulatory Record* (Jan. 29, 2025), https://www.americanactionforum.org/insight/the-biden-regulatory-record/, which tracks rules published in the Federal Register that include a quantified estimate of either net regulatory costs or paperwork burden.

$6 trillion.[2] Many of these rules were put in place at the behest of big businesses and special interests to hold back competition from the small businesses that drive American innovation.

Against that backdrop, President Trump was elected to stop the "ever-expanding morass of complicated Federal regulation [that] imposes massive costs on the lives of millions of Americans, creates a substantial restraint on our economic growth and ability to build and innovate, and hampers our global competitiveness."[3]

Red tape is not only a compliance problem. It is also a competition and cost-of-living problem. Regulations can raise the cost of living through channels the RFA itself highlights: reducing competition by giving large companies an artificial advantage, and discouraging innovation and productivity improvements that would otherwise lower prices and expand output. When regulation tilts markets toward incumbents and away from new entrants, it directly undermines the small businesses that drive American innovation and job creation.

These are not abstract concerns. They show up in practice. For years, small businesses burdened by regulations remained silent, fearing retaliation from regulators for speaking up. Today, they tell Advocacy that this administration is unlike any before. Now they are comfortable shining a light on unlawful, unnecessary, and unjust regulatory overreach. Many other small businesses say that this is the first time that the federal government has listened and understood. One even said that Advocacy "quite literally saved Christmas."

The urgency is compounded when rulemaking shortcuts prevent small-business burdens from being identified and minimized in the first place. My recent certification report documents widespread use of certifications under 5 U.S.C. § 605(b) that lacked the factual basis the statute requires, including certifications that contradict agencies' own cost or paperwork discussions elsewhere in the same rule. When agencies label major or otherwise consequential rules as having no significant impact on a substantial number of small entities, they reduce transparency for Congress and the White House and weaken the mechanisms that would otherwise force agencies to confront small entity impacts and consider less burdensome alternatives.

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[2] THE COUNCIL OF ECON. ADVISERS, THE ECONOMIC BENEFITS OF CURRENT DEREGULATORY EFFORTS (June 2025), https://www.whitehouse.gov/research/2025/06/the-economic-benefits-of-current-deregulatory-efforts/; CASEY B. MULLIGAN, COMM. TO UNLEASH PROSPERITY, BIDEN-HARRIS REGULATIONS COST THE AVERAGE FAMILY ALMOST $50,000 (July 2024), https://committeetounleashprosperity.com/wp-content/uploads/2024/07/240724_CTUP_BidenHarrisRegulations_Doc.pdf.

[3] Exec. Order No, 14,192, Unleashing Prosperity Through Deregulation, 90 Fed. Reg. 9065 (Feb. 6, 2025).

This is also a moment of opportunity. The Trump administration has directed agencies to identify "regulations that impose undue burdens on small businesses and impede private enterprise and entrepreneurship."[4] Small businesses are responding to that change in posture, and Advocacy's outreach shows that small businesses are now willing to share concrete examples of unlawful, unnecessary, or unjustified regulatory burdens.

For these reasons, cutting red tape is both urgent and achievable. The burdens are large, the mechanisms for relief already exist in law, and the administration and agencies are increasingly seeking practical, small-business-informed ways to implement regulatory relief.

II. Advocacy at the Regulatory Policy Table

Advocacy brings unique capabilities to the administration's regulatory policy table: nationwide small business outreach, longstanding expertise resisting unnecessary small business regulatory burdens, modern analytic capacity (including AI review of rules), and economic research that helps quantify small business experiences. As Chief Counsel for Advocacy and the RFA watchdog, I apply those capabilities to a practical mission that is especially important in this administration: identifying existing regulations that impose undue burdens on small businesses.

This retrospective, burden-reduction work is grounded in what Advocacy is designed to do: serve as the independent voice for small business inside the executive branch, bringing real-world small business conditions into regulatory decision-making. Advocacy's regional outreach is central to this effort. Small businesses can often describe, with specificity, where legacy requirements have become outdated, duplicative, overly prescriptive, or effectively unworkable in the field, and that intelligence helps agencies prioritize what to fix first. It required scarcely more than 100 days to put in place the office's Regional Advocacy team. They have already visited at least 40 states, providing our office much of the intelligence we bring to interagency policymaking processes in Washington, DC.

Agencies and White House offices have increasingly come to Advocacy for input on regulatory policy and deregulatory priorities, reflecting a renewed seriousness about following the law and reducing unnecessary burdens on small businesses. Advocacy has flagged approximately 300 issues for this administration where deregulatory action would help small businesses. Many of these issues are rules which give large organizations an artificial

[4] Exec. Order No. 14,219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, 90 Fed. Reg. 10583 (Feb. 2, 2025). *See also* THE COUNCIL OF ECON. ADVISERS, *supra* note 2, which lists several 2025 executive orders, presidential memoranda, and proclamations laying out a deregulatory agenda for the administration.

advantage over small ones. An example is the Outpatient Prospective Payment System that pays hospitals more for the same services than it pays independent physicians.[5] Others include the Department of Labor's 2013 Companion Care rule and the Department of War's 2024 Cybersecurity Maturity Model Certification.[6]

The Occupational Safety and Health Administration's proposed 2024 Heat rule illustrates how Advocacy's outreach brings real-world operational knowledge into the regulatory process.[7] During a meeting with Advocacy, an Arizona watermelon farmer understood the rule to require shade structures for workers even though harvesting takes place at night, when there is no sun to shade. In another scenario, asphalt or concrete arrives at a construction site and must be applied immediately, without mandatory breaks. Additionally, the rule could lead to situations where water is required to be introduced near industrial processes or chemical reactions, creating an explosion hazard.

Advocacy's outreach also helped cut foreign regulations that burden small businesses here at home. A family-operated firewood manufacturer in New Mexico secured a contract to export American-made piñon pine firewood to Canada. Despite the product being 100% legal, heat-treated, and pest-free, Canadian customs rejected four truckloads without a clear explanation. Through coordinated engagement spearheaded by our Regional Advocate, we worked with the Department of Agriculture, the U.S. Ambassador's office, the Department of State, and New Mexican Congressional staff to resolve the impasse. The manufacturer became the only U.S. company holding an export permit for packaged firewood to Canada, enabling shipments to resume for the first time in 26 months and creating immediate economic benefits for this small business.

Another indicator of agencies' unprecedented engagement with Advocacy is compliance with the RFA's agenda-sharing requirement in 5 U.S.C. § 602(b), under which agencies are to share their regulatory flexibility agendas with the Chief Counsel for comment. With only one or two exceptions, agencies in the prior Administration failed to comply with this requirement, limiting Advocacy's ability to provide timely input on the rules agencies planned to develop. In contrast, during my first five months as Chief Counsel, more than sixty agencies have

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[5] U.S. Small Bus. Admin, Off. of Advoc., Comments on Medicare and Medicaid Programs; CY 2026 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment and Coverage Policies; Medicare Shared Savings Program Requirements; and Medicare Prescription Drug Inflation Rebate Program (Sept. 11, 2025) https://advocacy.sba.gov/wp-content/uploads/2025/09/Comment-Letter-CMS25-CY-2026-PFS-NPRM-Final.pdf.

[6] Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60454 (Oct. 1, 2013); Cybersecurity Maturity Model Certification (CMMC) Program, 89 Fed. Reg. 83092 (Oct. 15, 2024).

[7] Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70698 (Aug. 30, 2024).

sought Advocacy input on their upcoming regulatory agendas. This is an increase in § 602(b) compliance of at least 3,000 percent. More importantly, the agencies seek Advocacy's input for the proper reason. They do not want to overlook opportunities to cut unnecessary and burdensome regulations.

III. Certification Abuse is an Obstacle to Regulatory Review

That renewed engagement is essential because, as my recent certification review documents, a recurring practice in the prior administration was to label rules as having "no significant economic impact on a substantial number of small entities" (a "certification" under 5 U.S.C. § 605(b)) without the factual basis Congress required. This short-circuits the very safeguards that help prevent red tape. My report, "Unlawful Disregard for Small Business Regulatory Burdens: A Comprehensive Review of Biden Administration Rulemaking," examines thousands of these certifications and evaluates their lawfulness and prevalence, not the merits or policy objectives of the underlying regulations.

The report's key conclusion is straightforward: fictional certifications are both prevalent and unlawful. Congress amended 5 U.S.C. § 605(b) in 1996 to require agencies to publish a statement providing the factual basis for a certification. Certifications that contradict a rule's own analysis, ignore quantified costs, or provide no supporting facts fail this statutory requirement. Regulators routinely published certifications that were unsupported or inconsistent with the agency's own findings.

This finding matters for at least two reasons—one prospective and one retrospective. Prospectively, much more is at stake than technical compliance with procedures. Regulatory flexibility analyses are essential to the goals of the RFA and the Small Business Regulatory Enforcement Fairness Act (SBREFA) because they help the White House and Congress stay apprised of the costs of new federal regulations for small entities and assess obstacles to competition and innovation. Moreover, a 5 U.S.C. § 605(b) certified final rule is not required to publish a final regulatory flexibility analysis and therefore is not required to publish a small entity compliance guide explaining the actions a small entity is required to take to comply. This leaves small entities on their own to become aware of their obligations and determine how to comply.

Retrospectively, accurate identification of small entity burdens facilitates the regulatory review processes that Congress codified at 5 U.S.C. § 610 and §§ 801-808. When agencies issue fictional or improper certifications, they not only evade the RFA's front-end safeguards. They also leave the impression that the rule is not one of those that need subsequent review by the executive branch (under § 610) or by Congress under the Congressional Review Act.

Fictional certifications are therefore a target-rich environment for identifying rules that impose substantial burdens on small entities and are ripe for retrospective review. Advocacy estimates that rules unlawfully certified by the Biden administration would by themselves have imposed between $200 billion and $600 billion in net-present-value regulatory costs on small entities, mitigated only by deregulatory actions taken since January 20, 2025.

Unlawful certifications were widespread even among the most important rules. Among rules disapproved by Congress under the Congressional Review Act, 75 percent were certified or were claimed to be exempt from the RFA.[8] Among all major rules, nearly two-thirds fell into this category, despite major rules being economically significant.

To make the problem concrete, the report identifies five recurring genres of fictional certifications:

(1) ignoring direct compliance costs and enforcement or liability risks;
(2) treating product bans, facility closures, or firm exit as economically insignificant;
(3) dismissing millions of hours of paperwork acknowledged elsewhere in the same rule;
(4) applying arbitrary below-threshold tests that ignore cumulative burdens ("death by a thousand cuts") and the smallest of small businesses; and
(5) excluding large, foreseeable indirect effects that are quantified and relied upon in regulatory impact analyses.

In short, the certification report is not merely a critique of past process failures. It is a practical roadmap for finding and fixing red tape that is already on the books. It identifies rules where the statutorily required factual basis was missing or fictional, and where small-business burdens were therefore more likely to be hidden from both oversight and review. That diagnosis supports the Action Agenda below: concrete steps for preventing recurrence and for accelerating the identification and reform of existing rules that impose undue burdens on America's small businesses.

IV. Action Agenda

President Trump's cabinet goes to great lengths to hear from Advocacy, but he will not always be our president. Small businesses will continue to be vital to the U.S. economy even when a future president is less supportive. This committee might consider legislation that

[8] The denominator is 16 rules. It does not include the six Bureau of Land Management rules disapproved in December 2025, which had no RFA commentary because they were originally published in the Federal Register as a "notice of availability," or not published in the Federal Register at all.

encourages compliance with the RFA and strengthens the voice of small businesses in federal policymaking. Policy options include:

- **Reconsidering the role of the Government Accountability Office (GAO) in the process of Congressional review of agency rules.** GAO published hundreds of "RFA compliance" reports with conclusions opposite to my report and opposite to the May 2024 report of the House Committee on Small Business.[9] GAO's methodology is misleading due to several fundamental flaws identified in my October 2025 letter to GAO and Congressional Committees.[10] GAO's methods fail to stop certification abuse and likely promote it.
- **Prohibiting certification of major rules**, except in specific situations requiring the approval of the Chief Counsel for Advocacy.
- **Limiting allowable sanctions against small entities** for violations of rules that were certified as not significantly affecting them.
- **Starting the timeframe for regulatory review under the Congressional Review Act** only when the rulemaking agency has published either a certification with a factual basis, or a Final Regulatory Flexibility Analysis.
- **Pursuing legislative options such as the PROVE IT Act of 2025**.[11]
- Allowing the Chief Counsel for Advocacy to **add agencies to the list of covered agencies** as defined in 5 U.S.C. § 609. Covered agencies are subject to additional requirements to engage small businesses in their rulemaking.
- **Clarifying perceived ambiguities** in the Regulatory Flexibility Act, such as the meaning of "economically significant," "factual basis," and transmitting regulatory flexibility agendas to the Chief Counsel for comment.
- **Supporting President Trump's budget**, which significantly increases the budget of the Office of Advocacy in support of its missing to be the voice of small business in federal policymaking.
- Giving the Office of Advocacy a more official role in **trade policy**.

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[9] 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.

[10] Letter from Casey B. Mulligan, Chief Counsel, Off. of Advoc., U.S. Small Bus. Admin., to Chairmen Paul, Comer, Ernst & Williams et al. (Oct. 7, 2025), https://advocacy.sba.gov/wp-content/uploads/2025/10/FINAL-10-7-2025-Advocacy-Statement-of-Actions-Letter-in-re-GAO-25-106950.pdf.

[11] Prove It Act of 2025, S. 495, 119th Cong. (2025); Prove It Act of 2025, H.R. 1163, 119th Cong. (2025).

V. Conclusion

Thank you for the opportunity to testify today. Advocacy looks forward to continuing to work with you and other Members of Congress to be the voice for small businesses in the federal regulatory process and work with agencies to reduce small businesses' regulatory burdens. I would be happy to answer any questions you may have.

Appendix. About The Office of Advocacy

Congress recognized the importance of small businesses to our nation's economy. The Office of Advocacy was created by Congress in 1976 to be an independent voice for small business within the executive branch. Title II of Public Law 94-305 and the Regulatory Flexibility Act confer responsibilities and authorities on Advocacy. Both laws are standing, non-expiring legislation and have been amended since passage.

An important theme leading to Public Law 94-305 was the need for an advocate within the federal government to represent the interests of small business. The law provides that the Chief Counsel is to be appointed from civilian life by the President with the advice and consent of the Senate, and Advocacy employees serve at the pleasure of the Chief Counsel. Further, the law authorized the Chief Counsel to prepare and publish reports as deemed appropriate. The reports "shall not be submitted to the Office of Management and Budget (OMB) or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President."[12] For this reason, Advocacy does not circulate its work for clearance with the SBA Administrator, OMB, or any other federal agency prior to publication. Since 2010, Advocacy has also had its own budget authority.[13]

That said, Advocacy is a relatively small office and continues to rely on SBA for a variety of administrative support services, including office space, equipment, IT, communications support, human resources support, and acquisitions, which are outlined in a Memorandum of Understanding between SBA and Advocacy. Advocacy's administrative support staff utilize SBA's administrative and computer systems to keep Advocacy functioning at a high level of productivity.

It is also important to note the other ways in which Advocacy and SBA interact. Advocacy's economic research team's work is widely used by SBA offices. For example, the number of small businesses in the United States is a common statistic used by SBA and other agencies but is calculated by Advocacy's research team.[14] Additionally, Advocacy's press team works

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[12] § 206, Public L. No. 94-305, 15 U.S.C. § 634f.

[13] The Small Business Jobs Act of 2010 established a separate appropriations account for Advocacy, in addition to a requirement that SBA provide operating support for Advocacy. Advocacy's funds are to remain available until expended. Pub. L. No. 111-240, title I, § 1601(b) (Sept. 27, 2010), 124 Stat. 2551, 15 U.S.C. § 634g. These provisions became operational with Advocacy's budget request for Fiscal Year 2012. Since then, Advocacy's annual Congressional Budget Justification and its accompanying Annual Performance Report have appeared in a separate budget appendix following the main SBA budget request.

[14] There are 36.2 million small businesses in the United States. U.S. SMALL BUS. ADMIN., OFF. OF ADVOCACY, 2025 SMALL BUSINESS PROFILE: UNITED STATES 1 (2025), https://advocacy.sba.gov/wp-content/uploads/2025/06/United_States_

with SBA's Office of Communications and Public Liaison to field media requests regarding small business data. Advocacy also works closely with the SBA Ombudsman and prides itself on the level of cooperation and assistance that its professionals provide to all SBA program and policy staff.

2025-State-Profile.pdf. Advocacy calculates small business statistics using the most recent data available from government sources.