



July 26, 2023

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The Honorable Kevin Kiley
Chairman of the Workforce Protections Subcommittee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Alma S. Adams
Ranking Member of the Workforce Protections Subcommittee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Kiley and Ranking Member Adams:

I'm a Senior Policy Analyst at the Center for Progressive Reform, a nonprofit research and advocacy organization that conducts independent scholarly research and policy analysis, and advocates for effective, collective solutions to our most pressing societal challenges. Guided by a national network of scholars and professional staff with expertise in governance and regulation, we convene policymakers and advocates to shape legislative and agency policy at the state and federal levels and advance the broad interests of today's social movements for the environment, democracy, and racial justice and equity. For the last 15 years, I've led the Center's Responsive Government Program which studies regulatory policy reforms. One particular focus of my work has been the effects of regulatory policy on small business.

I watched with interest the July 18, 2023, Subcommittee on Workforce Protections hearing entitled "Cutting Corners at WHD: Examining the Costs to Workers, Small Business, and the Economy." One of the major topics of the hearing was the role of the Small Business Administration's (SBA) Office of Advocacy in the rulemaking process. Unfortunately, much of this discussion neglected many of the problems with the SBA Office of Advocacy's

role. As I've documented in my research, rather than helping small businesses, this Office actually works to their detriment.¹

In this letter, I will briefly discuss some of the major flaws with how the SBA Office of Advocacy operates. My hope is that this will enable the subcommittee to pursue a more productive oversight of the small business issues within its jurisdiction.

A Flawed Mission

The SBA Office of Advocacy's statutory mission rests on a false premise – namely, that there is an inherent tradeoff between strong regulations and a strong small business presence in the U.S. economy. On the contrary, not only are strong regulations compatible with the health of small businesses; indeed, they often are necessary for it.

Many small firms depend on strong regulations for their success. Consider the case of craft beer brewers, which must have access to clean water sources to produce their products. Clean water safeguards implemented by the Environmental Protection Agency (EPA) are thus essential for these firms.² Alternatively, stronger regulations can create new markets that more nimble small businesses are often better equipped to respond to. For instance, regulations strengthening fuel efficiency standards have created new opportunities for smaller parts manufacturers to quickly innovate new engineering solutions that meet those standards more cheaply and effectively.³

Similarly, the *absence* of strong regulations can also be devastating for small businesses. The BP Oil Spill, which in part was the result of inadequate regulations of offshore oil drilling, took an enormous toll on many small businesses along the Gulf Coast, including restaurants, commercial fisherman, and others engaged in local tourism.⁴

Another problem with this premise is that it ignores that in some instances smaller firms require greater regulatory attention, not less. In particular, it is a mistake to assume that the relatively small firms in a given industry are better corporate citizens that can

¹ See SIDNEY SHAPIRO & JAMES GOODWIN, DISTORTING THE INTERESTS OF SMALL BUSINESS: HOW THE SMALL BUSINESS ADMINISTRATION OFFICE OF ADVOCACY'S POLITICIZATION OF SMALL BUSINESS CONCERNS UNDERMINES PUBLIC HEALTH AND SAFETY (Ctr. Progressive Reform White Paper 1302, 2013), available at https://cpr-assets.s3.amazonaws.com/documents/SBA_Office_of_Advocacy_1302.pdf; Rena Steinzor et al., THE SMALL BUSINESS CHARADE: THE CHEMICAL INDUSTRY'S STEALTH CAMPAIGN AGAINST PUBLIC HEALTH (Ctr. Progressive Reform Issue Alert 1501, 2015), available at https://cpr-assets.s3.amazonaws.com/documents/Small_Biz_Charade_Silica_1501.pdf.

² See, e.g., Phil McCausland, *Clean Water Case Ferments Trouble for Craft Breweries and Environmentalists*, NBC NEWS, <https://www.nbcnews.com/news/us-news/clean-water-case-ferments-trouble-craft-breweries-environmentalists-n1035401> (last visited July 26, 2022).

³ See, e.g., Camille von Kaenel, *Standards boost auto-sector jobs — BlueGreen Alliance*, E&E NEWS, Dec. 22, 2016.

⁴ Craig Guillot, *Spill's Effects Linger for Gulf Coast Entrepreneurs*, ENTREPRENEUR, Aug. 11, 2010, <https://www.entrepreneur.com/leadership/spills-effects-linger-for-gulf-coast-entrepreneurs/217203> (last visited July 26, 2023).

operate responsibly in the absence of regulations.⁵ For example, the relatively small independent oil and gas drillers operating in the United States are responsible for a disproportionate share of the air pollution emissions for that industry.⁶

The practical consequence of this flawed mission is that the SBA Office of Advocacy is fixated on weakening regulations rather than helping small businesses – and, as a result, the Office serves neither the public interest nor the unique interests of real small businesses.

Flawed Execution

The way the SBA Office of Advocacy implements its statutory authorities is marked by several problematic aspects, further compounding the defects in the agency's mission. Two such aspects are worth noting here.

First, the small business size standards, which delineate the firms covered by the Office's statutory authority, are in many cases quite broad, including businesses that have thousands of employees and millions of dollars in revenues.⁷ While these firms may be relatively "small" for their particular industry, they are by no means the kind of unsophisticated or under-resourced company that needs special assistance from the SBA Office of Advocacy. Nevertheless, much of the Office's efforts are expended on helping them, while genuinely small businesses (*i.e.*, those with fewer employees with and smaller revenues) are ignored.

Second, the SBA Office of Advocacy is poorly resourced for the ambitious mission that Congress has assigned to it. There are millions of real small businesses in the United States, and the challenges they face are myriad. It would be an enormous undertaking for the Office to pursue meaningful outreach to them to understand the unique challenges they face from regulations. Congressional appropriators have not given the Office anywhere near enough resources to accomplish this task.

Unfortunately, the SBA Office of Advocacy has responded to this challenge by relying very heavily on large industry trade associations. Such heavy reliance has left the Office prone to capture by these trade associations, such that these associations tend to exercise undue influence over its work. This is especially problematical because industry trade associations' policy agendas tend to be driven by their largest members, and thus are frequently at odds with the unique interests of their smaller firm members.⁸

⁵ Richard J. Pierce, Jr., *Small is Not Beautiful: The Case against Special Regulatory Treatment of Small Firms*, 50 ADMIN. L. REV. 537 (1998).

⁶ Press Release, Env'tl. Defense Fund, New Study: Low-Producing Oil and Gas Wells Drive Roughly Half of Well Site Methane Pollution Nationwide (Apr. 20, 2022), available at <https://www.edf.org/media/new-study-low-producing-oil-and-gas-wells-drive-roughly-half-well-site-methane-pollution>.

⁷ SHAPIRO & GOODWIN, *supra* note 1, at 17.

⁸ *Id.* at 18.

The upshot then is a government agency charged with helping small businesses is often working to advance the interests of large businesses (which need no affirmative assistance from the government), and often in ways that are harmful to small businesses. This phenomenon was documented in an important 2014 audit by the Government Accountability Office.⁹

Missed Opportunities to Help Real Small Businesses

To summarize the above points briefly, the activities of the SBA Office of Advocacy have tended to undermine, rather than advance, the unique interests of real small businesses in the United States. That fact alone is cause for outrage. To make matters worse, there are things that the SBA Office of Advocacy and other relevant agencies could do that would advance these unique interests.

Accordingly, I urge lawmakers to consider necessary legislative actions and targeted appropriations for accomplishing the following reforms:

- Redefined mission for the SBA Office of Advocacy. Rather than working to weaken regulation, the SBA Office of Advocacy should instead be directed to focus on promoting “small business competitiveness.” This alternative approach would enable the Office to better account for important nuances in the economic relationship between small businesses and regulations. Most notably, it would enable the Office to push for stronger regulations when doing so would benefit small businesses. More broadly, this new approach would empower the SBA Office of Advocacy to pursue “win-win” solutions in which small businesses are supported (*i.e.*, their ability to compete is protected or even strengthened) and the public interest is advanced (*i.e.*, through stronger regulations).
- Stronger Regulations. Stronger regulations are often necessary for the success of small businesses. Congress should reform the SBA Office of Advocacy’s legal authorities to enable it to push stronger regulations when doing so would benefit real small businesses. This could be accomplished in part by redefining the Office’s mission so that it is focused on promoting small business competitiveness.
- Realistic Small Business Size Standards. The SBA Office of Advocacy relies on a “relative” standard for defining small businesses. Instead, Congress should define small businesses in “absolute” terms. For instance, it could define a small business as any firm that has fewer than 20 employees and earns less than \$5

⁹ U.S. GOV’T ACCOUNT. OFF., SMALL BUSINESS ADMINISTRATION: OFFICE OF ADVOCACY NEEDS TO IMPROVE CONTROLS OVER RESEARCH, REGULATORY, AND WORKFORCE PLANNING ACTIVITIES (July 2014), *available at* <https://www.gao.gov/assets/gao-14-525.pdf>.

million in annual revenues. This would enable the Office to focus its limited resources on helping those firms that genuinely need help.

- Preventing Capture. The SBA Office of Advocacy should adopt a policy prohibiting contacts with industry trade associations, unless the trade association's members comprise firms meeting the revised small business size standard described above. Alternatively, Congress could impose such a requirement by amending the Office's statutory authority.
- Stronger antitrust enforcement. One of the greatest threats to small businesses' ability to compete is increasing consolidation within industries. As larger firms begin to dominate particular industrial sectors, their smaller competitors are squeezed out. The Federal Trade Commission (FTC) is charged with enforcing antitrust laws, and thus would have a major role to play in protecting small business competitiveness by addressing this pattern of corporate consolidation. Congress should consider and enact any legislative reforms necessary that would enable the FTC to pursue this objective effectively, while providing the agency with the necessary financial resources through the appropriations process.

Conclusion

I appreciate your attention to the ideas on improving regulatory policy for small businesses included in this letter. I hope they will guide the subcommittee's future efforts on this issue. If you have any further questions about the forgoing, please do not hesitate to contact me.

Sincerely,

James Goodwin

Senior Policy Analyst

Center for Progressive Reform