

106TH CONGRESS  
1ST SESSION

# S. 1346

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IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 1999

Referred to the Committee on Small Business

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## AN ACT

To ensure the independence and nonpartisan operation of the Office of Advocacy of the Small Business Administration.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Independent Office of  
5        Advocacy Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) excessive regulations continue to burden our  
4 Nation’s small businesses;

5 (2) Federal agencies are reluctant to comply  
6 with the requirements of chapter 6 of title 5, United  
7 States Code, and continue to propose regulations  
8 that impose disproportionate burdens on small busi-  
9 nesses;

10 (3) the Office of Advocacy of the Small Busi-  
11 ness Administration (referred to in this Act as the  
12 “Office”) is an effective advocate for small busi-  
13 nesses that can help ensure that agencies are re-  
14 sponsive to small businesses and that agencies com-  
15 ply with their statutory obligations under chapter 6  
16 of title 5, United States Code and under the Small  
17 Business Regulatory Enforcement Fairness Act of  
18 1996 (Public Law 104–121; 106 Stat. 4249 et seq.);

19 (4) the independence of the Office is essential  
20 to ensure that it can serve as an effective advocate  
21 for small businesses without being restricted by the  
22 views or policies of the Small Business Administra-  
23 tion or any other executive branch agency;

24 (5) the Office needs sufficient resources to con-  
25 duct the research required to assess effectively the  
26 impact of regulations on small businesses; and

1           (6) the research, information, and expertise of  
2           the Office make it a valuable adviser to Congress as  
3           well as the executive branch agencies with which the  
4           Office works on behalf of small businesses.

5 **SEC. 3. PURPOSES.**

6           The purposes of this Act are—

7           (1) to ensure that the Office has the statutory  
8           independence and adequate financial resources to  
9           advocate for and on behalf of small business;

10          (2) to require that the Office report to the  
11          Chairmen and Ranking Members of the Committees  
12          on Small Business of the Senate and the House of  
13          Representatives and the Administrator of the Small  
14          Business Administration in order to keep them fully  
15          and currently informed about issues and regulations  
16          affecting small businesses and the necessity for cor-  
17          rective action by the regulatory agency or Congress;

18          (3) to provide a separate authorization for ap-  
19          propriations for the Office;

20          (4) to authorize the Office to report to the  
21          President and to Congress regarding agency compli-  
22          ance with chapter 6 of title 5, United States Code;  
23          and

24          (5) to enhance the role of the Office pursuant  
25          to chapter 6 of title 5, United States Code.

1 **SEC. 4. OFFICE OF ADVOCACY.**

2 (a) IN GENERAL.—The Small Business Act (15  
3 U.S.C. 631 et seq.) is amended—

4 (1) by redesignating section 32 as section 33;

5 and

6 (2) by inserting after section 31 the following:

7 **“SEC. 32. OFFICE OF ADVOCACY.**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘Chief Counsel’ means the Chief  
10 Counsel for Advocacy appointed under subsection  
11 (b); and

12 “(2) the term ‘Office’ means the Office of Ad-  
13 vocacy established under subsection (b).

14 “(b) ESTABLISHMENT.—

15 “(1) IN GENERAL.—There is established in the  
16 Administration an Office of Advocacy (referred to in  
17 this section as the ‘Office’).

18 “(2) CHIEF COUNSEL FOR ADVOCACY.—

19 “(A) IN GENERAL.—The management of  
20 the Office shall be vested in a Chief Counsel for  
21 Advocacy who shall be appointed from civilian  
22 life by the President, by and with the advice  
23 and consent of the Senate, without regard to  
24 political affiliation and solely on the ground of  
25 fitness to perform the duties of the office.

1           “(B) EMPLOYMENT RESTRICTION.—The  
2 individual appointed to the office of Chief  
3 Counsel for Advocacy may not serve as an offi-  
4 cer or employee of the Small Business Adminis-  
5 tration during the 5-year period preceding the  
6 appointment.

7           “(C) REMOVAL.—The Chief Counsel for  
8 Advocacy may be removed from office by the  
9 President and the President shall notify Con-  
10 gress of any such removal not later than 30  
11 days before the removal.

12          “(3) APPROPRIATION REQUEST.—Each appro-  
13 priation request prepared and submitted by the Ad-  
14 ministration under section 1108 of title 31, United  
15 States Code, shall include a separate request relat-  
16 ing to the Office.

17          “(c) PRIMARY FUNCTIONS.—The Office shall—

18           “(1) examine the role of small businesses in the  
19 economy of the United States and the contribution  
20 that small businesses can make in improving com-  
21 petition, encouraging economic and social mobility  
22 for all citizens, restraining inflation, spurring pro-  
23 duction, expanding employment opportunities, in-  
24 creasing productivity, promoting exports, stimulating  
25 innovation and entrepreneurship, and providing the

1 means by which new and untested products and  
2 services can be brought to the marketplace;

3 “(2) assess the effectiveness of Federal subsidy  
4 and assistance programs for small businesses and  
5 the desirability of reducing the emphasis on those  
6 programs and increasing the emphasis on general  
7 assistance programs designed to benefit all small  
8 businesses;

9 “(3) measure the direct costs and other effects  
10 of government regulation of small businesses, and  
11 make legislative, regulatory, and nonlegislative pro-  
12 posals for eliminating the excessive or unnecessary  
13 regulation of small businesses;

14 “(4) determine the impact of the tax structure  
15 on small businesses and make legislative, regulatory,  
16 and other proposals for altering the tax structure to  
17 enable all small businesses to realize their potential  
18 for contributing to the improvement of the Nation’s  
19 economic well-being;

20 “(5) study the ability of financial markets and  
21 institutions to meet small business credit needs and  
22 determine the impact of government demands on  
23 credit for small businesses;

24 “(6) determine financial resource availability  
25 and recommend methods for—

1           “(A) delivery of financial assistance to mi-  
2           nority and women-owned enterprises, including  
3           methods for securing equity capital;

4           “(B) generating markets for goods and  
5           services;

6           “(C) providing effective business education,  
7           more effective management and technical assist-  
8           ance, and training; and

9           “(D) assistance in complying with Federal,  
10          State, and local laws;

11          “(7) evaluate the efforts of Federal agencies  
12          and the private sector to assist minority and women-  
13          owned enterprises;

14          “(8) make such recommendations as may be  
15          appropriate to assist the development and strength-  
16          ening of minority, women-owned, and other small  
17          businesses;

18          “(9) recommend specific measures for creating  
19          an environment in which all businesses will have the  
20          opportunity to—

21                 “(A) compete effectively and expand to  
22                 their full potential; and

23                 “(B) ascertain any common reasons for  
24                 small business successes and failures;

1           “(10) determine the desirability of developing a  
2           set of rational, objective criteria to be used to define  
3           small business, and to develop such criteria, if ap-  
4           propriate; and

5           “(11) make recommendations and submit re-  
6           ports to the Chairmen and Ranking Members of the  
7           Committees on Small Business of the Senate and  
8           the House of Representatives and the Administrator  
9           with respect to issues and regulations affecting small  
10          businesses and the necessity for corrective action by  
11          the Administrator, any Federal department or agen-  
12          cy, or Congress.

13          “(d) ADDITIONAL FUNCTIONS.—The Office shall, on  
14          a continuing basis—

15                 “(1) serve as a focal point for the receipt of  
16                 complaints, criticisms, and suggestions concerning  
17                 the policies and activities of the Administration and  
18                 any other department or agency of the Federal Gov-  
19                 ernment that affects small businesses;

20                 “(2) counsel small businesses on the means by  
21                 which to resolve questions and problems concerning  
22                 the relationship between small businesses and the  
23                 Federal Government;

24                 “(3) develop proposals for changes in the poli-  
25                 cies and activities of any agency of the Federal Gov-

1       ernment that will better fulfill the purposes of this  
2       section and communicate such proposals to the ap-  
3       propriate Federal agencies;

4           “(4) represent the views and interests of small  
5       businesses before other Federal agencies whose poli-  
6       cies and activities may affect small business;

7           “(5) enlist the cooperation and assistance of  
8       public and private agencies, businesses, and other  
9       organizations in disseminating information about the  
10      programs and services provided by the Federal Gov-  
11      ernment that are of benefit to small businesses, and  
12      information on the means by which small businesses  
13      can participate in or make use of such programs and  
14      services; and

15           “(6) carry out the responsibilities of the Office  
16      under chapter 6 of title 5, United States Code.

17      “(e) STAFF AND POWERS.—

18           “(1) STAFF.—

19           “(A) IN GENERAL.—The Chief Counsel  
20      may, without regard to the civil service laws  
21      and regulations, appoint and terminate such ad-  
22      ditional personnel as may be necessary to en-  
23      able the Office to perform its duties under this  
24      section.

1           “(B) COMPENSATION.—The Chief Counsel  
2           may fix the compensation of personnel ap-  
3           pointed under this paragraph without regard to  
4           the provisions of chapter 51 and subchapter III  
5           of chapter 53 of title 5, United States Code, re-  
6           lating to classification of positions and General  
7           Schedule pay rates, but at rates not to exceed  
8           the minimum rate payable for a position at GS–  
9           15 of the General Schedule, except that not  
10          more than 14 employees of the Office at any  
11          one time may be compensated at a rate not to  
12          exceed the maximum rate payable for a position  
13          at GS–15 of the General Schedule.

14          “(2) POWERS.—In carrying out this section, the  
15          Chief Counsel may—

16                 “(A) procure temporary and intermittent  
17                 services to the same extent as is authorized by  
18                 section 3109 of title 5, United States Code;

19                 “(B) consult with—

20                         “(i) experts and authorities in the  
21                         fields of small business investment, venture  
22                         capital, investment and commercial bank-  
23                         ing, and other comparable financial institu-  
24                         tions involved in the financing of business;  
25                         and

1           “(ii) individuals with regulatory, legal,  
2           economic, or financial expertise, including  
3           members of the academic community, and  
4           individuals who generally represent the  
5           public interest;

6           “(C) use the services of the National Advi-  
7           sory Council established under section 8(b) and,  
8           in accordance with that section, appoint such  
9           other advisory boards or committees as the  
10          Chief Counsel determines to be reasonably nec-  
11          essary and appropriate to carry out this section;  
12          and

13          “(D) hold hearings and sit and act at such  
14          times and places as the Chief Counsel deter-  
15          mines to be appropriate.

16          “(f) OVERHEAD AND ADMINISTRATIVE SUPPORT.—  
17          The Administrator shall provide the Office with appro-  
18          priate and adequate office space at central and field office  
19          locations of the Administration, together with such equip-  
20          ment, office supplies, and communications facilities and  
21          services as may be necessary for the operation of such of-  
22          fices, and shall provide necessary maintenance services for  
23          such offices and the equipment and facilities located there-  
24          in.

1       “(g) INFORMATION FROM FEDERAL AGENCIES.—  
2 The Chief Counsel may secure directly from any Federal  
3 department or agency such information as the Chief Coun-  
4 sel considers to be necessary to carry out this section.  
5 Upon request of the Chief Counsel, the head of such de-  
6 partment or agency shall furnish such information to the  
7 Office.

8       “(h) REPORTS.—

9               “(1) ANNUAL REPORTS.—Not less than annu-  
10 ally, the Chief Counsel shall submit to the President  
11 and to the Committees on Small Business of the  
12 Senate and the House of Representatives, the Com-  
13 mittee on Governmental Affairs of the Senate, the  
14 Committee on Government Reform of the House of  
15 Representatives, and the Committees on the Judici-  
16 ary of the Senate and the House of Representatives  
17 a report on agency compliance with chapter 6 of title  
18 5, United States Code.

19               “(2) ADDITIONAL REPORTS.—In addition to the  
20 reports required under paragraph (1) of this sub-  
21 section and subsection (c)(12), the Chief Counsel  
22 may prepare and publish such reports as the Chief  
23 Counsel determines to be appropriate.

24               “(3) PROHIBITION.—No report under this sec-  
25 tion shall be submitted to the Office of Management

1 and Budget or to any other department or agency  
2 of the Federal Government for any purpose before  
3 submission of the report to the President and to  
4 Congress.

5 “(i) AUTHORIZATION OF APPROPRIATIONS.—

6 “(1) IN GENERAL.—There are authorized to be  
7 appropriated to the Office to carry out this section  
8 such sums as may be necessary for each fiscal year.

9 “(2) AVAILABILITY.—Any sums appropriated  
10 under paragraph (1) shall remain available, without  
11 fiscal year limitation, until expended.”.

12 (b) REPEAL.—Title II of Public Law 94–305 (15  
13 U.S.C. 634a et seq.) is repealed.

14 (c) INCUMBENT CHIEF COUNSEL FOR ADVOCACY.—  
15 The individual serving as the Chief Counsel for Advocacy  
16 of the Small Business Administration on the date of enact-  
17 ment of this Act shall continue to serve in that position  
18 after such date in accordance with section 32 of the Small  
19 Business Act, as amended by this section.

Passed the Senate November 5, 1999.

Attest:

GARY SISCO,  
*Secretary.*