

107TH CONGRESS
1ST SESSION

S. 395

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2001

Mr. BOND (for himself and Mr. KERRY) introduced the following bill; which
was read twice and referred to the Committee on Small Business

A BILL

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 of 2001”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) excessive regulations continue to burden
9 United States small businesses;

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

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

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

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

23 (6) the research, information, and expertise of
24 the Office make it a valuable adviser to Congress as

1 well as the executive branch agencies with which the
2 Office works on behalf of small businesses.

3 **SEC. 3. PURPOSES.**

4 The purposes of this Act are—

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

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

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

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

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

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

2 (a) IN GENERAL.—Title II of Public Law 94–305 (15
3 U.S.C. 634a et seq.) is amended by striking sections 201
4 through 203 and inserting the following:

5 **“SEC. 201. SHORT TITLE.**

6 “This title may be cited as the ‘Office of Advocacy
7 Act’.

8 **“SEC. 202. DEFINITIONS.**

9 “In this title—

10 “(1) the term ‘Administration’ means the Small
11 Business Administration;

12 “(2) the term ‘Administrator’ means the Ad-
13 ministrator of the Small Business Administration;

14 “(3) the term ‘Chief Counsel’ means the Chief
15 Counsel for Advocacy appointed under section 203;
16 and

17 “(4) the term ‘Office’ means the Office of Ad-
18 vocacy established under section 203.

19 **“SEC. 203. ESTABLISHMENT OF OFFICE OF ADVOCACY.**

20 “(a) ESTABLISHMENT.—

21 “(1) IN GENERAL.—There is established in the
22 Administration an Office of Advocacy.

23 “(2) APPROPRIATION REQUESTS.—Each appro-
24 priation request prepared and submitted by the Ad-
25 ministration under section 1108 of title 31, United

1 States Code, shall include a separate request relat-
2 ing to the Office.

3 “(b) CHIEF COUNSEL FOR ADVOCACY.—

4 “(1) IN GENERAL.—The management of the
5 Office shall be vested in a Chief Counsel for Advo-
6 cacy, who shall be appointed from civilian life by the
7 President, by and with the advice and consent of the
8 Senate, without regard to political affiliation and
9 solely on the ground of fitness to perform the duties
10 of the office.

11 “(2) EMPLOYMENT RESTRICTION.—The indi-
12 vidual appointed to the office of Chief Counsel may
13 not serve as an officer or employee of the Adminis-
14 tration during the 5-year period preceding the date
15 of appointment.

16 “(3) REMOVAL.—The Chief Counsel may be re-
17 moved from office by the President, and the Presi-
18 dent shall notify the Congress of any such removal
19 not later than 30 days before the date of the re-
20 moval, except that 30-day prior notice shall not be
21 required in the case of misconduct, neglect of duty,
22 malfeasance, or if there is reasonable cause to be-
23 lieve that the Chief Counsel has committed a crime
24 for which a sentence of imprisonment can be im-
25 posed.

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

2 “(1) examine the role of small business con-
3 cerns in the economy of the United States and the
4 contribution that small business concerns can make
5 in improving competition, encouraging economic and
6 social mobility for all citizens, restraining inflation,
7 spurring production, expanding employment oppor-
8 tunities, increasing productivity, promoting exports,
9 stimulating innovation and entrepreneurship, and
10 providing the means by which new and untested
11 products and services can be brought to the market-
12 place;

13 “(2) assess the effectiveness of Federal subsidy
14 and assistance programs for small business concerns
15 and the desirability of reducing the emphasis on
16 those programs and increasing the emphasis on gen-
17 eral assistance programs designed to benefit all
18 small business concerns;

19 “(3) measure the direct costs and other effects
20 of government regulation of small business concerns,
21 and make legislative, regulatory, and nonlegislative
22 proposals for eliminating the excessive or unneces-
23 sary regulation of small business concerns;

24 “(4) determine the impact of the tax structure
25 on small business concerns and make legislative, reg-

1 ulatory, and other proposals for altering the tax
2 structure to enable all small business concerns to re-
3 alize their potential for contributing to the improve-
4 ment of the Nation’s economic well-being;

5 “(5) study the ability of financial markets and
6 institutions to meet small business credit needs and
7 determine the impact of government demands on
8 credit for small business concerns;

9 “(6) determine financial resource availability
10 and recommend, with respect to small business con-
11 cerns, methods for—

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

15 “(B) generating markets for goods and
16 services;

17 “(C) providing effective business education,
18 more effective management and technical assist-
19 ance, and training; and

20 “(D) assistance in complying with Federal,
21 State, and local laws;

22 “(7) evaluate the efforts of Federal agencies
23 and the private sector to assist minority and women-
24 owned small business concerns;

1 “(8) make such recommendations as may be
2 appropriate to assist the development and strength-
3 ening of minority, women-owned, and other small
4 business concerns;

5 “(9) recommend specific measures for creating
6 an environment in which all businesses will have the
7 opportunity—

8 “(A) to compete effectively and expand to
9 their full potential; and

10 “(B) to ascertain any common reasons for
11 small business successes and failures;

12 “(10) to determine the desirability of developing
13 a set of rational, objective criteria to be used to de-
14 fine small business, and to develop such criteria, if
15 appropriate;

16 “(11) make recommendations and submit re-
17 ports to the Chairmen and Ranking Members of the
18 Committees on Small Business of the Senate and
19 the House of Representatives and the Administrator
20 with respect to issues and regulations affecting small
21 business concerns and the necessity for corrective
22 action by the Administrator, any Federal depart-
23 ment or agency, or the Congress; and

24 “(12) evaluate the efforts of each department
25 and agency of the United States, and of private in-

1 industry, to assist small business concerns owned and
2 controlled by veterans, as defined in section 3(q) of
3 the Small Business Act (15 U.S.C. 632(q)), and
4 small business concerns owned and controlled by
5 serviced-disabled veterans, as defined in such section
6 3(q), and to provide statistical information on the
7 utilization of such programs by such small business
8 concerns, and to make appropriate recommendations
9 to the Administrator and to the Congress in order
10 to promote the establishment and growth of those
11 small business concerns.

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

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

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

23 “(3) develop proposals for changes in the poli-
24 cies and activities of any agency of the Federal Gov-
25 ernment that will better fulfill the purposes of this

1 title and communicate such proposals to the appro-
2 priate Federal agencies;

3 “(4) represent the views and interests of small
4 business concerns before other Federal agencies
5 whose policies and activities may affect small busi-
6 ness;

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 business con-
12 cerns, and information on the means by which small
13 business concerns can participate in or make use of
14 such programs and services; and

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

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

1 (b) REPORTS TO CONGRESS.—Title II of Public Law
2 94–305 (15 U.S.C. 634a et seq.) is amended by striking
3 section 206 and inserting the following:

4 **“SEC. 206. REPORTS TO CONGRESS.**

5 “(a) ANNUAL REPORTS.—Not less than annually, the
6 Chief Counsel shall submit to the President and to the
7 Committees on Small Business of the Senate and the
8 House of Representatives, the Committee on Govern-
9 mental Affairs of the Senate, the Committee on Govern-
10 ment Reform of the House of Representatives, and the
11 Committees on the Judiciary of the Senate and the House
12 of Representatives a report on agency compliance with
13 chapter 6 of title 5, United States Code.

14 “(b) ADDITIONAL REPORTS.—In addition to the re-
15 ports required under subsection (a) of this section and sec-
16 tion 203(c)(11), the Chief Counsel may prepare and pub-
17 lish such reports as the Chief Counsel determines to be
18 appropriate.

19 “(c) PROHIBITION.—No report under this title shall
20 be submitted to the Office of Management and Budget
21 or to any other department or agency of the Federal Gov-
22 ernment for any purpose before submission of the report
23 to the President and to the Congress.”.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—Title II
2 of Public Law 94–305 (15 U.S.C. 634a et seq.) is amend-
3 ed by striking section 207 and inserting the following:

4 **“SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

5 “(a) IN GENERAL.—There are authorized to be ap-
6 propriated to the Office to carry out this title such sums
7 as may be necessary for each fiscal year.

8 “(b) AVAILABILITY.—Any amount appropriated
9 under subsection (a) shall remain available, without fiscal
10 year limitation, until expended.”.

11 (d) INCUMBENT CHIEF COUNSEL FOR ADVOCACY.—
12 The individual serving as the Chief Counsel for Advocacy
13 of the Small Business Administration on the date of enact-
14 ment of this Act shall continue to serve in that position
15 after such date in accordance with section 203 of the Of-
16 fice of Advocacy Act, as amended by this section.

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