

## Calendar No. 22

107TH CONGRESS  
1ST SESSION

# S. 395

[Report No. 107-5]

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

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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

MARCH 21, 2001

Reported by Mr. BOND, with amendments

[Omit the part struck through and insert the part printed in italic]

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## 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”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) excessive regulations continue to burden  
4 United States small businesses *concerns*;

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 *concerns*;

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 *concerns* that can help to ensure that agencies  
14 are responsive to small businesses *concerns* and that  
15 agencies comply with their statutory obligations  
16 under chapter 6 of title 5, United States Code, and  
17 under the Small Business Regulatory Enforcement  
18 Fairness Act of 1996 (Public Law 104–121; 106  
19 Stat. 4249 et seq.);

20 (4) the independence of the Office is essential  
21 to ensure that it can serve as an effective advocate  
22 for small businesses *concerns* without being re-  
23 stricted by the views or policies of the Small Busi-  
24 ness Administration or any other executive branch  
25 agency;

1           (5) the Office needs sufficient resources to con-  
2           duct the research required to assess effectively the  
3           impact of regulations on small businesses *concerns*;  
4           and

5           (6) the research, information, and expertise of  
6           the Office make it a valuable adviser to Congress as  
7           well as the executive branch agencies with which the  
8           Office works on behalf of small businesses *concerns*.

9 **SEC. 3. PURPOSES.**

10          The purposes of this Act are—

11           (1) to ensure that the Office has the statutory  
12           independence and adequate financial resources to  
13           advocate for and on behalf of small business *con-*  
14           *cerns*;

15           (2) to require that the Office report to the  
16           Chairmen and Ranking Members of the Committees  
17           on Small Business of the Senate and the House of  
18           Representatives and the Administrator of the Small  
19           Business Administration in order to keep them fully  
20           and currently informed about issues and regulations  
21           affecting small businesses *concerns* and the necessity  
22           for corrective action by the regulatory agency or the  
23           Congress;

24           (3) to provide a separate authorization for ap-  
25           propriations for the Office;

1           (4) to authorize the Office to report to the  
2           President and to the Congress regarding agency  
3           compliance with chapter 6 of title 5, United States  
4           Code; and

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

7 **SEC. 4. OFFICE OF ADVOCACY.**

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

11 **“SEC. 201. SHORT TITLE.**

12          “This title may be cited as the ‘Office of Advocacy  
13          Act’.

14 **“SEC. 202. DEFINITIONS.**

15          “In this title—

16                 “(1) the term ‘Administration’ means the Small  
17                 Business Administration;

18                 “(2) the term ‘Administrator’ means the Ad-  
19                 ministrators of the Small Business Administration;

20                 “(3) the term ‘Chief Counsel’ means the Chief  
21                 Counsel for Advocacy appointed under section 203;

22                 and

23                 “(4) the term ‘Office’ means the Office of Ad-  
24                 vocacy established under section 203; *and*

1           “(5) the term ‘small business concern’ has the  
2           same meaning as in section 3 of the Small Business  
3           Act.

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

5           “(a) ESTABLISHMENT.—

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

8           “(2) APPROPRIATION REQUESTS.—Each appro-  
9           priation request prepared and submitted by the Ad-  
10          ministration under section 1108 of title 31, United  
11          States Code, shall include a separate request relat-  
12          ing to the Office.

13          “(b) CHIEF COUNSEL FOR ADVOCACY.—

14          “(1) IN GENERAL.—The management of the  
15          Office shall be vested in a Chief Counsel for Advoc-  
16          acy, who shall be appointed from civilian life by the  
17          President, by and with the advice and consent of the  
18          Senate, without regard to political affiliation and  
19          solely on the ground of fitness to perform the duties  
20          of the office.

21          “(2) EMPLOYMENT RESTRICTION.—The indi-  
22          vidual appointed to the office of Chief Counsel may  
23          not serve as an officer or employee of the Adminis-  
24          tration during the 5-year period preceding the date  
25          of appointment.

1           “(3) REMOVAL.—The Chief Counsel may be re-  
2           moved from office by the President, and the Presi-  
3           dent shall notify the Congress of any such removal  
4           not later than 30 days before the date of the re-  
5           moval, except that 30-day prior notice shall not be  
6           required in the case of misconduct, neglect of duty,  
7           malfeasance, or if there is reasonable cause to be-  
8           lieve that the Chief Counsel has committed a crime  
9           for which a sentence of imprisonment can be im-  
10          posed.

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

12           “(1) examine the role of small business con-  
13           cerns in the economy of the United States and the  
14           contribution that small business concerns can make  
15           in improving competition, encouraging economic and  
16           social mobility for all citizens, restraining inflation,  
17           spurring production, expanding employment oppor-  
18           tunities, increasing productivity, promoting exports,  
19           stimulating innovation and entrepreneurship, and  
20           providing the means by which new and untested  
21           products and services can be brought to the market-  
22           place;

23           “(2) assess the effectiveness of Federal subsidy  
24           and assistance programs for small business concerns  
25           and the desirability of reducing the emphasis on

1 those programs and increasing the emphasis on gen-  
2 eral assistance programs designed to benefit all  
3 small business concerns;

4 “(3) measure the direct costs and other effects  
5 of government regulation of small business concerns,  
6 and make legislative, regulatory, and nonlegislative  
7 proposals for eliminating the excessive or unneces-  
8 sary regulation of small business concerns;

9 “(4) determine the impact of the tax structure  
10 on small business concerns and make legislative, reg-  
11 ulatory, and other proposals for altering the tax  
12 structure to enable all small business concerns to re-  
13 alize their potential for contributing to the improve-  
14 ment of the Nation’s economic well-being;

15 “(5) study the ability of financial markets and  
16 institutions to meet *the small business* credit needs  
17 *of small business concerns*, and determine the impact  
18 of government demands on credit for small business  
19 concerns;

20 “(6) determine financial resource availability  
21 and recommend, with respect to small business con-  
22 cerns, methods for—

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

1           “(B) generating markets for goods and  
2 services;

3           “(C) providing effective business education,  
4 more effective management and technical assist-  
5 ance, and training; and

6           “(D) assistance in complying with Federal,  
7 State, and local laws;

8           “(7) evaluate the efforts of Federal agencies  
9 and the private sector to assist minority and women-  
10 owned small business concerns;

11          “(8) make such recommendations as may be  
12 appropriate to assist the development and strength-  
13 ening of minority, women-owned, and other small  
14 business concerns;

15          “(9) recommend specific measures for creating  
16 an environment in which all ~~businesses~~ *small busi-*  
17 *ness concerns* will have the opportunity—

18           “(A) to compete effectively and expand to  
19 their full potential; and

20           “(B) to ascertain any common reasons for  
21 ~~small business~~ *the successes and failures of*  
22 *small business concerns*;

23          “(10) ~~to~~ determine the desirability of developing  
24 a set of rational, objective criteria to be used to de-

1       fine *the term* ‘small business *concern*’, and to develop  
2       such criteria, if appropriate;

3               “(11) make recommendations and submit re-  
4       ports to the Chairmen and Ranking Members of the  
5       Committees on Small Business of the Senate and  
6       the House of Representatives and the Administrator  
7       with respect to issues and regulations affecting small  
8       business concerns and the necessity for corrective  
9       action by the Administrator, any Federal depart-  
10      ment or agency, or the Congress; and

11              “(12) evaluate the efforts of each department  
12      and agency of the United States, and of private in-  
13      dustry, to assist small business concerns owned and  
14      controlled by veterans, as defined in section 3(q) of  
15      the Small Business Act (15 U.S.C. 632(q)), and  
16      small business concerns owned and controlled by  
17      serviced-disabled veterans, as defined in such section  
18      3(q), and to provide statistical information on the  
19      utilization of such programs by such small business  
20      concerns, and to make appropriate recommendations  
21      to the Administrator and to the Congress in order  
22      to promote the establishment and growth of those  
23      small business concerns.

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

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

6           “(2) counsel small business concerns on the  
7           means by which to resolve questions and problems  
8           concerning the relationship between small business  
9           and the Federal Government;

10           “(3) develop proposals for changes in the poli-  
11           cies and activities of any agency of the Federal Gov-  
12           ernment that will better fulfill the purposes of this  
13           title and communicate such proposals to the appro-  
14           priate Federal agencies;

15           “(4) represent the views and interests of small  
16           business concerns before other Federal agencies  
17           whose policies and activities may affect small busi-  
18           ness;

19           “(5) enlist the cooperation and assistance of  
20           public and private agencies, businesses, and other  
21           organizations in disseminating information about the  
22           programs and services provided by the Federal Gov-  
23           ernment that are of benefit to small business con-  
24           cerns, and information on the means by which small

1 business concerns can participate in or make use of  
2 such programs and services; and

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

5 “(e) OVERHEAD AND ADMINISTRATIVE SUPPORT.—  
6 The Administrator shall provide the Office with appro-  
7 priate and adequate office space at central and field office  
8 locations of the Administration, together with such equip-  
9 ment, office supplies, and communications facilities and  
10 services as may be necessary for the operation of such of-  
11 fices, and shall provide necessary maintenance services for  
12 such offices and the equipment and facilities located there-  
13 in.”.

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

17 **“SEC. 206. REPORTS TO CONGRESS.**

18 “(a) ANNUAL REPORTS.—Not less than annually, the  
19 Chief Counsel shall submit to the President and to the  
20 Committees on Small Business of the Senate and the  
21 House of Representatives, the Committee on Govern-  
22 mental Affairs of the Senate, the Committee on Govern-  
23 ment Reform of the House of Representatives, and the  
24 Committees on the Judiciary of the Senate and the House

1 of Representatives, a report on agency compliance with  
2 chapter 6 of title 5, United States Code.

3 “(b) **ADDITIONAL REPORTS.**—In addition to the re-  
4 ports required under subsection (a) of this section and sec-  
5 tion 203(c)(11), the Chief Counsel may prepare and pub-  
6 lish such reports as the Chief Counsel determines to be  
7 appropriate.

8 “(c) **PROHIBITION.**—No report under this title shall  
9 be submitted to the Office of Management and Budget  
10 or to any other department or agency of the Federal Gov-  
11 ernment for any purpose before submission of the report  
12 to the President and to the Congress.”.

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

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

17 “(a) **IN GENERAL.**—There are authorized to be ap-  
18 propriated to the Office to carry out this title, such sums  
19 as may be necessary for each fiscal year.

20 “(b) **AVAILABILITY.**—Any amount appropriated  
21 under subsection (a) shall remain available, without fiscal  
22 year limitation, until expended.”.

23 (d) **INCUMBENT CHIEF COUNSEL FOR ADVOCACY.**—  
24 The individual serving as the Chief Counsel for Advocacy  
25 of the Small Business Administration on the date of enact-

1 ment of this Act shall continue to serve in that position  
2 after such date in accordance with section 203 of the Of-  
3 fice of Advocacy Act, as amended by this section.

**Calendar No. 22**

107TH CONGRESS  
1ST SESSION

**S. 395**

**[Report No. 107-5]**

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**A BILL**

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

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MARCH 21, 2001

Reported with amendments