

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

November 19, 2015

Ms. Claudia Rodgers
Acting Chief Counsel for Advocacy
Office of Advocacy
U.S. Small Business Administration
409 3rd Street SW
Washington, DC 20416

Dear Ms. Rodgers:

The Small Business Administration's Office of Advocacy (Advocacy) was created to serve the important role of assisting small businesses. Advocacy issued a series of studies "to quantify the economic impact of regulations on small businesses."¹ A 2010 installment in that series, called "The Impact of Regulatory Costs on Small Firms," estimated that federal regulations inflict as much as \$1.75 trillion in annual damage on the U.S. economy.² Three years later, in response to questions regarding the study's methodology, Advocacy published a clarification that stated "the findings of the study have been taken out of context and certain theoretical estimates of costs have been presented publicly as verifiable facts," among other things.³

It is our understanding that, since 2010, Advocacy has abandoned its effort to periodically evaluate the effects of federal regulations, despite a promise to support research on that topic.⁴ We would like to know whether the criticism of Advocacy's 2010 report influenced the office's decision.

¹ The reports are: Thomas D. Hopkins, *Profiles of Regulatory Costs: Report to the U.S. Small Business Association*, Rochester Inst. of Tech (Nov. 1995); Thomas D. Hopkins, *A Survey of Regulatory Burdens: Report to the U.S. Small Business Administration*, Diversified Research Inc. (June 1995); W. Mark Crain & Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms: A Report For The Office of Advocacy*, U.S. Small Business Administration (2001); W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, Lafayette College (Sep. 2005); Nicole V. Crain and W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, Lafayette College (Sep. 2010).

² Nicole V. Crain and W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, available at <https://www.sba.gov/advocacy/impact-regulatory-costs-small-firms> (last visited Nov. 3, 2015).

³ *Id.* See also Charles S. Clark, *Regulations May Not Really Cost \$1.75 Trillion a Year, SBA Office Concedes*, GOV'T EXEC. (Nov. 4, 2013).

⁴ *Supra* note 2 and Small Business Administration website, available at <https://www.sba.gov/advocacy/impact-regulatory-costs-small-firms> (last visited Nov. 3, 2015). "Considering the costs of regulations is critical to gain the required insight to work with agencies to minimize the burden on small businesses while still achieving the goals of the regulations. Advocacy will continue to support research that informs this objective and will continue to seek out the best ideas and methodology to help accomplish it."

Advocacy has a statutory mandate to “measure the direct costs and other effects of government regulation on small businesses; and make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations of small business.”⁵ This mandate serves as one of Advocacy’s “primary functions.”⁶ Acknowledging that “no comprehensive cost accounting system exists for regulation,” the 1995 study stated that a “[b]etter understanding of the scope and incidence of compliance costs should facilitate more rational debate about the role and effects of government, and better targeting of efforts to improve government oversight.”⁷

These studies also address the significant limitations of the Office of Management and Budget (OMB)’s annual reports on the costs and benefits of federal regulations.⁸ The OMB reports only cover major rules within a ten year span, and do not use an independent source to estimate costs and benefits—they rely instead on agencies’ own analyses. OMB itself acknowledges that because of these limitations, “the total benefits and costs of all Federal rules now in effect are likely to be significantly larger than the sum of the benefits and costs reported [by OMB]” and “[m]ore research would be necessary to produce current estimates of total benefits and costs for all agencies and programs”⁹

To help the Committee better understand Advocacy’s efforts to evaluate the effects of federal regulations, please provide the following information as soon as possible, but no later than 5:00 p.m. on December 17, 2015. For the period of Fiscal Year 2010 through the date of this letter:

1. All reports, studies, or research projects related to estimating the cumulative costs or benefits of regulations commissioned by Advocacy, including the contracts associated with these procurements and any unfulfilled solicitations.
2. All documents and communications referring or relating to the procurement of a report, study, or research product regarding the collection or evaluation of cumulative regulatory costs or benefits.
3. All documents and communications referring or relating to any of the series of Advocacy’s studies on the impact of regulatory costs.¹⁰
4. All communications with external parties regarding recommendations for Advocacy’s reports, studies, or research products on cumulative regulatory costs or benefits.
5. All communications between Advocacy and the Office of Information and Regulatory Affairs or OMB referring or relating to reports, studies, or research projects on the collection or evaluation of cumulative regulatory costs or benefits, including OMB’s Annual Report to Congress on the Benefits and Costs of Federal Regulations.

⁵ 15 U.S.C. § 634b – Primary functions of the Office of Advocacy.

⁶ *Id.*

⁷ Thomas D. Hopkins, *Profiles of Regulatory Costs: Report to the U.S. Small Business Association*, Rochester Inst. of Tech (Nov. 1995).

⁸ Regulatory Right-to-Know Act, 31 U.S.C. § 1105 note.

⁹ U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, *2014 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (2014).

¹⁰ *Supra* note 1.

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The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. When producing documents to the Committee, please deliver production sets to the Majority staff in room 2157 of the Rayburn House Office Building and the Minority staff in room 2471 of the Rayburn House Office Building. An attachment to this letter contains additional instructions for responding to Committee documents requests.

Please contact Christina Aizcorbe of Chairman Chaffetz' staff at (202) 225-5074 or Krista Boyd from Ranking Member Cummings' staff at (202) 225-5051 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman



Elijah E. Cummings
Ranking Member



Jim Jordan
Chairman
Subcommittee on Health Care,
Benefits and Administrative Rules

Enclosure

cc: The Honorable Matt Cartwright, Ranking Member
Subcommittee on Health Care, Benefits, and Administrative Rules

The Honorable Harold Rogers, Chairman
Committee on Appropriations

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.