



March 2, 2022

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Rep. Nydia Velázquez, Chair
Rep. Blaine Luetkemeyer, Ranking Member
House Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chair Velázquez, Ranking Member Luetkemeyer, and Members of the Committee:

I'm a Senior Policy Analyst at the Center for Progressive Reform (CPR), a non-profit research and advocacy organization that works to build thriving communities on a resilient planet. I have been studying the federal regulatory system for over 13 years, including with regard to research on the economic impacts of federal regulation.

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Consistent with this work, I followed with great interest the Committee's recent hearing on "Competition and the Small Business Landscape: Fair Competition and a Level Playing Field," which was held on March 1. I noticed that testimony from the minority made reference to the false claim that small businesses suffer disproportionate burdens due to regulations. In support of this false claim, the witness's testimony cites "[a] series of studies conducted for the Small Business Administration's Office of Advocacy."

With this letter, I hope to set the record straight for the Committee regarding the flaws of these Office of Advocacy studies, as well as make the Committee aware of the extent to which these studies' have been repudiated following their publication. As the Committee will see, these studies are so flawed that they can serve no legitimate purpose in a serious discussion regarding how best to help small businesses compete fairly in the economy. As such, I urge the Committee to disregard these studies as it carries out its important work in this area.

The Significant Methodological Flaws of the Office of Advocacy Studies

As a preliminary matter, it is important to underscore that the Office of Advocacy did not conduct these studies on its own in-house. Rather, it contracted to have them performed. The fact a government entity was not

responsible for these studies, combined with the fact that the Office of Advocacy employed derisive contracting oversight (as noted below), explains how such significantly flawed studies were ever able to be published with the apparent imprimatur of the Office of Advocacy.

The most notable flaw of the Office of Advocacy studies is that they fail to put their cost estimates into perspective by providing an accounting of the benefits of regulation in general, and for small businesses in particular. A discussion of regulation is inherently incomplete — and distorted — if it focuses on costs without also considering benefits. If one only looks at the cost side of the ledger, then any economic transaction — from purchasing a loaf of bread to constructing a new factor — will look like a drain of scarce resources. In perpetrating this flaw, the Office of Advocacy studies confirm they're not serious economic analyses, but rather anti-regulatory propaganda.

The 2010 version of the Office of Advocacy study departed from earlier versions by creating a category of regulations it styles as “economic” in nature. This category is significant for two reasons. First, it accounts for 70 percent of the total regulatory costs that the study purports to find. Second, the methodology for calculating this category of regulatory costs relies on a very peculiar source: public opinion polling. Specifically, the authors of the Office of Advocacy study rely on polling performed by the World Bank — and this despite the fact that the World Bank researchers explicitly warned against attempting to extrapolate from their data in such a manner. Nevertheless, the Office of Advocacy study authors disregarded these warnings and sought to manufacture out of whole cloth an exotic model that purported to describe a relationship between a country's regulatory stringency and its Gross Domestic Product (GDP). The upshot of this model was that excessive regulation in the United States was allegedly costing the economy in terms of economic growth.

To make matters worse, the authors of the 2010 Office of Advocacy study made it impossible for a more detailed critique of their model because they refused to release all the underlying data and assumptions necessary for recreating it independently. They rebuffed my organization's repeated requests to share this information; likewise, they never provided this information to the Office of Advocacy as part of the contract under which they performed the study. Needless to say, such opacity is contrary to prevailing academic and government norms.

Attached to this letter, I have included a report I co-authored that explains in greater detail the flaws of the model used by the 2010 Office of Advocacy study. This report also explains how the 2010 Office of Advocacy study and its predecessors used dubious methods to generate exaggerated estimates for the other regulatory costs categories, including environmental regulations and occupational safety and health and homeland security regulations. Bizarrely, those studies also count “tax compliance” as a regulatory cost category. All of these methodological choices are noteworthy for sharing the same effect: the systematic overstatement of regulatory costs.

Finally, the peer review process of the 2010 Office of Advocacy study was essentially a farce that fell below federal guidelines for federally sponsored research. Only two people examined the study. The study's authors ignored a significant criticism raised by one of the two reviewers concerning their estimate of economic regulatory costs. As for the second reviewer, the entire

review consisted of the following comments: “I looked it over and it's terrific, nothing to add. Congrats[.]”

The Backlash Against the Office of Advocacy Studies

The Office of Advocacy studies on regulation attracted controversy, but this was especially the case for the 2010 version. All of these studies were known for their topline finding – the total annual cost of federal regulation. Thanks to its inclusion of an “economic” regulations category, the 2010 study’s topline funding was significantly higher than previous version, pegging this value at the outlandish amount of \$1.75 trillion. Many opponents of federal safeguards – including lawmakers and industry lobbyists – cited this finding repeatedly to justify their attacks on the regulatory system.

As the citations 2010 study’s topline finding grew more frequent, there was increased attention to the study’s methodology itself, including the report I co-authored. Several members of Congress spoke out against the studies and criticized officials from the Office of Advocacy for sponsoring it without adequate supervision. Eventually, the then-Administrator of the White House Office of Information and Regulatory Affairs (OIRA) Cass Sunstein also publicly denounced the studies, referring to them as an “urban legend.”

The Congressional Research Service (CRS) conducted its own review of the 2010 study. It raised criticisms that largely tracked with the ones identified in my organization’s report. I have attached a copy of that CRS review to this letter.

The criticism reached a point that even the Office of Advocacy was forced to formally disavow the study. In October 2013, the Office of Advocacy posted a disclaimer on its website explaining that, with regard to the 2010 study, “the findings of the study have been taken out of context and certain theoretical estimates of costs have been presented publicly as verifiable facts.”¹

Finally, the Government Accountability Office (GAO) weighed in on this episode as part of a larger, scathing audit of the Office of Advocacy, which was published in July of 2014. I have attached a copy of the GAO audit report to this letter. With respect to the Office of Advocacy’s program for sponsoring research, the GAO audit identified the following shortcomings:

- The Office of Advocacy has no policies defining how its staff should select peer reviewers for the research projects it sponsors. The lack of such policies gives rise to the appearance that SBA Office of Advocacy staff are free to choose peer reviewers who are unqualified or who would be unduly biased in favor of the project undergoing review. This appeared to be the case for the 2010 study where both of the peer reviewers were individuals who were widely known for their anti-regulatory views.
- The GAO reviewed 20 different research projects that the Office of Advocacy had sponsored, and, of those, 16 lacked any documentation demonstrating that they had been subject to any peer review process, even though such documentation is required by both Office of Advocacy internal guidelines and federal internal control standards. Without such documentation, it is impossible to confirm whether these research projects

¹ Off. of Advocacy, U.S. Small Bus. Admin, The Impact of Regulatory Costs on Small Firms, <https://www.sba.gov/advocacy/impact-regulatory-costs-small-firms> (last visited Mar. 1, 2022).

underwent any peer review at all. This appeared to be the case for the 2010 study, as well. While the Office of Advocacy had records of the peer reviewers reviews (such as they were), there was no documentation or evidence of the 2010 study's authors responses to those reviews, if, indeed, they had any responses.

- The Office of Advocacy lacks any policies or procedures for ensuring that research projects are properly revised to reflect substantive comments from peer reviewers prior to being published. Of 10 research projects that the GAO reviewed, only 1 “included evidence that the peer reviewer comments were incorporated into the final report.” This was relevant to the 2010 study where, as noted above, one of the reviewers raised a core criticism one of the key methodologies used for the study. The study nonetheless retained that methodology, and there was no evidence that the study's authors attempted to address or defend that the methodology against the reviewer's criticism.
- The Office of Advocacy did not retain any of the “original data or underlying computer codes” for three studies on regulatory costs—including the 2010 version—even though this step is required by both Office of Management and Budget (OMB) data quality guidelines and by the SBA's internal data quality guidelines. By failing to retain these data and codes, it is impossible for the general public to independently verify the quality of these studies.
- The Office of Advocacy attempted to provide the GAO with a feeble excuse for not retaining the data and computer codes for those three studies, which the GAO easily dismantled. The Office of Advocacy attempted to claim that retaining the data and codes would have been prohibitively expensive. Performing its own calculations, however, the GAO concluded that the “cost would not have been prohibitive.”
- The Office of Advocacy failed to take any additional steps—in lieu of retaining the underlying data and computer codes—to attempt to substantiate the quality of the information contained in two of the studies on total regulatory costs (including the 2010 study), even though such steps are required by OMB data quality guidelines. When pressed on the matter by the GAO, the Office of Advocacy could offer no explanation for this failure, but instead sought to direct the GAO's investigators to the authors of the two studies who also declined to cooperate.
- The GAO determined that the Office of Advocacy had taken actions that would lead the public to conclude that it agreed with the findings contained in the two major studies on total regulatory costs (including the 2010 study). These actions include maintaining the studies on their website and citing one of the studies in their comment letters. As noted above, the Office of Advocacy eventually sought to distance itself from these studies, but the GAO found that these efforts have been insufficient.

Conclusion

As the forgoing amply demonstrates, the Office of Advocacy studies on federal regulations – and especially the 2010 version – are simply not credible, given the faulty methodologies on which they are based and the appalling supervision by the Office of Advocacy of the contracts under which the studies were performed. As such, I urge this committee to disregard any citations of this study, both for the purposes of this hearing and in the future. Further, I urge this committee to conduct vigorous oversight of the Office of Advocacy's activities, including their

involvement in individual rulemaking as well as their sponsorship of studies related to regulatory policy.

I appreciate your attention to this letter. I look forward to continuing work with the committee on the important issue of how regulations impact America's small business community.

Sincerely,

James Goodwin

Senior Policy Analyst

Center for Progressive Reform