

**Senate Small Business Committee Ranking Member Olympia J. Snowe
Testimony for the Senate Homeland Security and Governmental Affairs Committee
in Support of the FREEDOM Act (S. 1030)
June 23, 2011**

Chair Lieberman, Ranking Member Collins -- thank you for convening this crucial hearing on regulatory reform. Mr. Chairman, I know you have been a steadfast champion of small businesses as I've witnessed firsthand on the Small Business Committee and as my fellow co-chair on the Senate Task Force on Manufacturing. And small businesses have a true champion in my friend and colleague, Ranking Member Collins, who hails from a family of small business owners and who previously served as New England Regional Administrator of the SBA. I am pleased to offer testimony on the FREEDOM Act that 53 Senators *and TEN members of this Committee*, voted for on June 9th. I am especially thankful to my co-author, Senator Coburn, who has been instrumental throughout this process.

Mr. Chairman, we have experienced the highest percentage increase in long-term unemployment of any recession since World War II...it would take 285,000 new jobs every month for five years to return to pre-recession unemployment levels...and small businesses have lost an estimated \$2 trillion in profits and asset valuation since the recession began. So, why regulatory reform, and why now? Because *indisputably*, we need an *economic game-changer*, to encourage entrepreneurs to invest and *create new jobs*.

As a letter endorsing our bill from 32 *major small business associations* stated, federal regulations "...add up and increase the cost of labor. If the cost of labor continues to increase, then job creation will be stifled because small businesses will not be able to afford to hire new employees." Moreover, we learned in a November Small Business Committee hearing that a 30% reduction in regulatory costs would save nearly \$32,000 for a 10-person firm – enough to hire one additional person.

And it's not hard to understand *why* regulations are *stifling* small business. Since enactment of the Small Business Regulatory Enforcement Fairness Act of 1996, more than 50,000 new rules have gone into effect, including 1,000 "major" rules, each with an estimated impact of more than \$100 million annually. More than 3,000 new

federal rules are established each year! And the Administration’s own cost estimates for the 407 proposed or enacted regulations this year is over \$68.1 billion with likely broader economic costs on our economy. It’s no coincidence that, compared to China, India, and other major competitors, it costs U.S. firms *18% more* to manufacture goods.

The Freedom Act is based on existing law and those processes that *actually work*. We include small business review panels, such as those that have *already been in place for 15 years* at EPA and OSHA and now at the Consumer Financial Protection Bureau. Those 32 organizations supporting this legislation stated “these panels have proven to be an extremely effective mechanism.” The panels have evaluated 41 rules at EPA and 10 at OSHA, including the arsenic in drinking water rule; the ground water rule; and the ergonomics standard rule. And while we originally sought panels at every agency, in response to those who advocated a smaller, phased in approach when our legislation was on the floor, we revised our bill to add only nine additional panels over three years – one of five major revisions we made to forge consensus on this bill.

The Regulatory Flexibility Act (RFA) of 1980 requires agencies to conduct small business analyses for any regulation that would impose a significant impact on a substantial number of small firms. Yet, agencies have circumvented this obligation by issuing “guidance documents” instead of formal rules, as occurred with OSHA’s recent “proposed reinterpretation” of its noise standard. Fortunately, Chair Lieberman and I weighed in on behalf of small businesses and OSHA withdrew its proposal. Now, to prevent similar occurrences, our bill extends the RFA to guidance documents as well.

Another disregard for the RFA is when agencies fail to conduct a meaningful small business impact analysis at the *proposed rule stage*. Regrettably, the law does not allow small businesses to challenge this in court, *until* a burdensome rule is *finalized*, when it is already *too late*. Therefore, using identical language from legislation previously filed by Small Business Committee Chair Landrieu and Senator Cardin, our bill extends judicial review to the *proposed* rule stage.

Agencies also ignore the Regulatory Flexibility Act, without consequence, when they do not review their rules each decade for possible elimination, or to be made less burdensome. That is why the FREEDOM Act carries a “stick,” stating that if an

agency ignores this requirement, its budget for salaries will be reduced by 1%, unless Congress intervenes. After all, why should citizens seeking to create jobs and prosperity bear the brunt of noncompliance by federal agencies?

Even the President is conducting a review of regulations across 30 agencies, in areas as diverse and consequential as Endangered Species Act procedures and EPA regulations on air pollution. And he expects this examination will yield *billions* in savings. In fact, here is just a sampling of regulations the administration is reviewing for possible revisions. So why wouldn't we want these reviews to be the *norm* rather than the exception? And *that* requires the consistency of process and accountability through enforcement that can only be assured through the weight of *law*.

Finally, the FREEDOM Act requires agencies to consider foreseeable indirect costs of rules, which is a top legislative priority of the President's SBA Office of Advocacy. Currently, the RFA only mandates regulators to take into account the entities directly affected by a proposed rule – *completely ignoring* the secondary effects on small businesses. For example, a factory closure devastates not only those working at that facility, but *entire communities* of suppliers and contractors. And we have addressed concerns that our original language might require agencies to consider too many types of indirect effects, by using the *exact language* proposed by Dr. Winslow Sargeant – the President's own chief small business regulatory appointee.

To conclude Mr. Chairman, the time to act to remove the impediments to job creation is now. Our economy needs help. Our small businesses need relief. Our families need work.

In a May 25th article, Cass Sunstein, OMB Administrator of the Office of Information and Regulatory Affairs, who will testify today, stated, "...*while maintaining critical health and safety protections* for the American people." While a good first step, more **MUST** be done to reduce the regulatory burdens obstructing our nation's economic growth. That is why Congress must do its part to enact meaningful regulatory reform. I thank this Committee for holding this hearing and for the opportunity to testify. I intend to submit additional materials for the record. Thank you.