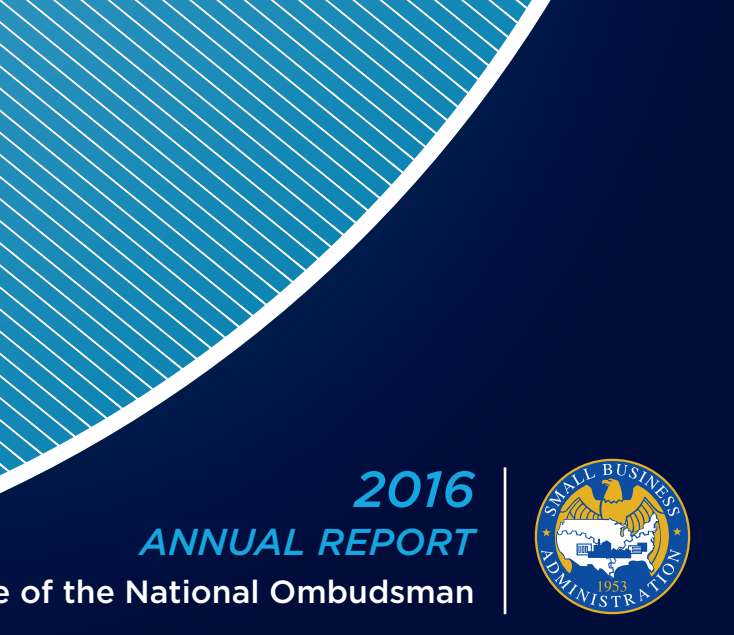


CHAMPIONS FOR AMERICA'S SMALL BUSINESSES

20TH ANNIVERSARY
of the Small Business Regulatory
Enforcement Fairness Act



2016
ANNUAL REPORT

Office of the National Ombudsman



*“The Office of the National Ombudsman
helps lift the burden of regulatory
compliance off the backs of entrepreneurs,
enabling them to keep their focus where
it belongs — on their businesses.”*

Linda E. McMahon, SBA Administrator

MESSAGE FROM THE SBA ADMINISTRATOR

Congratulations to the Office of the National Ombudsman (ONO) on its 20th anniversary in service to small businesses, working to ensure Federal regulations are fair and properly enforced. ONO helps lift the burden of regulatory compliance off the backs of entrepreneurs, enabling them to keep their focus where it belongs—on their businesses.



As I meet with entrepreneurs all over the country, I constantly hear that the sheer volume of regulations and uncertainty of how to comply with them cost businesses time and money. And small businesses often don't have the resources big businesses do to hire lawyers and compliance officers. President Trump has heard these concerns too. He is working to roll back overly burdensome regulations—a move projected to save businesses \$18 billion a year. This initiative will not only save money, but it will also enable entrepreneurs to invest in their companies and hire more workers, creating jobs and building our national economy.

Regulatory reform is just one part of the President's pro-growth agenda for small businesses. As an entrepreneur himself, he understands the challenges small business owners face and can effectively advocate on their behalf. He has made tax reform and health care reform his top policy priorities, and he is steadfast in his commitment to delivering on his promises. As the President noted at an event he hosted at the White House with more than a hundred entrepreneurs from all over the country, "America is on the verge of a golden age for small business." As head of the U.S. Small Business Administration (SBA), I am working with him to make sure small businesses are part of the conversation on Capitol Hill and their interests are reflected in any policy or legislation Congress puts forth.

I am proud to be part of a team committed to helping small businesses succeed through the fair implementation of Federal policy. I appreciate the work of National Ombudsman and Assistant Administrator for Regulatory Fairness Nathan J. Miller and the seven prior ombudsmen, as well as the ONO staff and the Regulatory Fairness Board members who represent ONO across the SBA's ten regions. ONO is working to strengthen its collaboration with the Office of Advocacy—a vital partnership that will enhance their support of small businesses.

As the SBA embarks on its 65th year helping small businesses start, grow and succeed, it recommits to its core missions: advocating for entrepreneurs and helping them access capital, government contracts, counseling and disaster assistance. As SBA Administrator, my goal is to continue to revitalize a spirit of entrepreneurship in America and to ensure the Agency is operating as efficiently and effectively as possible. I want entrepreneurs to feel confident taking a risk on starting or expanding their small businesses. That will help them create jobs and help our nation's economy thrive. And a favorable regulatory climate will help us achieve these goals.

Regards,

A handwritten signature in black ink that reads "Linda E. McMahon". The signature is written in a cursive, flowing style.

Linda E. McMahon
SBA Administrator

CHAMPIONS FOR AMERICA'S SMALL BUSINESSES *2016 ANNUAL REPORT TO CONGRESS*

UNITED STATES SMALL BUSINESS ADMINISTRATION
OFFICE OF THE NATIONAL OMBUDSMAN

Linda E. McMahon
Administrator

U.S. SMALL BUSINESS ADMINISTRATION

Nathan J. Miller
*National Ombudsman and Assistant Administrator
for Regulatory Enforcement Fairness*

U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF THE NATIONAL OMBUDSMAN
409 3rd Street, S.W., Mail Code 2120, Washington, D.C. 20416
TTY/TTD: 800-877-8339, Toll Free: 888-734-3247
www.sba.gov/ombudsman

MESSAGE FROM THE NATIONAL OMBUDSMAN

For 20 years and still today, the U.S. Small Business Administration's (SBA) Office of the National Ombudsman (ONO) has worked with steadfast resolve to create a more favorable regulatory climate for small businesses to start, grow, and prosper.



Over the past two decades, ONO has remained determined in its commitment to fulfilling its core mission of assisting small businesses when they experience excessive, unfair Federal regulatory enforcement actions. The Small Business Regulatory Enforcement Fairness Act of 1996 authorized the establishment of ONO and 10 Regional Regulatory Fairness Boards to serve as force multipliers in expanding ONO's reach into small business communities across the nation. Since its inception 20 years ago, ONO has significantly expanded its outreach to small businesses and trade associations that represent their interests, leveraged use of SBA's resource partners to make even more small businesses aware of the services offered by ONO, and worked on behalf of small businesses to get their disputes with Federal agencies resolved. This work continues today.

In the execution of its work, ONO has consistently adhered to core standards underpinning the Federal ombudsman profession highlighted by the Administrative Conference of the United States— independence, confidentiality, and impartiality. As stewards of the Federal ombudsman profession, ONO has shared best practices with, and actively engaged in, communities of practice comprised of Federal and private sector ombudsmen.

Highlights of ONO's FY2016 accomplishments include:

- Conducted a total of 24 regional outreach events, including five public hearings resulting in 60 testimonies from small business entities and 19 small business roundtables nationwide.
- Participated in 78 other outreach events, including delivery of speeches, participation on panels, and one-on-one meetings with senior Federal agency officials.
- Received and processed 316 comments filed by small businesses.
- In collaboration with the SBA Office of Advocacy, raised Congressional awareness of regulatory burdens on small businesses and actions taken by both offices to address issues surfaced by small businesses to our attention.

I am pleased to present to you the *2016 Annual Report to Congress*. This report captures not only our accomplishments for FY2016 alone, but also represents a culmination of victories we have achieved for small businesses over the past 20 years.

President Donald J. Trump has underscored his commitment to “roll back the regulatory burdens so that coal miners, factory workers, small business owners, and so many others can grow their businesses and thrive.” He has called upon Federal regulators to ensure that every regulation passes a simple test: “Does it make life better or safer for American workers or consumers?” Underlying the President's regulatory reform agenda are core tenets: namely, removing job-killing regulations, incentivizing companies to do business in the United States, and creating more opportunities for businesses to prosper.

ONO stands ready to work in collaboration with Federal agencies in realizing the President's and SBA Administrator Linda McMahon's ambitious goal of reducing the cost and complexity of regulatory compliance and shaping a regulatory environment that is favorable for America's small businesses to prosper.

A handwritten signature in black ink, appearing to read 'Nathan J. Miller'.

Nathan J. Miller

*National Ombudsman and Assistant Administrator
for Regulatory Enforcement Fairness*

EXECUTIVE SUMMARY

Celebrating 20 Years as Champions of Small Businesses

Over the past two decades, the Office of the National Ombudsman (ONO) has served as the focal point for the Federal government's and U.S. Small Business Administration's (SBA's) outreach to small businesses faced with rising regulatory burdens, and has worked diligently to carry out its core mission of ensuring that Federal regulatory enforcement actions taken against small businesses are fair, and not excessive. ONO's commitment to seek fair, expeditious resolution of regulatory disputes between small businesses and Federal agencies remains as strong today as it was two decades ago when Congress introduced the Small Business Regulatory Enforcement Fairness Act of 1996 — the authority under which ONO was established.

Under the stewardship of seven successive National Ombudsmen and through the dedicated efforts of our highly skilled case managers, Regulatory Fairness Board members, and Federal agencies with whom we have partnered over the past 20 years, ONO has played a vital role in helping create a more favorable regulatory climate for America's small businesses to grow and flourish.

FY2016 ACCOMPLISHMENTS

By any definition, ONO has notched wins in FY2016 on every front—from effectively and efficiently managing its caseload to influencing Federal agencies to take concrete actions to address long-standing, systemic issues that have hurt small businesses spanning across multiple geographic regions.

Over the course of FY2016, ONO intervened to resolve a wide variety of regulatory compliance and enforcement matters that have resulted in tangible outcomes for small businesses in the form of waived penalties, fine reductions, recovered claims payments, and—in some instances—reversal of decisions by Federal agencies.

We have opened new lines of communication between small businesses and Federal regulators. Our public hearings and regional roundtables have served as unique platforms for small businesses to voice their concerns directly to Federal agencies. Our sustained engagement has yielded positive, enduring results for small businesses. Compelling, real-life stories shared by small business owners who have been adversely impacted by undue regulatory enforcement measures have stimulated Federal regulators to rethink their policies, streamline their procedures, and introduce education and assistance to help small businesses achieve regulatory compliance.

In FY2016, the National Ombudsman and Regulatory Fairness Board members hosted and/or participated in 102 outreach events, including 24 regional regulatory fairness roundtables and public hearings, and 78 speaking engagements across 29 states and in Washington, D.C. More than 60 small business owners or trade association leaders who represented them brought regulatory enforcement concerns to the forefront by testifying

at our public hearings. Their testimonies have helped convince Federal agencies to make changes that would result in cost and time savings for small businesses.

We have made the voices of small businesses heard by making the case for regulatory relief on Capitol Hill. In February 2016, the National Ombudsman testified before the House Small Business Committee Subcommittee on Investigations, Oversight, and Regulations, joined by the SBA Chief Counsel for Advocacy. Our joint efforts have raised awareness of the plight of small business owners who have suffered financially due to the weight of regulatory burdens on the Hill and have prompted calls by lawmakers to lift those burdens.

Throughout the year, ONO has worked to strengthen our relationships with trade associations, small business liaisons within Federal agencies, and SBA resource partners—all of whom we have effectively leveraged as force multipliers to expand our reach to small businesses nationwide. Together, we have surfaced issues to Federal agencies that otherwise would have remained under the radar and catalyzed them to take action, taking into account small business equities.

Representing 10 regions across the country, ONO's Regulatory Fairness Board members have built bridges between small businesses within their respective communities and the Federal government by shining a light upon small business regulatory concerns, advocating on their behalf before Federal regulators and lawmakers, and raising awareness of ONO's role in helping resolve their issues through their outreach to small businesses.

A SALUTE TO REAR ADMIRAL EARL L. GAY, USN (RET.)—SBA'S 7TH NATIONAL OMBUDSMAN

On January 20, 2017, we bid farewell to Rear Admiral Earl L. Gay, USN (Ret.), who served as SBA's 7th National Ombudsman with distinction and honor. During his tenure, he worked tirelessly to strengthen ONO's relationship with the SBA Office of Advocacy and collaborated with the Chief Counsel for Advocacy to ensure that concerns raised by small businesses across the regulatory lifecycle were fully addressed. Among the most notable accomplishments under his leadership were improvements introduced by the Center for Medicare and Medicaid Services to its claims reimbursement practices and audit procedures – changes backed by bipartisan support in Congress.

A BRIGHT FUTURE FOR AMERICA'S SMALL BUSINESSES TO FLOURISH

President Donald J. Trump and SBA Administrator Linda E. McMahon have made rolling back regulatory burdens that adversely impact small businesses and reducing the cost and complexity of regulatory compliance as high priorities. In the coming years, ONO will work to advance the President's and SBA Administrator's Small Business Agenda and Regulatory Reform efforts by collaborating with Federal agencies and other stakeholders to create and sustain a business-friendly climate that will fuel the growth and prosperity of America's small businesses.

ACCOMPLISHMENTS AT A GLANCE

102 outreach events in **29** states

316

**Total number
of comments**

36

Board members

4

Working groups

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), ONO can only achieve such results when small business concerns are subjected to an audit, on-site inspection, fines, penalties or other regulatory enforcement actions taken by a Federal regulator.

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DePriest, Esq.
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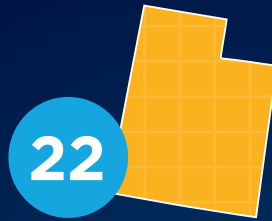


Pictured from left to right: C. Natalie Lui Duncan, Deputy National Ombudsman; Cynthia Pope, Case Management Specialist; Nathan J. Miller, National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness; Elahe Zahirieh, Case Management Specialist

TOP STATES FOR CASE SUBMISSIONS



CALIFORNIA



UTAH



FLORIDA



NEW YORK



VIRGINIA



TEXAS



GEORGIA

TOP AGENCIES FOR CASE SUBMISSIONS



Centers for Medicare
and Medicaid Services



U.S. Small Business
Administration



U.S. Citizenship and
Immigration Services



U.S. Department
of Defense



U.S. Department of
the Interior (U.S. Fish
and Wildlife Service)

CHAPTER 01

CHAMPIONS FOR SMALL BUSINESSES

Established by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, the Office of the National Ombudsman (ONO) celebrated its 20th anniversary in FY2016. Today, ONO continues to fulfill the critical mission by representing the interests of small businesses before Federal agencies when unfair, excessive regulatory enforcement actions are taken against them by Federal agencies.

When repetitive audits and investigations, unreasonable fines or penalties, or threats of retaliation are levied against small businesses, ONO works with them and the Federal agency involved to bring the concerns of small businesses to light and seek expeditious resolution of these issues. The complexity and costs associated with regulatory compliance have had adverse financial impact on small businesses, and in some instances, have driven them out of business.

HOW ONO LEARNS ABOUT REGULATORY ENFORCEMENT AND COMPLIANCE CHALLENGES EXPERIENCED BY SMALL BUSINESSES

In FY2016, ONO listened to regulatory compliance concerns raised by small businesses at 24 regional regulatory fairness hearings and roundtables, and 78 outreach events across 29 states and in Washington, D.C.

Through 60 testimonies at public hearings and roundtables hosted by ONO, small business owners and entrepreneurs have made their voices heard by surfacing their regulatory concerns to senior officials representing their respective Federal agencies who have been invited to the table and receiving real-time progress updates from Federal agency officials on actions taken to address these issues and outcomes achieved thus far.

Working in collaboration with ONO, members of 10 Regulatory Fairness Boards have helped small businesses navigate through regulatory compliance challenges, introduced them to ONO to get their issues resolved, and walked them through what to expect once they have filed a comment. The board members serve as eyes and ears for the Ombudsman in every part of the country.

Regulations are the most important determinant of “business friendliness” in evaluations by small businesses

HOW WE ASSIST SMALL BUSINESSES

ONO champions process and procedural fairness in disputes between small businesses and Federal agencies. Additionally, ONO analyzes trends based on complaints received, and advocates for fairness at a broader, system-wide level on regulatory compliance issues that are adversely impacting a number of small businesses.

Small business owners may formally file a comment or complaint with ONO electronically or in paper format.

ELECTRONIC FORM (recommended approach)

Submit an online request for assistance at www.sba.gov/ombudsman/comment

PAPER FORM

Download a printable Federal Agency Comment Form (SBA Form 1993) from the Ombudsman website at sba.gov/ombudsman/comment. Submit a signed comment form and supporting documentation by:

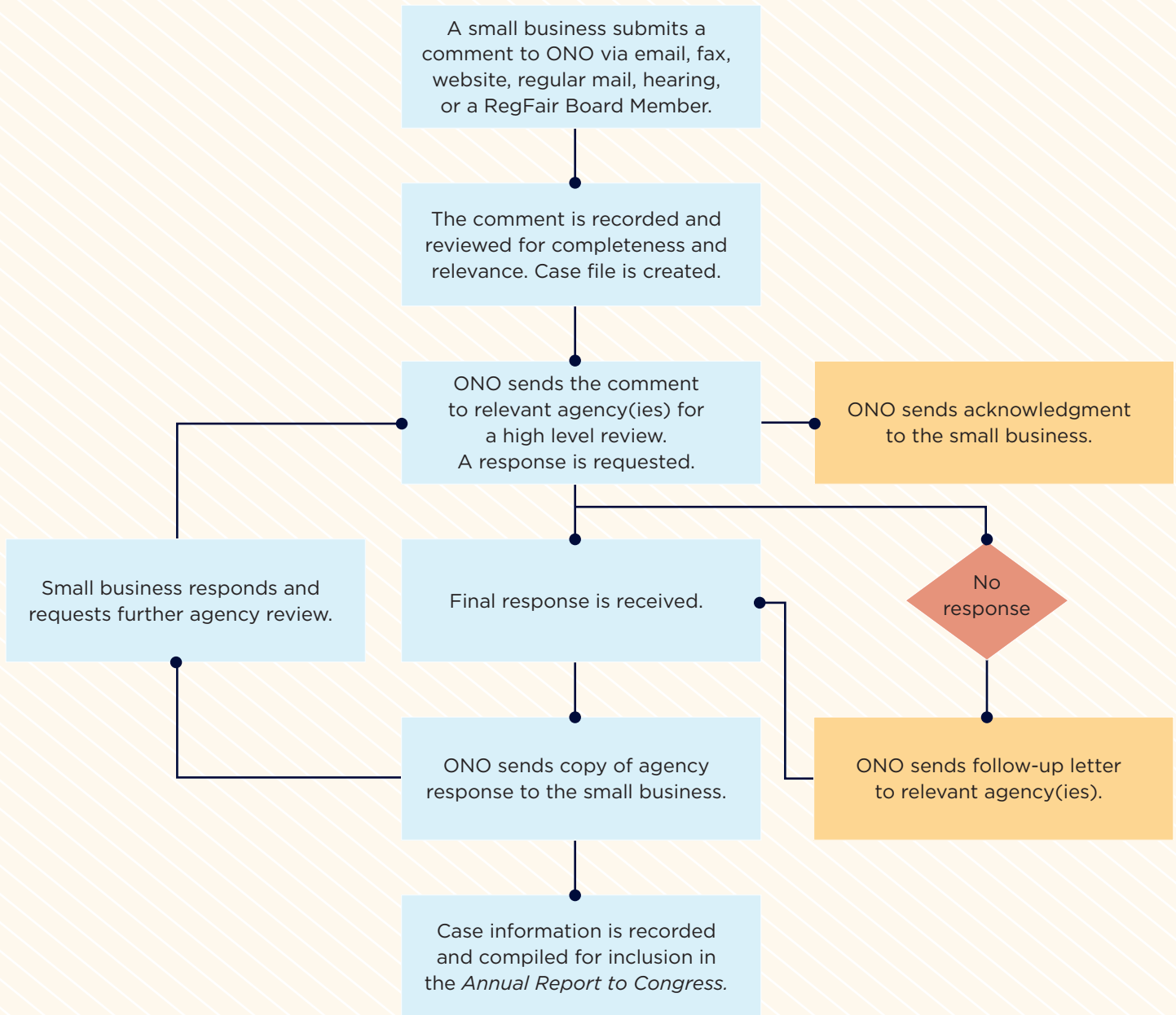
Email: ombudsman@sba.gov

Fax: (202) 481-5719

Mail: Office of the National Ombudsman
U.S. Small Business Administration
409 3rd Street, S.W., Mail Code 2120
Washington, D.C. 20416

How Our Comments/Complaint Filing Process Works:

ONO has adopted a clear, transparent process for receiving, reviewing, and assisting small businesses in the resolution of regulatory compliance issues with Federal agencies. The flow chart below lays out actions ONO take upon receipt of a comment or complaint formally filed by a small business.



See [Chapter 3: Meeting Small Businesses at Their Point of Need](#) for examples of specific cases and the solutions delivered through committed efforts by ONO and the Federal agencies with which we partner.

How the Office of the National Ombudsman Fights for Small Business Regulatory Fairness

After receiving a Federal Agency Comment Form from a small business, the Office of the National Ombudsman:

1 | Reviews the Federal Agency Comment Form (SBA Form 1993), which authorizes the Ombudsman to proceed, and any supporting documentation for completeness, including signatures.

2 | Determines how ONO can assist, then advises the small business of expected next steps and parameters of the SBREFA review.

3 | Contacts the Federal agency involved to initiate the SBREFA review process.

4 | Follows up with the Federal agency and the small business, as appropriate, to provide a timely and responsive answer on the issue reported.

5 | Communicates to the small business owner the actions that ONO has taken to assist.

While ONO and our Regulatory Fairness Board members have assisted thousands of small businesses in addressing their regulatory compliance and enforcement challenges, we cannot:

1. Address matters in litigation or provide legal advice
2. Guarantee a positive outcome
3. Overrule, stop, or delay regulatory enforcement actions taken by Federal agencies (e.g., audit or investigation)
4. Make decisions that are binding on Federal agencies
5. Handle harassment claims or internal workplace issues

20 YEARS OF COMMITMENT TO SMALL BUSINESSES

Seven individuals have served as the National Ombudsman over the past two decades, contributing significantly to its mission and impact on small businesses. The timeline reflects highlights of notable developments and accomplishments under their leadership.

KEY | Ombudsman Service Tenure

- Peter Barca**
First Ombudsman, 1999–2000
- Gail A. McDonald**
2000–2001
- Michael L. Barrera**
2001–2005
- Nicholas N. Owens**
2006–2009
- Esther H. Vassar**
2009–2012
- Brian M. Castro**
2013–2015
- Earl L. Gay**
2015–2016

1996

The Small Business Regulatory Enforcement Fairness Act establishes the Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman) at the SBA to give small businesses a voice in the Federal regulatory enforcement process.

2000

The first National Regulatory Fairness Board meeting takes place in October in Washington, D.C.

Gail A. McDonald
Ombudsman, 2000–2001

2004

The first-ever Office of the National Ombudsman's economic impact study demonstrated that ONO saved small businesses at least \$19.7 million in FY2003 alone.

Peter Barca
Ombudsman, 1999–2000

"The work I did to identify best practices by Federal regulatory agencies highlighted my tenure because other agencies replicated them, which eased regulatory burdens on small businesses nationwide."

The Office of the National Ombudsman introduces a web-based comment system to notify Board members of any new comments from small businesses in their regions and provide a link to web pages with supporting documents.



Nicholas N. Owens
Ombudsman,
2006–2009

Michael L. Barrera
Ombudsman, 2001–2005

"During my service as Ombudsman, we conducted a study that found ONO saved small businesses an estimated \$25 million in regulatory costs, demonstrating the effectiveness of our efforts."

2001



Brian M. Castro
Ombudsman, 2013 - 2015

"One of my biggest priorities was sharing the mission of the Office of the National Ombudsman and the resources available to small businesses. We did this by optimizing our Annual Report to create awareness with Congress and the media, and by making it accessible and relatable to our stakeholders."



Earl L. Gay
Ombudsman,
2015 - 2016

"The Office of the National Ombudsman team fostered effective working relationships with America's small businesses and Federal government agencies. This led to an unprecedented number of resolutions of unfair regulatory practices and resulted in two bipartisan Congressional Bills that address improved audit procedures and reimbursement practices by the Centers for Medicare and Medicaid Services."

2007

Congress amends the Small Business Regulatory Enforcement Fairness Act of 1996 by adding stronger, more specific requirements for Federal agency compliance to provide further assistance to small businesses.

2010

The Office of the National Ombudsman holds a series of "Reducing Barriers" events around the nation, followed by an executive order requiring Federal agencies to review and eliminate outmoded regulations.



Esther H. Vassar
Ombudsman, 2009 - 2012

"As National Ombudsman, my goal was to encourage regulations that considered both small business concerns and agencies' regulatory obligations under the law. With that charge, we identified the regulatory issues most frequently addressed by the National Ombudsman to forge more effective and powerful partnerships between Federal agencies and America's entrepreneurs. Our slogan was, 'It is not enough to just listen to small businesses — what we do must make a difference.'"

The Office of the National Ombudsman ties a previous record number of resolved cases, originally set in 2008, with 420 formal comments filed by small businesses.

The Office of the National Ombudsman celebrates its 20th anniversary in giving small businesses a voice.

2014

2016

“I’ve grown my business through the Federal market place and I’m very thankful for the opportunities I’ve had. Serving on the board is a way for me to pay it forward by letting others know of the support available to them.”

David Rambhajan, a Region 5 Regulatory Fairness Board member and owner of a professional construction management company

CHAPTER 02

THE VOICE OF SMALL BUSINESS — REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS

With first-hand experience as small business owners and leaders in the business community, the members of the Regional Regulatory Fairness Boards of the Office of the National Ombudsman provide invaluable insight and service in 10 regions across the country. They do this by connecting personally with small business owners at outreach events, creating awareness of ONO, and bringing national-level attention to regulatory issues.

Board members also help identify unfair, unnecessary, or inconsistently applied agency rules or practices affecting large numbers of small businesses. With a constant pulse on local communities and extensive professional networks, Board members can more easily identify systemic issues that unduly burden small businesses. They bring these issues to the attention of the National Ombudsman, who subsequently intervenes on behalf of small businesses to resolve matters of concern with the appropriate Federal agencies.

The Board's four working groups focused its work on high priority areas of concern to small businesses.

These working groups included:

● ACCESS TO CAPITAL

Addressing issues involving SBA lender and community banker concerns, as well as alternative capital funding opportunities for small businesses.

- Gary Ezovski (Region 1)
- Christopher Harvell (Region 2)
- David Huller (Region 5)
- Frank Knapp Jr. (Region 4)
- Marilyn Landis (Region 3)

● GOVERNMENT CONTRACTING

Addressing issues involving proposals, bids, subcontractors, and 8(a) eligibility/certifications.

- Mike Anderson (Region 8)
- Tom Briones (Region 6)
- Alison Brown (Region 8)
- Cliftena Carter (Region 4)
- Al Edwards (Region 4)
- Charles Largay (Region 1)
- Carisa McMullen (Region 7)
- Doña A.P. Storey (Region 3)

● OUTREACH AND VISIBILITY

Identifying outreach opportunities for ONO, including roundtables, public hearings, and speaking opportunities.

- Reginald "Reg" Baker Jr. (Region 9)
- Joseph Jindra (Region 7)
- Deborah Osgood (Region 1)
- Doña A.P. Storey (Region 3)
- Muriel Watkins (Region 3)

● WORKFORCE MANAGEMENT/LABOR

Addressing obstacles involving joint employer issues for franchisees, independent contractor determinations, and contingent workforce issues.

- Reginald "Reg" Baker Jr. (Region 9)
- Cindy Brown Rohrer (Region 7)
- James Houser (Region 10)
- Kristine Kassel (Region 9)
- Kevin Maloney (Region 1)
- Mike Mitternight (Region 6)
- Deborah Osgood (Region 1)
- Bobby Pancake (Region 3)
- Anthony Welcher (Region 10)

FY2016 BOARD CHAIRS



Region I

GARY EZOVSKI

President & Owner, Lincoln Environmental Properties, Slatersville, Rhode Island

Gary Ezovski has over 40 years of experience serving in senior leadership roles in civil engineering. Mr. Ezovski serves on the Board of Directors of a bank and as a Trustee of a financial services company in New England. Since 2007, he served as Chair of the Regulations Subcommittee for the Rhode Island Small Business Economic Summit. Mr. Ezovski received his Bachelor of Science degree in Civil Engineering from the University of Rhode Island.



Region II

CHRISTOPHER HARVELL

CEO & Founder, Dental Kidz, LLC, Newark, New Jersey

Christopher Harvell co-founded the largest pediatric dental practice in New Jersey. He formerly served as an investment banker with Credit Suisse. He brings significant experience working for small business initiatives and economic development efforts across the state of New Jersey. Mr. Harvell received his Bachelor of Science degree in Electrical Engineering from George Washington University and Master of Business Administration degree in Finance and Real Estate from Columbia University.



Region III

DOÑA A.P. STOREY

President/CEO, GOVtips.biz, Virginia Beach, Virginia

Doña A.P. Storey continues as a successful entrepreneur, creating and leading award-winning businesses in both the Federal and commercial sectors. She is a widely recognized expert on business focusing on Federal and corporate procurement and appeared as an expert on several broadcast news shows. She serves as a consultant and featured speaker on supplier diversity issues for the Institute for Supply Management. Ms. Storey received her Bachelor of Science degree in Industrial and Organization Psychology from Old Dominion University.



Region IV

FRANK KNAPP JR.

President, The Knapp Agency, Columbia, South Carolina

Frank Knapp Jr. is the President of The Knapp Agency, an advertising and public relations firm, and the President and CEO of the South Carolina Small Business Chamber of Commerce. In addition, he serves on the Advisory Board for the South Carolina Small Business Development Center and was recognized by SBA as the 2014 South Carolina Small Business Financing Advocate of the Year. Mr. Knapp received his Master's degree in Social Psychology from the University of South Carolina and a Bachelor's degree from Indiana University of Pennsylvania.



Region V

DAVID HULLER

President, ICAP Enterprises, LLC, Rocky River, Ohio

David Huller is Founder and Principal of ICAP Enterprises, LLC and brings over 30 years of sales, operations and business development experience across multiple industries. He sits on the Board of Trustees for the National Small Business Association and has served on numerous boards throughout his career. Mr. Huller received his Bachelor's degree from the University of Richmond, Robins School of Business.



Region VI

MIKE MITTERNIGHT

Owner/President, Factory Service Agency, Inc., Metairie, Louisiana

Mike Mitternacht was the president and owner of Factory Service Agency, Inc., and served as the Secretary of the Board of Trustees for the National Small Business Association. In addition, he served as the Chairman of the Louisiana Economic Development's Small Business Advisory Council and was an appointed member of the Louisiana Workforce Investment Council. Mr. Mitternacht received his Master's degree in Public Health from the Tulane University School of Public Health and Tropical Medicine.

*** Mr. Mitternacht passed away on October 7, 2016 at the age of 71. In November, the Louisiana Association of Business and Industry posthumously honored him with the 2016 Free Enterprise Champion Award for his distinguished career as a small business owner and his advocacy on behalf of small businesses with the Louisiana Economic Development Small Business Advisory Council and the Office of the National Ombudsman.*



Region VII

CYNTHIA 'CINDY' BROWN ROHRER

President, Brown Germann Enterprises, Inc., Hazelwood, Missouri

Cynthia Brown Rohrer is the majority Owner of Brown Germann Enterprises, Inc., DBA Shred-it. She is a member of the National Association of Women's Business Owners and was named a Distinguished Member by the St. Louis Chapter and member of P.E.O., a women's Philanthropic Educational Organization (P.E.O.). Ms. Brown received her Master of Science degree in Education from Northwest Missouri State University, and her Bachelor of Science degree in Education from the University of Missouri-Columbia.



Region VIII

PETER M. CORROON

Managing Member, Red Gate Properties, LLC, Salt Lake City, Utah

Peter Corroon is the Managing Member of Red Gate Properties, LLC, which he has co-owned since 1995. Mr. Corroon was previously elected Mayor of Salt Lake County. He served two terms and oversaw an \$850 million budget, 8,000 employees, and 36 agencies. He holds numerous board positions and leadership roles with local coalitions and chambers of commerce across the state. He holds a Juris Doctor degree from Golden Gate University School of Law, a Master of Science degree in Real Estate Development and Finance from New York University, and a Bachelor of Science degree in Civil Engineering from Carnegie-Mellon University. Mr. Corroon also speaks fluent French, intermediate Spanish, and some Italian.



Region IX

REGINALD 'REG' BAKER

Managing Member, Reg Baker CPA, LLC, Honolulu, Hawaii

Reg Baker is a Managing Member of Reg Baker CPA, LLC, a former Executive Vice President and Treasurer for the Hawaii Medical Assurance Association, and a former Manager, International Operations for the Bank of Hawaii. He currently serves as the Chair of the Small and Mid-sized Business Committee for the Hawaii Chamber of Commerce. In addition, he serves in a leadership position for the Hawaii Society of CPAs and was named SBA's Accountant Advocate of the Year for the state of Hawaii. Mr. Baker received his Bachelor of Business Administration degree in accounting from the University of Central Arkansas, studied international business at the University of Hawaii, and taught at the University of Nevada, Las Vegas.



Region X

MICHAEL BALLANTYNE

Managing Partner, Thornton Oliver Keller Commercial Real Estate, LLC, Eagle, Idaho

Michael Ballantyne is a Managing Partner with Thornton Oliver Keller Commercial Real Estate, and serves as a board member for the Boise Valley Economic Partnership with an emphasis on local public/private economic development. In addition, he received numerous awards and recognition for his leadership and economic impact accomplishments. Mr. Ballantyne received his Bachelor of Arts degree in International Studies and Spanish from Willamette University.

BOARD MEMBERS WHO SERVED IN FY2016

Zach Adamson, Owner, Operator
Urban Designs Indy, Indianapolis, IN

Reginald Baker Jr., Managing Member
Reg Baker CPA, LLC, Honolulu, HI

Michael Ballantyne, Managing Partner
Thornton Oliver Keller Commercial Real Estate, Eagle, ID

Tom Briones, Founder & Owner
Briones Business Law Consulting, P.C., Albuquerque, NM

Alison Brown, PhD, President & CEO
NAVSYS Corporation, Colorado Springs, CO

Cynthia Brown Rohrer, President
Shred-It, Brown Germann Enterprises, Inc., Hazelwood, MO

Cliftena Carter, President/CEO
CSCI, Fayetteville, TN

Peter M. Corroon, Managing Member
Red Gate Properties, LLC, Salt Lake City, UT

Al Edwards, Managing Director
Corporate Environmental Risk Management, LLC, Atlanta, GA

Gary S. Ezovski, President & Owner
Lincoln Environmental Properties, LLC, Slatersville, RI

Kenneth Franasiak, President & CEO
Calamar Enterprises, Inc., Wheatfield, NY

Christopher Harvell, CEO & Founder
Dental Kidz, LLC, Newark, NJ

James Houser, Co-Owner, Sec-Treasurer
Hawthorne Auto Clinic, Inc., Portland, OR

David Huller, President
ICAP Enterprises, LLC, Rocky River, OH

Louis G. Hutt Jr., Managing Member
CPA Esq., Bennett, Hutt & Co., Columbia, MD

Rollie Leo James, President
Food Enterprises, Inc., Cherokee, NC

Joseph Jindra, President/General Manager, Co-Owner, KNCK, Inc.,
Concordia, KS

Kristine Kassel, President
Benefits by Design Inc., Tempe, AZ

Frank Knapp Jr., President
The Knapp Agency, Columbia, SC

Marilyn Landis, President & CEO
Basic Business Concepts, Inc., Pittsburgh, PA

Charles Largay, President
Yankee Logic, LLC, Grand Beach, ME

Kevin Maloney, President
Northeast Express Transportation, Inc., Windsor Locks, CT

Juliette Mayers, President & CEO
Inspiration Zone, LLC, Quincy, MA

Carisa McMullen, Principal
Landworks Studio, LLC, Olathe, KS

Alex McQuillen, Owner/Operator
McQuillen Farm, Inc., Whitewater, WI

John A. Michael, Chairman & Project Principal
Naismith Engineering, Inc., Corpus Christi, TX

Mike Mitternight, Owner/President
Factory Service Agency, Inc., Metairie, LA

Moises Montanez, President
ALTA Home Remodeling, Miami, FL

Deborah Osgood, PhD, CEO
Knowledge Institute, Exeter, NH

Bobby Pancake, Principal & COO
High 5, LLC, Bear, DE

David Rambhajan, President
Industria, Inc., Chicago, IL

Wilfred P. Ryan, President
Ryan Air, Inc., Anchorage, AK

Doña A.P. Storey, President/CEO
GOVtips.biz, Virginia Beach, VA

Muriel Watkins, President
MW Financial, Inc., Potomac, MD

Anthony Welcher, Owner
21st Century Communications, Bellevue, WA

Isabel Valdés, President
IVC, San Francisco, CA

REGULATORY FAIRNESS BOARDS

Serving as Champions for Small Businesses

10

REGIONS

36

BOARD MEMBERS

4

WORKING GROUPS

CREDENTIALS

State Economic Development leadership

Business and trade association leadership

Elected officials

Professionals—lawyers, engineers, architects

- *Award-winning business professionals*

Industry Diversity

- *Real Estate*
- *Transportation & Warehousing*
- *Information Technology*
- *Professional, Scientific & Technical Services*
- *Accommodation & Food Service*
- *Construction*
- *Finance & Insurance*

*“The work and dedication of the
Ombudsman team is absolutely phenomenal.
I’ve been thoroughly impressed by what
they’re able to do with limited resources
and how well they manage the cases.”*

*Christopher Harvell, a Region 3 Regulatory Fairness Board
member and co-founder of a dental practice in Newark, NJ*

CHAPTER 03

MEETING SMALL BUSINESSES AT THEIR POINT OF NEED

Throughout FY2016, the Office of the National Ombudsman has intervened to resolve a broad range of case-specific issues, as well as systemic issues that have had disproportionate, adverse financial impact on small businesses that fall within particular industry sectors.

Our sustained engagement with Federal agencies has yielded positive results for small businesses in the form of waived penalties, fine reductions, and in some instances, reversal of agency decisions. Through our roundtables and public hearings, we have opened new lines of communication between small businesses and Federal regulators, providing opportunities for small businesses to voice their concerns directly to Federal regulators and for Federal regulators to respond in real-time. Our efforts have promoted agencies to rethink their policies, streamline their procedures, and introduce education and assistance to help small businesses achieve regulatory compliance.

During my service as Ombudsman, we established and formalized a lot of the procedures used by the Office today, like the online comment system. Before, small business owners would call in and a staff person would take notes.

Michael L. Barrera, Ombudsman 2001-2005



CASE RESOLUTION PROCESS

1

SEEKING ASSISTANCE

A small business encounters an issue regarding payment, compliance or other regulatory issue involving a Federal agency (*i.e., through inspections, contracting, fines*).

The small business reports the issue through email, fax, web, mail, public hearing, roundtable, or telling a Regulatory Fairness Board member about the issue.

2

DEVELOPING SOLUTIONS

ONO confirms receipt of the comment with the small business and promptly contacts the appropriate Federal agency.

A designated Case Management Specialist serves as the small business' liaison with the Federal agency, ensuring a focus on customer service and timely, responsive review.

3

DELIVERING RESULTS

ONO champions for the small business through issue resolution by remaining engaged and accessible to assist the business through the process.

Results range from clarification of regulatory requirements, compliance assistance, reduced fines, and payment of contracting invoices to regulatory process improvements, penalty abatement, and reversal of initial decisions.

4

SUPPORTING BUSINESS OPPORTUNITY

ONO's commitment to case resolution helps identify areas for regulatory streamlining and provides channels for small business owners to weigh in, and contribute to, system improvements.

ADDRESSING SYSTEMIC ISSUES

The following are illustrative examples of systemic issues ONO has addressed by bringing together small businesses and Federal regulators to achieve mutually agreeable outcomes.

Michigan *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*

A health care provider contested a Medicare Advantage Organization's denial of payment by providing documentation and payment examples from Medicare to the Medicare Advantage Organization with several appeal requests to receive payment to no avail. After ONO intervened on behalf of the healthcare provider, the Medicare Advantage Organization determined that the problem resulted from a claims system defect, which resulted in erroneous denials. Subsequently, the Medicare Advantage Organization adjusted the claims for payment.

Michigan *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*

A Medicare Advantage Organization failed to consistently follow billing procedures for Medicare coverage and accepted approximately \$26,000 in overpayments from a blood disease and cancer treatment center tied to 27 claims. Once ONO raised the issue to the Medicare Advantage Organization's attention, the claims disputes were resolved. As a result, the treatment center recovered the overpayments.

Indiana *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*

A blood disease and cancer treatment center made several attempts to receive payments from a Medicare Advantage Organization. However, a processing system upgrade resulted in 113 incorrectly denied claims. With assistance from ONO, the healthcare provider recovered most of the claims totaling approximately \$170,800.

Maryland *U.S. Department of Defense, Defense Finance and Accounting System (DFAS)*

A Navy defense contractor began invoicing under a modified contract. However, DFAS failed to follow the invoice instructions, as required under the modification. As a result, DFAS incorrectly rejected the company's invoices for three months. Despite acknowledging the errors, DFAS made only partial payment of the \$864,086 owed to the company. Upon the intervention of ONO, DFAS paid the three invoices in full.

REFUNDS

As a result of ONO's intervention on behalf of small businesses awaiting to recoup monies owed, a number of small businesses were issued refunds that they have requested.

West Virginia *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS)*

Although a substance abuse treatment clinic filed a timely cost report, CMS issued a notice of intent to refer unfiled cost report debts to the Department of Treasury's Debt Collection Center. The notice resulted in withheld payments to the clinic. ONO wrote CMS requesting a review of the matter. Subsequently, CMS determined that the notice was sent in error. As a result, the clinic received the \$11,565 owed.

CONTRACTING AND PAYMENT ASSISTANCE

For small business government contractors, the complexity of the Federal acquisition process can be daunting. ONO has played an instrumental role in helping small businesses recover payments owed by the Federal government for work performed and ensuring that fair opportunity practices were adopted by Federal agencies.

Texas *Defense Logistics Agency (DLA)*

An industrial spill kit supplier made several requests to DLA for payment for goods delivered. Despite having presented proof of delivery paperwork to the contract specialist, the issue remained unresolved. Upon receipt of ONO's request to look into the matter, DLA located the misplaced goods and paid the invoice.

Utah *U.S. Department of Veterans Affairs (VA)*

An architect firm suffered tremendous losses after two projects for the VA resulted in work "substantially over the budget." Following numerous unannounced audits and finally being forced to close, the business was then served a *Limitations on Subcontracting Compliance Review* notification. Facing potential bankruptcy, the company sought assistance from ONO. As a result of ONO's involvement, the architect firm contacted the contracting officer and entered into negotiations for equitable compensation.

Arizona *U.S. Department of Agriculture, U.S. Forest Service*

The U.S. Forest Service owed a construction company almost \$194,000 for work already performed. After ONO intervened, the company entered into negotiations with the U.S. Forest Service and recovered payment.

Maryland *U.S. Department of the Army, U.S. Army Corps of Engineers (USACE)*

Struggling to receive payment for an invoice, a telecommunications company sought a response to a *Request for Equitable Adjustment* from USACE. ONO's intervention sparked negotiations between the two parties. As a result, a mutual agreement was reached for USACE to pay issue a payment of \$78,880.

California *U.S. Department of Defense, Department of the Navy*

A construction company filed a complaint with ONO after experiencing a long delay in receiving payment from the Department of the Navy for work performed. With assistance from ONO, the Navy issued a payment of the approximately \$1.2M owed.



PENALTIES AND FINES ABATEMENT

While penalties and fines vary based on circumstances, some amounts exceed what is fair respective to the size of the small business. When the Office of the National Ombudsman reviews such cases, it works for adjustments to the penalties and fines, including corrective action for official records when appropriate.

Maine *Internal Revenue Service (IRS)*

The IRS fined a convenience store \$5,000 for a missing notice sticker on a kerosene pump, informing anyone buying the kerosene of the penalty for reselling the fuel. Although the business ordered the sticker prior to the random fuel inspection, it did not place the sticker on the pump until the compliance officer was at the site. ONO's inquiry into the matter prompted the IRS to convene an appeals conference. The two parties reached a settlement, resulting in a reduced penalty of \$2,000.

Pennsylvania *Internal Revenue Service (IRS)*

A biotechnology company requested abatement of the assessed penalties due to a misunderstanding and limited knowledge of tax filing requirements. Upon receiving a request from ONO, the IRS looked into the issue and fully abated the penalty.

REVERSED DECISIONS

Upon ONO's request to undertake a higher level review of a case, Federal agencies have—in some instances—reconsidered their position on a given issue and reversed their initial decision. The following are illustrative examples of decisions that were reversed to the benefit of small business owners who have filed with us.

Massachusetts *U.S. Small Business Administration (SBA), Office of 8(a) Business Development*

The SBA Office of 8(a) Business Development made multiple errors in denying a program management company's 8(a) application. Upon completion of a higher level review requested by ONO, SBA approved the application for participation in the 8(a) Business Development Program.

Pennsylvania *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*

A Medicare Advantage Organization audit claimed a cancer treatment provider received an overpayment of \$1,057. The Medicare Advantage Organization intended to deduct it from the provider's reimbursements. Upon completion of a higher level review requested by ONO, CMS identified an error in their audit. The Medicare Advantage Organization subsequently paid \$481 owed to the clinic.

Virginia *U.S. Small Business Administration (SBA), Office of 8(a) Business Development*

SBA's Richmond District Office erroneously calculated a staffing firm's 8(a)/non-8(a) percentages and alleged that the firm took excessive withdrawals, preventing them from receiving future 8(a) sole source awards. Upon further examination at the request of ONO, the District Office determined that the firm had not, in fact, exceeded the withdrawal requirement. Subsequently, the restriction placed on the company was lifted.

CLAIMS DENIED AND PROCESSING CLAIMS

Denial of claims and delays in receiving payment for patient services rendered due to administrative errors on the part of medical insurance companies have had a significant, adverse impact on small business healthcare providers. ONO has worked on behalf of providers to rectify the errors, resulting in payment of claims. The examples below are illustrative.

California *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*

A Medicare Advantage Organization requested medical records from a healthcare provider that provided 78 episodes of patient care within 10 days instead of 14 days, and denied payments on several claims. The Medicare Advantage Organization also provided no reason for the denial of claims and requested a refund of payments. At ONO's request to research the matter, the healthcare provider received clarification of the request for medical records in 10 business days, equating to 14 calendar days per the contract. The Medicare Advantage Organization dismissed its initial audit and its request for a refund of payments.

Michigan *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*

A Medicare Advantage Organization rejected several claims for chemotherapy with no clear reason even after the cancer treatment center used the same codes and diagnosis for a previous payment. At the request of the healthcare provider, ONO reached out to the Medicare Advantage Organization to get the issue resolved. The Medicare Advantage Organization reprocessed the claims and issued payment.

North Carolina *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*

A Medicare Advantage Organization failed to make payments to a cancer treatment center even after it had authorized the treatments. After ONO intervened, the Medicare Advantage Organization reprocessed three claims and paid the \$19,270 owed.

Ohio *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*

A Medicare Advantage Organization denied a claim due to processing errors. After ONO wrote to the Medicare Advantage Organization requesting a higher level review of the claim, the Medicare Advantage Organization reprocessed the claim and paid the healthcare provider.

Texas *U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services*

A Medicare Advantage Organization conducted a pre-payment audit of an ophthalmology practice, which took over a year to complete. During the audit, payments were delayed on cases more than 120 days old. Upon the request of ONO, the Medicare Advantage Organization removed the ophthalmology practice from the pre-payment review list and sent a list of claims for payment release upon receipt of medical records supporting documentation.

ADDITIONAL CASES

Federal Agency	State	Industry	Issue	Outcome
Centers for Medicare and Medicaid Services	New York	Healthcare	Hold placed on payment due to processing error claiming overpayment	Hold lifted and refund provided
Centers for Medicare and Medicaid Services	Ohio	Healthcare	Underpayment on over 10 different claims	A higher level review was conducted, errors were identified, and the claims were processed
Centers for Medicare and Medicaid Services	Kentucky	Healthcare	Issues with an application for recertification of a clinic	Recertification approved and the clinic was reactivated
Centers for Medicare and Medicaid Services	Massachusetts	Healthcare	Issues with an application for Medicare certification	Following a successful site visit, provider's enrollment in Medicare was approved and a Provider Transaction Access Number (PTAN) was issued. Once the provider furnished the required information about its capital (bank statements, etc.), the PTAN was approved for billing purposes
U.S. Department of Army	Georgia	Construction	Dispute of evaluation statements regarding company performance	Contractor Performance Assessment Reporting System language was revised
U.S. Department of Army	Washington, D.C.	Government consulting	Unnecessary restriction of competition for program bid	A small business requested that an Army's requirement for a contract be solicited and set aside for Service Disabled Veteran Owned Small Businesses (SDVOSB). The Army restructured the scope of the contract because of budget constraints and decided to set-aside the follow-on contract for SDVOSBs
U.S. Department of Commerce	New Hampshire	Fishing	High cost of monitors for fishing vessels under new program	Program improvements were implemented, including adjustments and reimbursements
U.S. General Services Administration	Washington, D.C.	Nonprofit	Clause contradictory to Federal Acquisition Regulation requiring third party for-profit provider	Federal agencies were directed to remove third party for-profit provider references
U.S. Small Business Administration	Louisiana	Food service	Issues with receiving payment, inability to perform work, and long wait for funds disbursement	All outstanding issues resolved
U.S. Small Business Administration	California	Property management	An increase in the loan amount resulted in higher monthly SBA loan repayments	SBA is processing a request to re-amortize the loan
U.S. Small Business Administration	Washington	Law	Short sale approval issues with property lien	Short sale approved with additional documentation and lien released
U.S. Small Business Administration	Nebraska	Agriculture	Loan collections issues, with collection fees and uncooperative collection agent	Collection efforts ceased and remaining interest waived
U.S. Small Business Administration	New Jersey	Property management	Misapplied payments on small business loan with early payments	Payment application policy explanation and agreement to advance due date for early payments
U.S. Small Business Administration	California	Property management	Although the loan was settled, attempts were made to garnish wages and seize tax return	Collections against the small business ceased

REGIONAL SNAPSHOT

REGION 1 | 27 Cases – 2 Outreach Events

STATES

Connecticut New Hampshire
Maine Rhode Island
Massachusetts Vermont

BOARD MEMBERS

Gary Ezovski, *Slatersville, RI*
Charles Largay, *Grand Beach, ME*
Kevin Maloney, *Windsor Locks, CT*
Juliette Mayers, *Quincy, MA*
Dr. Deborah Osgood, *Exeter, NH*

REGION 2 | 22 Cases – 1 Outreach Event

STATES

New Jersey Puerto Rico
New York U.S. Virgin Islands

BOARD MEMBERS

Kenneth Franasiak, *Wheatfield, NY*
Christopher Harvell, *Newark, NJ*

REGION 3 | 48 Cases – 55 Outreach Events

STATES

Delaware Virginia
Maryland Washington, D.C.
Pennsylvania West Virginia

BOARD MEMBERS

Louis G. Hutt Jr., CPA Esq., *Columbia, MD*
Marilyn D. Landis, *Pittsburgh, PA*
Bobby Pancake, *Bear, DE*
Doña A.P. Storey, *Virginia Beach, VA*
Muriel Watkins, *Washington, D.C.*

REGION 4 | 58 Cases – 11 Outreach Events

STATES

Alabama Mississippi
Florida North Carolina
Georgia South Carolina
Kentucky Tennessee

BOARD MEMBERS

Cliftena Carter, *Fayetteville, TN*
Al Edwards, *Atlanta, GA*
Rollie Leo James, *Cherokee, NC*
Moises Montanez, *Miami FL*
Frank Knapp Jr., *Columbia, SC*

REGION 5 | 41 Cases – 5 Outreach Events

STATES

Illinois Minnesota
Indiana Ohio
Michigan Wisconsin

BOARD MEMBERS

Zach Adamson, *Indianapolis, IN*
Dave Huller, *Cleveland, OH*
Alex McQuillen, *Whitewater, WI*
David Rambhajan, *Chicago, IL*

REGION 6 | 31 Cases – 1 Outreach Event

STATES

Arkansas Oklahoma
Louisiana Texas
New Mexico

BOARD MEMBERS

Tom Briones, *Albuquerque, NM*
John Michael, *Corpus Christi, TX*
Mike Mitternacht**, *Metairie, LA*

REGION 7

13 Cases – 7 Outreach Events

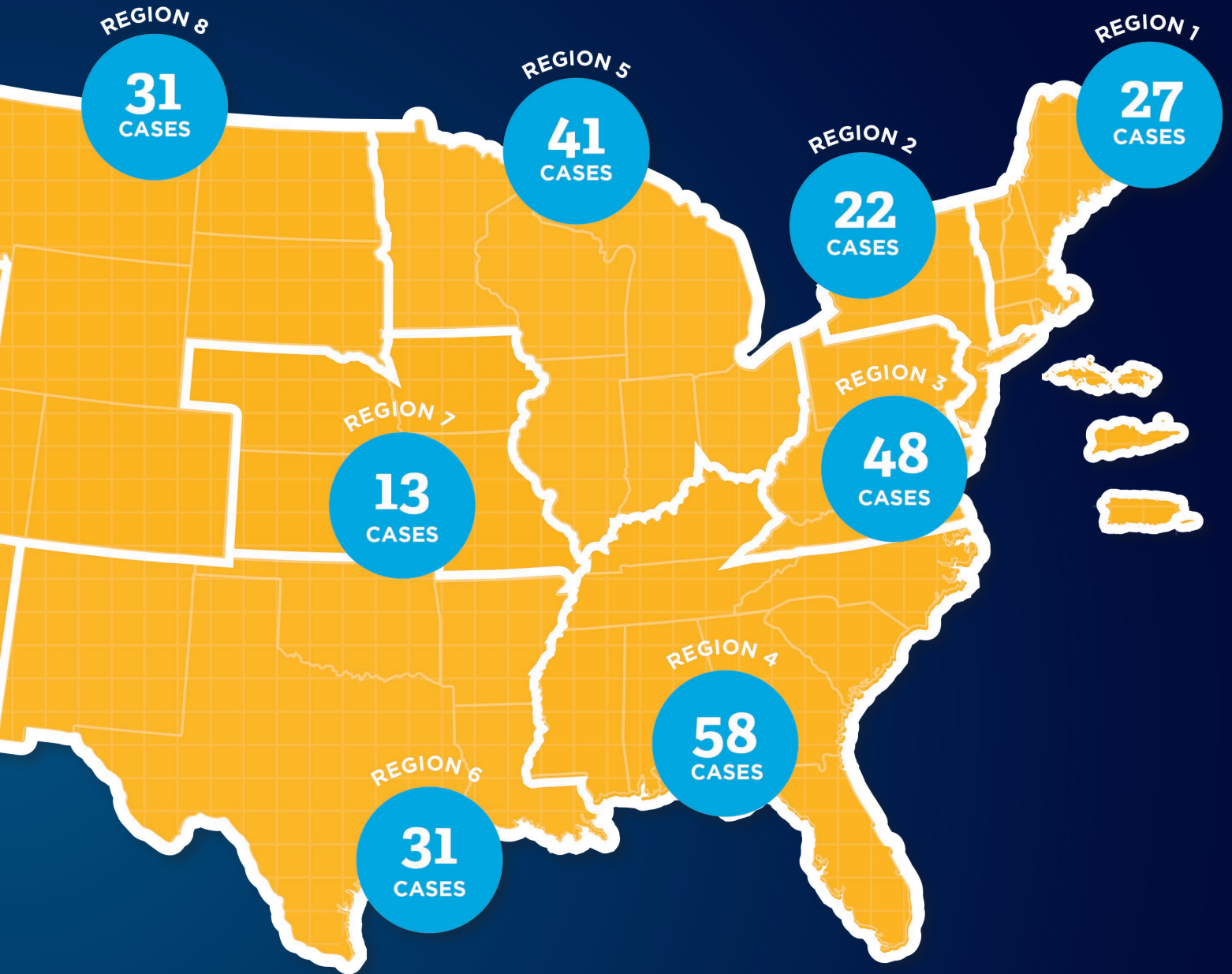
STATES

Iowa Missouri
Kansas Nebraska

BOARD MEMBERS

Cynthia Brown, *St. Louis, MO*
Joseph E. Jindra, *Concordia, KS*
Carisa L. McMullen, *Olathe, KS*





REGION 8

31 Cases - 6 Outreach Events

STATES

- Colorado
- Montana
- North Dakota
- South Dakota
- Utah
- Wyoming

BOARD MEMBERS

- Alison K. Brown, Ph.D., *Colorado Springs, CO*
- Peter M. Corroon, *Salt Lake City, UT*

REGION 9 | 38 Cases - 11 Outreach Events

STATES

- Arizona
- California
- Hawaii
- Nevada
- Territories of Guam and American Samoa

BOARD MEMBERS

- Reginald Baker, *Honolulu, HI*
- Kristine Kassel, *Tempe, AZ*
- Isabel Valdés, *San Francisco, CA*

REGION 10 | 7 Cases - 3 Outreach Events

STATES

- Alaska
- Idaho
- Oregon
- Washington

BOARD MEMBERS

- Michael Ballantyne, *Eagle (Boise), ID*
- James Houser, *Portland, OR*
- Wilfred P. Ryan, *Anchorage, AK*
- Anthony Welcher, *Seattle, WA*

OMBUDSMAN ACTIVITIES

316

**Total number of
comments (FY2016)**

190

**Non-enforcement
related cases**

121

**Enforcement
related cases**

Five cases received by the Office of the National Ombudsman were not appropriate for referral to a Federal agency for review and response.

102

EVENTS in

29

STATES

Comments received via:

Web: **197**

Testimony: **54**

E-mail: **25**

Fax: **19**

Mail: **13**

Meeting: **7**

Letter: **1**

Who filed the comments?

Small Businesses: **254**

Nonprofits: **15**

Associations: **13**

Small Government Organizations: **7**

Other: **27**

CHAPTER 04

FEDERAL AGENCIES RATINGS

At the close of each fiscal year, ONO issues a scorecard rating Federal agencies on the extent to which they have complied with Small Business Regulatory Enforcement Fairness Act (SBREFA) requirements. The ratings provide insights into how Federal agencies responded to small business regulatory burden along quality of response and timeliness dimensions, how they have improved during the previous year, and where they could further improve.

ONO rates Federal agencies on a number of criteria: responsiveness to small business concerns, the quality of those responses, compliance with SBREFA, and information provided by the agency in an annual questionnaire fielded by ONO. Each agency receives an overall grade for the fiscal year, as well as individual ratings.

ONO takes into account feedback from small business owners and entrepreneurs who formally file comments with us, issues raised by small business owners and trade associations at ONO-sponsored public hearings, roundtables, and other external outreach events, information self-reported by Federal agencies in our annual questionnaires, and observations by Regulatory Fairness Board Members. We also take into account the extent to which Federal agencies have made a concerted effort to resolve systemic issues and progress achieved to date.

The ratings help promote agency accountability and stimulate agencies to work collaboratively with small businesses and ONO to reach win/win outcomes.

Every effort is made to ensure that the ratings process is fair and transparent.

RESPONSIVENESS TO SMALL BUSINESS

Regulatory Concerns

Each Federal agency earns a letter grade in the areas identified below based on its responsiveness to small business concerns:

- *Timeliness of agency responses*
- *Quality of agency responses*

SBREFA Compliance

Each agency also earns a letter grade on the extent to which its policies governing the items below comply with SBREFA.

- *Non-retaliation against small business commenters*
- *Provision of regulatory compliance assistance to small businesses*
- *Provision of notice to small businesses of their rights under SBREFA, including the right to file a comment with ONO*

AGENCY QUESTIONNAIRE HIGHLIGHTS

All Federal agencies that interact with ONO in FY2016 received the following questionnaire. The responses by each agency to this questionnaire are taken into account in determining respective agency ratings featured on pages 28–29 of this report.

Non-retaliation Policies

Internal: Does the agency have a written non-retaliation policy available to all employees?

YES NO

If yes, please provide a copy and indicate how the policy is disseminated and what, if any, related employee training or education is provided.

Public: Does the agency have a published non-retaliation policy widely available to small entities?

YES NO

If yes, please provide a copy and indicate how the policy is disseminated (include web link if applicable).

Compliance Assistance

Internal: Does the agency provide small businesses with regulatory compliance assistance in the form of generally applicable written compliance guidance, or similar written information?

YES NO

If yes, please provide copies and indicate how that assistance is disseminated (include web link(s) if applicable).

Public: Does the agency provide small business compliance assistance (e.g., training or counseling) other than generally applicable written guidance?

YES NO

If yes, please describe this assistance, how it is provided (in writing or otherwise), indicate whether individually tailored compliance assistance is provided to small businesses, and state the name of the designated agency compliance contact.

SBREFA Notification

Internal: Does the agency provide public notice regarding small entities' rights under SBREFA, including the right to file a comment with the National Ombudsman?

YES NO

If yes, please provide a copy and indicate how the notice is disseminated (include web link(s) if applicable).

Public: When the agency issues a citation, notice of regulatory violation, charge of violation, or the like to a particular small business, is written notice of small entities' SBREFA rights included in the issuance?

YES NO

If yes, please include samples of the written notice(s) provided.

1

TIMELINESS OF RESPONSES

Response times are measured from the date ONO forwards a small business comment to an agency to the date the agency's response is received. "Days" are defined as business days.

- 30 days or fewer (A)
- 31-60 days (B)
- 61-90 days (C)
- 91-120 days (D)
- More than 120 days (F)

2

RESPONSE QUALITY

ONO considers the specificity and detail provided in each agency's response and determines ratings according to whether:

- *The agency provides detailed information demonstrating that it investigated the facts of the specific case and the actions of the agency personnel involved.*
- *The agency response comes from a high-level representative, such as an agency official with SBREFA responsibilities or someone from the program office with oversight responsibilities related to the comment.*
- *The agency addresses all applicable questions posed and responds to the specific comment made by the small entity.*

When forwarding a comment, ONO may include questions necessary to assess agency responsiveness. The answers shed light on aspects of responsiveness, including how thoroughly the agency considered the effects of its actions and whether appropriate follow-up occurred.

Examples include: "Why and how did you take the enforcement action?" and "Did your agency consider alternatives such as waiving penalties or reducing fines?"

3

AGENCY NON-RETALIATION POLICY

"Non-retaliation" policies are defined as policies designed to prevent acts that punish a small business for complaining or commenting about an agency action. An agency will receive a letter rating of "A" if it demonstrates that:

- *The agency has a written non-retaliation policy that is available to all agency employees.*
- *Small entities have access to the non-retaliation policy at the agency's public website and/or other readily available source.*

Example of an agency non-retaliation policy:

General Services Administration (GSA) — GSA is committed to maintaining an environment in which small businesses and others that participate in programs that are regulated by GSA are free to raise questions or concerns, or complain about GSA actions or policies in full confidence and without fear of retribution. No GSA employee shall take any type of retaliatory action against a small entity for raising questions, concerns, or complaining about GSA actions or policies. Employees must provide good customer service to small entities at all times by acting in a professional manner and responding appropriately to small entity concerns.

GRADING CATEGORIES (CONTINUED)

4

REGULATORY COMPLIANCE ASSISTANCE

To receive a letter grade of “A” for providing compliance assistance resources to small business, the agency must demonstrate the availability of:

- *Compliance guides and assistance as required under SBREFA as amended;*
- *A compliance assistance telephone number, website, or other compliance assistance contact for small entities;*
- *Documented compliance assistance education*

Ratings are reduced for deficient elements.

Examples of agency compliance assistance initiatives:

U.S. Department of Transportation (DOT) — DOT agencies provide an enormous amount of compliance assistance, compliance education, and guidance through agency websites, training programs, regulatory guidance documents, other guidance materials, education packages, industry conferences, pamphlets, and through audits and inspections. Ease of access to this information facilitates small business understanding of, and compliance with, its regulatory requirements.

Environmental Protection Agency (EPA) — Although businesses of all sizes can find significant compliance assistance information on the EPA website, a lot of it is directed to small business environmental compliance concerns. EPA also provides compliance information through person-to-person interaction, such as sharing tools available in hard copy, delivering free training, conducting site visits, and responding to hot lines and email inquiries.

5

SBREFA NOTICE

Compliance with SBREFA’s notice requirements remains critical to reaching all entities eligible for assistance through ONO.

Accordingly, the fifth rating evaluates whether an agency has established a policy to inform small entities of their SBREFA rights and whether notice of that policy is distributed generally or only when the agency issues a citation, charge, or notice of regulatory violation.

- *If an agency provides specific written notice of SBREFA rights to small businesses when a citation or notice of regulatory violation is issued, it will receive an “A” rating.*
- *If it does not, but the agency provides general notice to small businesses of the right to comment with the National Ombudsman’s office, it will receive a “C” rating.*
- *If the agency provides no notice regarding SBREFA rights or the Office of the National Ombudsman, the agency will receive an “F” rating.*

AGENCY AND BOARD INPUT

Federal agencies and members of the Regulatory Fairness Boards were provided the opportunity to comment on a draft of this Annual Report. This final report incorporates any substantive input provided.

Rating Criteria

NON-RETALIATION POLICIES

- *The agency has a written non-retaliation policy available to all employees and a published non-retaliation policy that is readily available to small entities online or otherwise.*
- *As used here, non-retaliation policies are those designed to prevent acts that punish small business concerns for complaining or commenting about an agency action. The agency must provide a copy of its policy and provide the web address for those policies available to the public.*

COMPLIANCE ASSISTANCE

- *The agency provides small business compliance guides and assistance as described in § 212, as amended, of SBREFA. The agency provides small entities with a compliance assistance telephone number, compliance assistance website, and/or a designated compliance assistance contact available to small business concerns. The agency provides, and is able to document, compliance assistance education.*

SBREFA NOTIFICATION

- *The agency provides public notice of small entities' SBREFA rights, including ONO's complete contact information.*
- *When each citation or notice of regulatory violation is issued, the agency provides written notice to small entities about their right to comment about the enforcement/compliance process to ONO.*

SUPPLEMENTAL INFORMATION

An agency is encouraged to submit additional information that demonstrates how it meets SBREFA requirements. This may include specific examples illustrating how the agency promotes regulatory enforcement and compliance fairness for small entities, including individualized compliance assistance, the amount of fines abated, or other appropriate accommodations.

FY2016 AGENCY RATINGS

Cabinet Agency	Comments ^		SBREFA Compliance			Overall
	Response Timeliness	Response Quality	Non-Retaliation Policies	Compliance Assistance	SBREFA Notification	
Agriculture						
Food Safety & Inspection Service	C	A	A	A	A	A
Animal & Plant Health Inspection Service	B	A	A	A	A	A
Commerce						
National Oceanic & Atmospheric Administration (NOAA)	A	A	A	A	A	A
Bureau of Industry and Security (BIS)	N/C	N/C	A	A	A	A
Defense + Sub Agencies	N/C	N/C	N/A	N/A	N/A	N/A
Education	N/C	N/C	A	A	A	A
Energy	N/C	N/C	A	A	C	B
Health and Human Services						
Food & Drug Administration	A	A	A	A	A	A
Centers for Medicare & Medicaid Services	A	A	A	A	C	A
Homeland Security						
Coast Guard	A	A	A	A	A	A
Customs & Border Protection	F+	A	A	A	A	B
Immigration & Customs Enforcement	N/C	N/C	A	C	A	B
Citizenship and Immigration Services	A	A	A	C	C	B
Housing & Urban Development	N/C	N/C	A	A	A	A
Interior	N/C	N/C	A	A	C	B
Justice	N/C	N/C	A	A	N/A	A
Labor						
Occupational Safety & Health Administration	A	A	A	A	A	A
Wage & Hour Division	A	A	A	A	A	A
Mine Safety & Health Administration	N/C	N/C	A	A	A	A
Employee Benefits Security Administration (EBSA)	N/C	N/C	A	A	C	B
Small Business Administration						
8(a) Business Development	D	A	A	A	A	B
Office of Financial Asst.	A	A	A	A	A	A

FY2016 AGENCY RATINGS (CONTINUED)

Cabinet Agency	Comments ^		SBREFA Compliance			Overall
	Response Timeliness	Response Quality	Non-Retaliation Policies	Compliance Assistance	SBREFA Notification	
State	N/C	N/C	A	A	A	A
Transportation						
Federal Aviation Administration	B	A	A	A	A	A
Treasury						
Internal Revenue Service	B	A*	A	A	A	A
Veterans Affairs	N/C	N/C	F	A	F	D
Consumer Product Safety Commission	N/C	N/C	A	A	A	A
Environmental Protection Agency	A	A	A	A	A	A
Equal Employment Opportunity Commission	N/C	N/C	A	A	A	A
Federal Communications Commission	N/C	N/C	A	A	C	B
Federal Deposit Insurance Corporation	N/C	N/C	A	A	N/A	A
Federal Energy Regulatory Commission	A	A	A	A	A	A
Federal Reserve Board	N/C	N/C	A	A	N/A	A
Federal Trade Commission	N/C	N/C	A	A	A	A
General Services Administration	N/C	N/C	A	A	N/A	A
National Credit Union Administration	N/C	N/C	A	A	N/A	A
National Labor Relations Board	A	A	A	N/A	N/A	A
National Science Foundation	N/C	N/C	A	A	A	A
Pension Benefit Guaranty Corporation	N/C	N/C	A	A	A	A
Securities and Exchange Commission						
National Aeronautics and Space Administration	N/C	N/C	A	A	A	A
Social Security Administration (SSA)	N/C	N/C	N/A	N/A	N/A	N/A

*Response quality rating is based on responses to FY2012, FY2014, and FY2015 cases received in FY2016

EXEMPLARY AGENCIES

U.S. Coast Guard — consistently timely and high quality responses

U.S. Small Business Administration, Office of Financial Assistance — consistently timely, responsive, and high quality responses with detailed background information

“The Ombudsman cannot overrule a regulation. But you do want somebody to shine a bright light on it.”

Marilyn Landis, a Region 3 Regulatory Fairness Board member and owner of a management and consulting business in Pittsburgh, PA

CHAPTER 05

A NEW REGULATORY ENVIRONMENT FOR SMALL BUSINESSES TO GROW AND PROSPER

Looking ahead, the Office of the National Ombudsman will work to advance the President's and SBA Administrator's vision of revitalizing the spirit of entrepreneurship and support the President's ambitious regulatory reform agenda.

DELIVER UPON OUR UNBRIDLED COMMITMENT TO RESOLVING REGULATORY COMPLIANCE ISSUES ON BEHALF OF SMALL BUSINESSES IN COLLABORATION WITH FEDERAL AGENCIES

While the regulatory compliance challenges raised to our attention may be unique to each small business or industry sector, one theme is constant — many small business owners do not feel that they are being heard by Federal regulators with which they are dealing. ONO will continue to open lines of communication between small businesses and Federal agencies, escalate small business concerns to the attention of Federal regulators at the appropriate level who otherwise may not be aware of their concerns, and bring all parties to the table to resolve issues in a fair, open, and transparent manner.

To that end, we will work to build trust between ONO and Federal agencies and between Federal agencies and small business owners by creating a shared understanding of the issues, resolving points of friction, and finding common ground. We will also work to establish new relationships with Federal agencies, renew existing ties, and seize opportunities for collaboration on initiatives that would benefit small businesses. We will create new avenues for small businesses and the public to engage with Federal agencies. Lastly, we will assess small business satisfaction with Federal agencies' responsiveness to their concerns and take those responses into account in ratings of Federal agencies in future *Annual Reports to Congress*.

BROADEN AWARENESS OF HOW ONO CAN HELP

To accomplish these objectives, we will need to raise awareness of ONO's services across the small business community and inform entrepreneurs on how they could easily access our services. To that end, ONO and Regulatory Fairness Board members will expand outreach efforts directly to small business owners, and intensify their engagement with trade associations, SBA resource partners, SBA district offices, and state/local regulatory agencies to reach an even greater number of small businesses. We will continue to collaborate with the SBA Office of Advocacy to set the regulatory conditions for small businesses to grow and prosper. We will optimize use of technology to enable small businesses in remote areas to participate in our public hearings and roundtables virtually.

The Office of Advocacy works with Federal agencies before promulgation of final rules. ONO intervenes after the rules and regulations have been enacted.

BUILD REGULATORY FAIRNESS BOARDS BENCH STRENGTH

We view our Regulatory Fairness Board members as national assets. They have their fingers on the pulse on regulatory issues impacting small businesses within their respective communities. They have brought forth systemic regulatory compliance issues facing small business owners to the attention of ONO and Federal regulators. Through their advocacy efforts, they have created a sense of urgency to get issues resolved expeditiously.

Moving forward, we will strengthen the Board by filling remaining vacancies. The appointment of new Board members representing a wide range of industries, hailing from different geographic locations, and bringing their own professional networks will broaden diversity of thought and serve as the voice for industry sectors and regions that may currently be underrepresented.

We will effectively leverage working groups to address issue-specific regulatory concerns facing small businesses. These working groups address high priority concerns that cross regional boundaries.

REGULATORY COMPLIANCE ASSISTANCE

ONO will collaborate with Federal agencies to develop best practice guidelines by which Federal regulators will abide in their development of compliance education materials to help small business comply with complex rules and regulations. The guidelines will be aimed at ensuring that compliance assistance is readily accessible, user-friendly, and directs small businesses to low cost approaches to achieve compliance.

STRENGTHEN THE EFFECTIVENESS AND EFFICIENCY OF ONO OPERATIONS

We will continue to adhere to ONO's high standards with regard to quality, productivity, and timeliness in the management of its casework. We will more fully leverage technology to make a broader number of small business owners aware of the services we offer. We will invest in technology to streamline our case management workflow and improve our reporting capabilities.

President Trump has called upon every Federal agency to repeal, modify, and simplify "regulations that are unnecessary, burdensome, and harmful to the economy, and therefore, harmful to the creation of jobs and businesses." ONO will fulfill the President's and the SBA Administrator's charge by lifting the burden of unfair regulatory enforcement so that small businesses that serve as the backbone and economic engine of our Nation can grow and prosper.

As stewards of taxpayer dollars, we will consistently look for new ways to enhance the effectiveness and efficiency of ONO operations.



APPENDICES

APPENDIX A

Office of the National Ombudsman Statute Statute 15 U.S. Code § 657–Oversight of Regulatory Enforcement

(a) Definitions

For purposes of this section, the term —

(1) “Board” means a Regional Small Business Regulatory Fairness Board established under subsection (c) of this section; and

(2) “Ombudsman” means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b) of this section.

(b) SBA Enforcement Ombudsman

(1) Not later than 180 days after March 29, 1996, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

(2) The Ombudsman shall —

(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

(C) based on substantiated comments received from small business concerns and the Boards,

annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

(c) Regional Small Business Regulatory Fairness Boards

(1) Not later than 180 days after March 29, 1996, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall —

(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b) of this section.

(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

(d) Powers of Boards

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

(2) The Board may use the United States mail in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Board.



APPENDIX B

Agency Ratings Footnotes and Comments

Note | A Cabinet Department's subordinate organizational unit is listed separately if it received at least one enforcement action-related comment during the fiscal year.

N/C | No comments relating to an agency enforcement action were filed with ONO; consequently, there is no basis for scoring the timeliness or quality of responses provided to such comments.

^ | Comment timeliness and quality ratings are based on agency responses provided to ONO as of 2/1/17 (if any), which is 120 days following the close of FY2016 (120 days is the maximum time allowed for a response to receive a timeliness grade other than "F").

X | The agency failed to provide the information necessary for this statutorily mandated report pursuant to 15 U.S.C. § 631, et. seq.

N/A | Not applicable. The agency asserts that it is not subject to this aspect of SBREFA due to the nature of its charter.

† | To provide accurate and comprehensive information in response to comments received from the U.S. Small Business Administration, U.S. Customs and Border Protection exceeded the allotted time for an official response. CBP is continually working to streamline its internal processes in order to reduce the time needed to ensure a thorough response.

APPENDIX C

Office of the National Ombudsman Directory

Main Number | (202) 205-2417 | Hotline: 888-REG-FAIR

Nathan J. Miller | National Ombudsman and Assistant Administrator
for Regulatory Enforcement Fairness, Nathan.Miller@sba.gov

C. Natalie Lui Duncan | Deputy National Ombudsman, Natalie.Duncan@sba.gov

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Elahe Zahirieh | Case Management Specialist, Elahe.Zahirieh@sba.gov

APPENDIX D

Over the past two decades, the SBA Office of the National Ombudsman has joined forces with the SBA Office of Advocacy to help shape a favorable regulatory environment for small businesses to grow and thrive. The February 2016 Congressional testimonies by the then National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness, Rear Admiral Earl Gay, USN (Ret.) and the then SBA Chief Counsel for Advocacy, The Honorable Darryl DePriest, Esq., illustrate the impact of our collaboration — all to the benefit of small business owners and entrepreneurs who seek out our assistance.

**Testimony by Rear Admiral Earl L. Gay, USN (Ret.)
National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness
U.S. Small Business Administration**

House Small Business Committee
Subcommittee on Investigations, Oversight, and Regulations
Wednesday, February 10, 2016

Thank you, Chairman Hardy and Ranking Member Adams, for providing me this opportunity to comment on how the Office of the National Ombudsman (ONO) can, and does, help improve the regulatory environment for America's small businesses.

I look forward to working with this committee to improve the regulatory enforcement environment for our nation's 28 million small businesses. I am also excited that Darryl L. DePriest is now on board as the Chief Counsel for the Office of Advocacy. I meet with Mr. DePriest weekly to discuss synergies our offices execute to ensure a fair regulatory environment. We both agree that a strong working relationship with frequent communication and collaboration is critical to the SBA's mission of counseling and protecting America's small businesses against unnecessary regulatory burdens.

While the Office of Advocacy is responsible for ensuring fairness in the implementation stages of Federal regulations,

ONO works to ensure regulations are being fairly enforced once they are enacted.

Pursuant to the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), this office was created to serve as a powerful voice for America's small businesses.

In fulfilling this role, we conduct public hearings and outreach events (including roundtables and meetings) in each of SBA's 10 regions, providing small businesses with forums where they voice their comments about Federal regulatory enforcement actions without fear of retaliation.

We work with, and encourage, regulators to address entrepreneurs' comments and concerns promptly, and wherever possible, to opt for compliance assistance and education rather than moving directly to levy penalties and fines. Additionally, in our *Annual Report to Congress*, we rate Federal agencies on the timeliness and quality of their responses to comments received from small businesses.

Our office also facilitates Regional Regulatory Fairness Boards (RegFair boards) in each of the SBA regions. Each RegFair board is comprised of five small business owners who serve as the eyes and ears for small businesses in their communities, states, and regions. They work with local small businesses to address regional concerns regarding Federal regulatory enforcement or compliance issues. These RegFair boards have been, and continue to be, vital assets and advocates. In addition to receiving comments regarding regulatory fairness, our office also receives comments regarding other issues such as contracting, access to capital, loan policy, business training, counseling, and other support.

During FY2015, our staff conducted more than 80 outreach events, four Regional Regulatory Fairness Hearings, and one National Hearing here in Washington, D.C. Through the aggressive efforts of our district and regional offices and SBA resource partners and Federal agency representatives, these roundtables and hearings continue to be very well attended and productive.

In my brief three months onboard, this office has held one Regulatory Enforcement Fairness Hearing, two small business roundtables in Nevada, and several outreach events with small business owners and entrepreneurs. I have met and established personal relationships with

senior leaders at 12 Federal agencies, discussing ways we can better work together to reduce regulatory burdens for small businesses. During the next six months, we plan on conducting several roundtables and hearings and hosting our Annual Meeting with members of the 10 regional Regulatory Fairness Boards.

It is important to note that all of our hearings, meetings, and partnership programs with small business stakeholders have been in close collaboration with other Federal agencies. We truly value their critical presence and participation.

Attached you will find a schedule of the ONO activities for FY2015, as well as the planned events for the first two quarters of FY2016.

In closing, I'd like to state that, on behalf of Administrator Contreras-Sweet, and the great staff in the Office of the National Ombudsman, we look forward to working with all of our teammates and the members of Congress to eliminate unnecessary regulatory burdens on small businesses as they continue to fuel America's economic prosperity.

I thank you again for the opportunity to appear here today and will be happy to answer any questions.

APPENDIX E

Testimony by the Honorable Darryl L. DePriest, Esq. Chief Counsel for Advocacy U.S. Small Business Administration

House Small Business Committee
Subcommittee on Investigations, Oversight, and Regulations
Wednesday, February 10, 2016

Chairman Hardy, Ranking Member Adams, and Members of the Committee,

Good afternoon. As the Chief Counsel for Advocacy, I would like to thank you for the opportunity to appear before the Committee today to discuss the Office of Advocacy and its many accomplishments during FY2015.

When the Office of Advocacy was first created in 1976, it was charged with providing small businesses with an independent and credible voice in the Federal rulemaking process. Too often, small businesses have been unduly burdened by one-size-fits-all regulations from Federal agencies.

During the past 40 years, the Office of Advocacy has facilitated greater consideration of small business impacts through economic research, regulatory flexibility

trainings, comment letters, roundtables, publications, and collaboration with Federal officials throughout government. Federal agencies treat Advocacy as a partner in the rulemaking process in the effort to reduce the regulatory burden on small business.

As the seventh Senate-confirmed Chief Counsel, I will ensure that the office continues to work with Federal agencies to mitigate the potential costs of regulation on small entities. To further describe our dedication to this cause, I would like to update you on Advocacy's efforts and accomplishments on behalf of small business during FY2015.

Regulatory Outreach

From draft until final proposal, Advocacy engages Federal officials throughout the entire rulemaking process.

Advocacy's roundtables, comment letters, and interagency discussions are vital to alerting Federal officials to the potential impacts on small entities and producing alternatives to help reduce any burdens.

Roundtables

Advocacy's regulatory roundtables gather Federal officials, trade associations, and small business stakeholders from across the country for substantive presentations and open discussions about regulatory issues. During FY2015, Advocacy hosted 21 roundtables to highlight the concerns of small businesses on a wide range of topics that included: (1) occupational exposure limits and other safety requirements, (2) overtime pay, (3) regulation of small drones, (4) Federal procurement, (5) national emission standards, and (6) tax reform.

Notably, our staff conducted roundtables in Louisville, New Orleans, and Washington, D.C. to discuss the new overtime pay regulation, and in Des Moines, Albuquerque, and Washington, D.C. to discuss new Federal procurement regulations.

Comment Letters

Once a proposed rule has been published and is open for public comment, Advocacy will often submit written comments voicing the concerns of small entities. These comment letters are a major tool used by Advocacy to ensure Federal officials consider the impacts on small business, as Federal agencies are compelled by statute to respond. During FY2015, Advocacy submitted 28 comment letters to 15 different agencies on a variety of issues.

Regulatory Impact

The Office of Advocacy has worked for nearly 40 years to create a more flexible regulatory environment for small business in the United States. Advocacy's positive impact on the Federal rulemaking process can be seen in many ways: (1) as first-year cost-savings, (2) as greater consideration of small business concerns in particular areas, and (3) as greater compliance with the RFA by Federal agencies. Taking each of these parts into account provides an accurate portrayal of Advocacy's success.

Cost Savings

During FY2015, Advocacy achieved over \$1.6 billion in first-year cost savings as a result of its efforts on behalf of small business. Generally, savings come from the difference in cost between the proposed rule and the final rule. These savings resulted from 11 separate rules proposed by five different agencies: (1) the Department of Energy, (2) the Food and Drug Administration, (3) the Occupational Safety and Health Administration, (4) the Bureau of Land Management, and (5) the Environmental Protection Agency.

For the majority of rules, the first-year cost-savings arises from a one-time implementation cost. However, for rules such as OSHA's final Cranes and Derricks in Construction rule, the first-year cost savings arises from a delay in implementation over a number of years. Under the Cranes and Derricks in Construction final rule, the initial implementation of the rule was delayed for three years. Advocacy's efforts resulted in over \$13 million in savings for each year, saving small businesses \$40 million cumulatively over those three years.

Greater Consideration of Small Business Concerns

Advocacy's efforts have also produced positive outcomes that are not quantifiable and are not captured in cost-savings projections. Advocacy's partnering approach to Federal agencies and small business trade associations often help facilitate greater consideration of small business concerns in Federal rulemakings and Federal initiatives. For example, during FY2015, Advocacy obtained greater consideration of small business concerns in three Federal rulemakings and three Federal initiatives. Advocacy's engagement of Federal officials from the Food and Drug Administration and the Federal Communications Commission produced more flexible regulations on animal food controls and on competitive bidding rules, respectively.

Advocacy's leadership and hard work on a Federal cybersecurity framework resulted in the National Institute of Standards and Technology conducting a panel on the impacts of Federal cybersecurity regulations on small Federal contractors. Similarly, Advocacy provided valuable regulatory advice to the agencies involved in the Transatlantic Trade and Investment Partnership negotiations. Advocacy's participation in several rounds of negotiations helped garner greater consideration of small business issues on the international stage.

Greater Compliance with the RFA Advocacy has established cooperative relationships with most Federal agencies, and has successfully facilitated greater compliance with the RFA throughout the government. As Federal agencies have become more familiar with the RFA and have actively partnered with Advocacy, agencies throughout the government have produced more flexible and less burdensome regulations. Such success has been achieved through Advocacy's respected publications, technical assistance, and formal trainings on the RFA. Since 2002, Advocacy has conducted formal trainings on RFA compliance for Federal agencies and other stakeholders. These trainings have been a valuable resource in achieving greater regulatory flexibility and greater consideration of small business concerns. Over the past 13 years, Advocacy has conducted trainings for 18 Cabinet-level departments and agencies, 67 separate component agencies and offices, 22 independent agencies, and various special groups

including Congressional staff, small business organizations, and trade associations. In FY2015 alone, Advocacy conducted training for 126 Federal officials from a variety of different agencies, exceeding our annual goal by over 25 percent.

In addition to these formal training, Advocacy offers Federal agencies technical assistance regarding RFA compliance. Throughout the rulemaking process, Advocacy is in daily contact with agencies to provide technical assistance in complying with the RFA. Such assistance can include: (1) estimates of the numbers of businesses likely to be affected by a proposal, (2) legal opinions on RFA issues, (3) the review of draft materials, (4) arranging roundtables with affected industry representatives, and (5) other assistance specific to each case.

Economic Research and Outreach

Since its creation, Advocacy has provided current and policy-relevant information on important issues affecting small businesses. During FY2015, the Office of Advocacy provided small business owners, researchers, policymakers, and other stakeholders with 26 contracted and internal research publications on several topics relevant to today's economy, including: (1) access to capital, (2) employment, (3) innovation, (4) veterans, and (5) minority- and women-owned businesses.

During FY2015, Advocacy also established a new program series entitled "Small Business Economic Research Forums." These forums provide interested parties with an opportunity to discuss relevant small business issues with our research team and other stakeholders. These forums also inform Advocacy's staff of the cutting-edge topics that are affecting small businesses across the country. During the series' inaugural year, eight research forums were held on topics such as consumer credit, student loan debt, tax exemptions, and new sources of capital.

Communications Outreach

Advocacy's information team keeps in touch with concerned stakeholders through Advocacy's website, various publications, email alerts, and social media presence. Our monthly newsletter, *The Small Business Advocate*, reaches nearly 37,000 electronic subscribers. In addition, our specialized email alerts provide valuable information to thousands more, including over 28,000 research subscribers and over 25,000 regulatory subscribers. Advocacy also frequently updates stakeholders on Facebook, Twitter, and Advocacy's blog.

Regional Advocates

The 10 Regional advocates play a vital role in maintaining an open dialogue with the vast majority of small entities that operate outside of the Washington, D.C. area. They interact directly with small business owners, small business trade associations, and state officials to educate them about the benefits of regulatory flexibility. Regional advocates conduct outreach to identify areas of concern for small business and assist headquarters staff with specific actions, such as recommending participants for Small Business Regulatory Enforcement Fairness Act panels that require small entity representatives. They also alert businesses in their respective regions about regulatory proposals that could affect them. During FY2015, Advocacy's regional advocates participated in more than 500 outreach events, exceeding their annual goal of 360.

Conclusion

In closing, I would like to thank the Committee and its staff for its continued support of the Office of Advocacy. As Chief Counsel, I look forward to working closely with you on the important issues affecting small entities across this country. If there are any questions, I would be pleased to answer them.

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2016 ANNUAL REPORT TO CONGRESS

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