

Office of the National Ombudsman Report to Congress

Fiscal Year 2012

The logo for the U.S. Small Business Administration (SBA). It features the letters 'SBA' in a bold, white, serif font. The letter 'A' is stylized with a blue triangle on its right side. The logo is set against a dark red background.

SBA

U.S. Small Business Administration

Office of the National Ombudsman Report to Congress for Fiscal Year 2012

Jeanne Hulit
Acting Administrator

Brian M. Castro
National Ombudsman and
Assistant Administrator for Regulatory Enforcement Fairness



Contents

Message from the Acting Administrator.....	v
Introduction by the National Ombudsman.....	vii
Mission of the Office of the National Ombudsman.....	ix
Regional Regulatory Fairness Boards.....	xi
I. Overview.....	1
II. Connecting with America’s Small Businesses.....	5
III. Delivering Big Results for Small Business.....	13
IV. Promoting Accountability and Regulatory Enforcement Fairness.....	17
Appendix: Organizational Chart	25

Message from the Acting Administrator

On behalf of the SBA, I am pleased to present the Report to Congress of our Office of the National Ombudsman for Fiscal Year 2012.

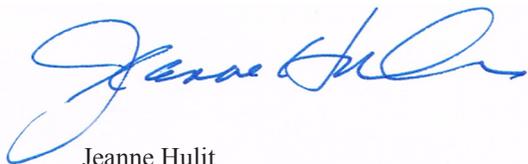
This report highlights the achievements of the Office of the National Ombudsman (ONO), including its work to support the creation, growth, and success of America's small businesses. Faced with Federal rules that often were crafted to regulate big business and global companies, many small businesses confront unique and many times extremely significant obstacles to regulatory compliance and – ultimately – to their long-term success. In those situations and many others, ONO does vital work to bridge the gap between Federal regulators and the small businesses they regulate by finding resolutions that achieve the intended regulatory goal, while at the same time helping businesses to function and even thrive. The resources available to small businesses through ONO are a key part of this Administration's ongoing initiatives aimed at ensuring that small businesses – the nation's driving force of job creation – are not unreasonably burdened by unintended consequences of Federal regulations.

In FY 2012, the Office of the National Ombudsman processed 254 small business comments or complaints of varying degrees of complexity; responded to over 2,500 public inquiries; identified, recruited, and appointed 13 Regional Regulatory Fairness (RegFair) Board members; held the annual RegFair Board meeting; and submitted its FY 2011 Annual Report to Congress. To connect directly with small business owners, the Ombudsman held 22 roundtables and 13 meetings for small businesses, with the participation of RegFair Board members in every region.

Through Executive Order 13563, *Improving Regulation and Regulatory Review*, President Obama directed all agencies to ensure that every Federal regulation – whether new or existing – uses the best, most innovative, and least burdensome tools to achieve its regulatory objective. These activities illustrate just part of the work the SBA is doing to implement that mandate, particularly when it comes to rules and regulations that disproportionately impact small businesses.

SBA also changed the way we provide tools and advice to small businesses by re-vamping our signature event, National Small Business Week, to provide more events locally and online for the first time.

These efforts will strengthen America's small businesses and entrepreneurs and make sure they continue to be the backbone of our nation's economy.



Jeanne Hulit
Acting Administrator



Introduction by the National Ombudsman

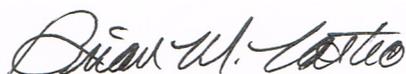
The vitality and continued expansion of the American economy depend, in large measure, on the capacity of new and existing small businesses to succeed and innovate in an intensely competitive and increasingly global marketplace. In just the few weeks I've been on the job at the SBA, already I've heard a clear, consistent message from small business owners and entrepreneurs around the country: among the top challenges they confront – in addition to the need for skilled workers and access to capital – is successfully navigating the array of Federal regulations that apply to their businesses.

Major corporations have legal departments, compliance officers, and outside lawyers to help them comply with the same regulations that often also impact much smaller ventures, including sole proprietors and startups. The SBA's Office of the National Ombudsman (ONO) exists to help small business owners, as well as non-profit organizations and small government entities, as they work to understand and comply with the requirements of Federal regulations, resolve disputed matters with Federal regulators, and ultimately thrive in the marketplace.

Government regulations must keep Americans safe and protect the public health and our environment, while cultivating a strong small business economy that promotes growth, innovation, and job creation. President Obama underscored this mandate in issuing Executive Order 13563, *Improving Regulation and Regulatory Review*. That Order directs all Federal agencies to assess existing and new regulations in order to identify those that are outmoded or ineffective, as well as those rules that can be streamlined to make each agency's regulatory program more effective and less burdensome.

The ONO team strives every day to meet this charge by working across the Federal government with our agency partners to find smart, effective, and innovative approaches to regulatory enforcement and compliance for the small business community; by assisting individual small business entities facing regulatory enforcement actions and compliance issues; and through outreach events across the country with small business owners and local representatives of Federal agencies. This Report to Congress for Fiscal Year 2012 describes that work, and the important contributions of the Regional Regulatory Fairness Boards, each of which plays an invaluable role in expanding the reach and impact of ONO.

In the coming fiscal year, all of us in the Office of the National Ombudsman are eager to continue this work, while expanding on the areas where we have been successful and identifying new ways to help ease unnecessary regulatory burdens for American small businesses.



Brian M. Castro
National Ombudsman and
Assistant Administrator for Regulatory Enforcement Fairness

MISSION OF THE OFFICE OF THE NATIONAL OMBUDSMAN

- *The mission of the Office of the National Ombudsman is to assist small businesses that experience excessive or unfair regulatory enforcement actions involving a Federal agency.*

The Office of the National Ombudsman was created by the Small Business Regulatory Enforcement Fairness Act of 1996. The law promotes a regulatory environment that is friendly to small business by directing the National Ombudsman, in partnership with other Federal agencies, to:

- Work with each Federal agency having regulatory authority over small businesses to provide small business concerns a means to comment on compliance and enforcement activities impacting them.
- Establish and maintain a confidential process for collecting comments from small businesses about regulatory enforcement and compliance actions by Federal agency personnel.
- Submit to Congress annually an evaluation of regulatory enforcement activities, to include ratings on the responsiveness of agencies to small business concerns. These assessments are based on substantiated comments received directly from small business owners and through ten Regional Regulatory Fairness (RegFair) Boards.
- Conduct public events with Regulatory Fairness Board members in each SBA region to listen to and record comments from small business owners and representatives of small business on Federal regulatory enforcement and/or compliance activities.

Regional Regulatory Fairness Boards

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which created the Office of the National Ombudsman, also created five-member Regional Regulatory Fairness Boards in each of the SBA's ten regions. The members of the Regulatory Fairness Boards represent the small business community to provide insights on immediate regulatory challenges facing small business owners—perspectives that are critical to eliminating ineffective, duplicative, or outmoded regulatory barriers to small business.

SBREFA directs the Boards to:

- Meet at least annually to advise the National Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies.
- Report to the National Ombudsman on substantiated instances of excessive enforcement actions by agencies against small businesses, including findings or recommendations concerning agency enforcement policy or practice.
- Provide comment to the National Ombudsman on the draft annual report.

Board members are small business owners, officers, or operators and are appointed to three-year terms by the SBA Administrator, serving without compensation.

The following individuals served as Regulatory Fairness Board Members during all or part of Fiscal Year 2012. The Office of the National Ombudsman is grateful for and wishes to acknowledge their vital contributions to the work of ONO on behalf of small businesses throughout the country.

Region I

Deborah A. Osgood, Board Chair
Knowledge Institute
Exeter, NH

Robert J. Kane
KarTele
Waterbury, CT

Charles L. Largay
Yankee Logic LLC
Grand Beach, ME

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

Gary S. Ezovski
Lincoln Environmental Properties, LLC
Slatersville, RI

Region II

W. Brian Maillian, Board Chair
Whitestone Capital Group, Inc.
New York, NY

Christopher Harvell
Dental Kids, LLC
Newark, NJ

Howard Horowitz
Elite Marketing Group
New Hyde Park, NY

Don Perry
Shiva's Karma, LLC
Monroe, NY

Gloria J. Benitez de Rodriguez
Rod Ben International DBA SHRED-IT
San Juan, PR

Region III

Louis G. Hutt, Jr., CPA Esq., Board Chair
Bennett Hutt & Co.
Columbia, MD

Brooks Hulitt
Droxel Hamilton, LLC
Philadelphia, PA

Marilyn D. Landis
Basic Business Concepts, Inc.
Pittsburgh, PA

Doña A.P. Storey
GOVtips, LLC
Virginia Beach, VA

Muriel Watkins
MW Financial, Inc.
Washington, DC

Region IV

William Jackson Patton, Board Chair
Kratos Defense & Security Solutions, &
DEI Services Corporation
Winter Park, FL

Cliftena Carter
CSCI
Fayetteville, TN

Stanley L. King
S.L. King & Associates, Inc.
Atlanta, GA

Willie G. Lucas
JSL Development Center, Inc.
Wilson, NC

Emilio Pérez
Emilio Pérez, LLC
Goldenrod, FL

Region V

Robert A. Kulp, Board Chair
Kulp's of Stratford, LLC
Stratford, WI

Iris Cooper
JustAskIris!
Columbus, OH

Craig K. Freedman
Freedman Seating Company
Chicago, IL

Joseph J. Montel
Coleman Stevenson & Montel
Indianapolis, IN

William Howard Morris
Prairie & Tireman
Detroit, MI

Region VI

John A. Michael, Board Chair
Naismith Engineering, Inc.
Corpus Christi, TX

Kay C. Bills
Strategic Native American Partnership,
LLC
Oklahoma City, OK

Dr. Ernest L. Johnson, Sr.
Developers & Managers Group, LLC
Baton Rouge, LA

Anna Muller
NEDA Business Consultants, Inc.
Albuquerque, NM

Region VII

Cynthia (Cindy) Brown, Board Chair
Shred-it, Brown Germann Enterprises, Inc.
Hazelwood, MO

Joseph E. Jindra
KNCK, Inc.
Concordia, KS

Carisa L. McMullen
Landworks Studio, LLC
Olathe, KS

Jennah Purk
Purk & Associates, P.C.
St. Louis, MO

Nate Weaton
Tigerhawk Proteins, LLC
Fairfield, IA

Region VIII

Michael J. Stransky, Board Chair
GSBS Architects
Salt Lake City, UT

Alison K. Brown, PhD
NAVSYS Corporation
Colorado Springs, CO

Sheryl Garling
R and D Enterprises, Inc.
Casper, WY

Steven M. Marks
Marks Lumber
Clancy, MT

Danton B. Rice
PrintingForLess.com
Livingston, MT

Region IX

Eddy N. Kemp, Board Chair
E.N. Kemp & Associates, Inc.
Kaneohe, HI

Ernest J. Reyes
Network Realty
San Diego, CA

James Settelmeyer
Settelmeyer Ranches Incorporated
Minden, NV

Ronald W. Wong
Imprenta Communications Groups, Inc.
Alhambra, CA

Cynthia Wrasman
MJC Solutions, Inc. & Women Winning
Worldwide
Paradise Valley, AZ

Paul C. Wright
Berkeley Policy Associates
Oakland, CA

Region X

David M. Hart, Board Chair
Continental Mapping Consultants, Inc.
Portland, OR

Richard G. Gaspar
Gaspar's Construction
Seattle, WA

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

Anthony Welcher
21st Century Communications
Bellevue, WA

I Overview

The Office of the National Ombudsman assists small businesses when they experience excessive or unfair regulatory enforcement actions involving a Federal agency. Created in 1996 by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Office was placed within the U.S. Small Business Administration to be a resource for small business owners and other entrepreneurs facing compliance or enforcement problems stemming from Federal regulations.

To promote a regulatory environment that is friendly to small business, SBREFA directs the National Ombudsman to establish a system for receiving comments from small businesses that receive or are subject to compliance or enforcement related activities or contacts from Federal agencies, including audits, inspections, and compliance assistance efforts. Accordingly, the Office of the National Ombudsman offers a channel for small business owners to register their compliance and enforcement concerns relating to Federal regulations, then work with regulators through ONO toward resolution.

The Comment Process

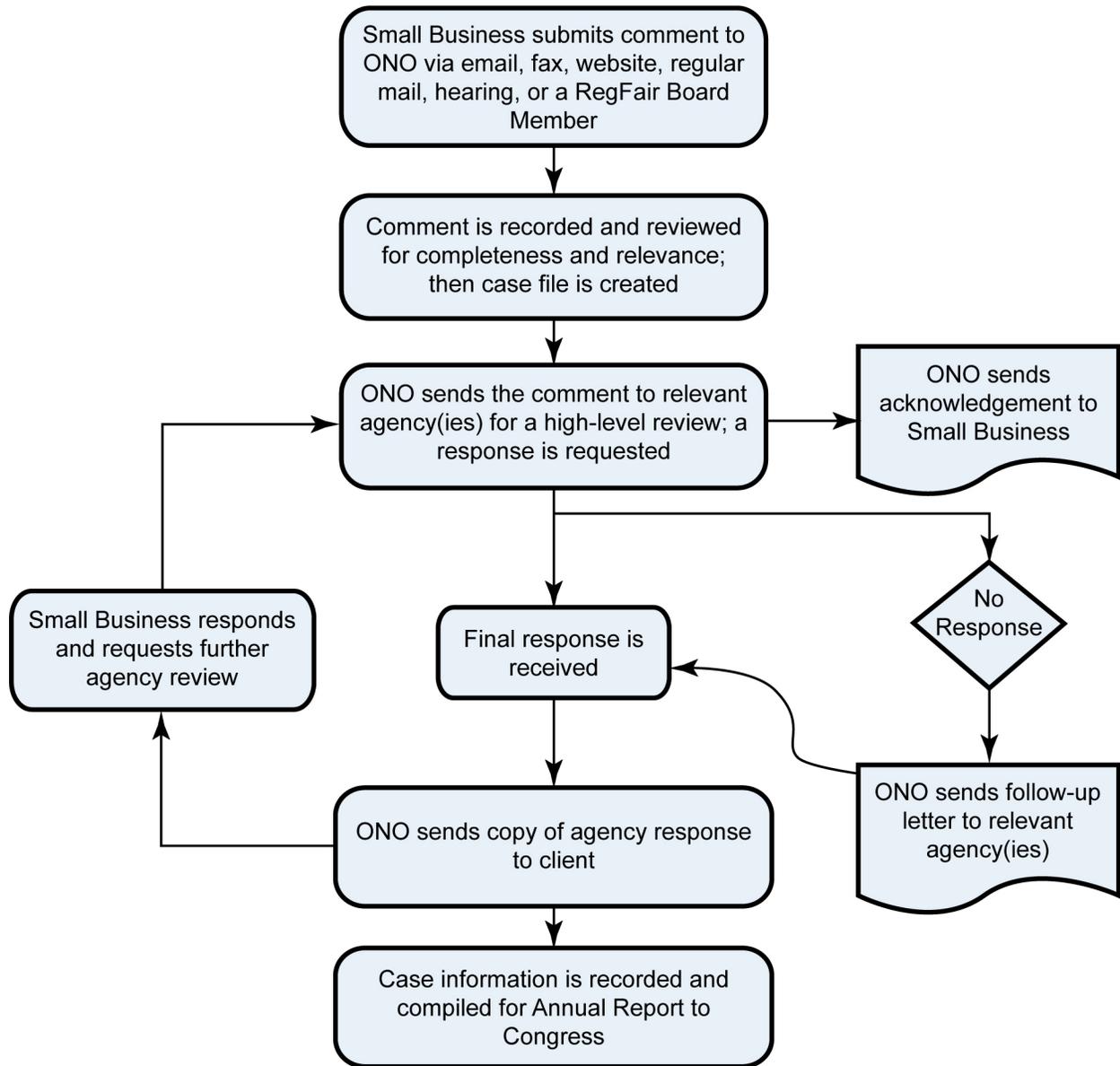
The Ombudsman's comment process (see Figure I-1) begins when a small

business files a "comment" form with ONO describing the compliance or enforcement activities by a Federal agency. Small businesses report issues regarding actions by more than 35 Federal departments and agencies, each of which implements regulations that impact small business. Comments are received through the Ombudsman's website, mail, fax, and electronic mail.

The National Ombudsman then contacts the Federal agency official(s) with authority to address the situation. The agency investigates the matter raised by the small business commenter, undertakes a high-level review of the fairness of the regulatory action taken, and provides ONO with a report of its findings and a response to the small business. ONO reviews these responses, which it provides to the commenters, and assesses the substance and timeliness of the responses provided. Collectively, these agency responses and assessments by ONO constitute the basis for the agency ratings contained in this Annual Report to Congress.

Below is an overview of the contents of this Report.

FIGURE I-1. COMMENT PROCESS



Chapter II. Connecting with America's Small Businesses

Chapter II describes the outreach initiatives of ONO in FY 2012, including small business roundtables with Regulatory Fairness Board members in every region, meetings with government and non-profit partners, and media engagement. Details of individual outreach events are set out in the tables.

Chapter III. Delivering Big Results for Small Business

The cases outlined in Chapter III are provided to illustrate regulatory issues that were reported by multiple small businesses in FY 2012. These issues include:

- Regulatory Misapplication or Misinterpretation
- Miscommunication
- Administrative Errors and Delays
- Fines and Other Compliance Costs

Chapter IV. Promoting Accountability and Regulatory Enforcement Fairness

Finally, the agency rating process and components are set out in Chapter IV, which also includes examples of policies implemented by various Federal agencies pursuant to SBREFA mandates. These ratings reflect SBREFA compliance with regard to policies on non-retaliation against small business commenters; provision of compliance

assistance and notice of SBREFA rights to small businesses; and the timeliness and quality of responses to small business concerns.

In FY 2012, federal agencies across government demonstrated a strong commitment to smart, effective regulation that fits small business and works for America. While work remains to be done to fully engage every relevant agency in the ONO process, most agencies achieved substantial compliance with the requirements of SBREFA both in terms of agency policy and in the resolution of concerns raised by individual small enterprises.

The Office of the National Ombudsman is especially grateful for the collaboration of those agency partners that supported our efforts on behalf of small business by actively working with us to resolve the hundreds of regulatory enforcement and compliance issues reported by individual small businesses. Beyond enabling this Office to fulfill its mandate under SBREFA, our partnerships with these agencies returned tangible and often significant financial benefits to small businesses throughout the country – benefits including refunds of fees improperly assessed, payment of invoices long overdue to small government contractors, and adjustment of fines and penalties to levels that further the aims of government regulation but also allow small businesses to come into compliance while staying open for business.

II

Connecting with America's Small Businesses

Outreach is critical to the effectiveness of the Office of the National Ombudsman, enabling the Ombudsman to connect directly with small business leaders and entrepreneurs throughout the United States. These connections give the SBA insight into current regulatory challenges for small business, and at the same time enhance awareness in the small business community regarding resources available through ONO.

A host of entities amplify the efforts of the National Ombudsman to foster a regulatory environment that is good for small business. Impactful outreach is facilitated through coordination with SBA program offices, other Federal agencies, and Regional Regulatory Fairness Boards. Each of these has collaborated with ONO to host small business roundtables around the country, linking local small businesses with their government in Washington, D.C. (See Figure II-1).

Roundtables bring together the small business community and business and trade associations for dialogue with the National Ombudsman, Regional Regulatory Fairness Board members,

and, often, local representatives of Federal regulators. Participating Federal agencies explain their regulatory and compliance assistance programs, while representatives of small businesses voice concerns about specific regulatory requirements and the impact of government rules on local businesses.

During FY 2012, the Office of the National Ombudsman held 22 small business roundtables, in addition to 13 meetings with small business representatives and other stakeholders. (See Tables II-1 and II-2). RegFair Boards play a key role in facilitating and promoting these roundtables and other outreach events to maximize local participation. Board members also encourage small business owners to speak out about unfair compliance and regulatory enforcement actions without fear of retaliation. In addition to participating in hearings and roundtables, RegFair Boards monitor Federal regulatory enforcement issues that arise in their regions and advise the Ombudsman regarding those of particular concern to small businesses.

SBA Offices and Resource Partners: Collaborating for Regulatory Fairness

ONO's SBA-affiliated resource partners include:

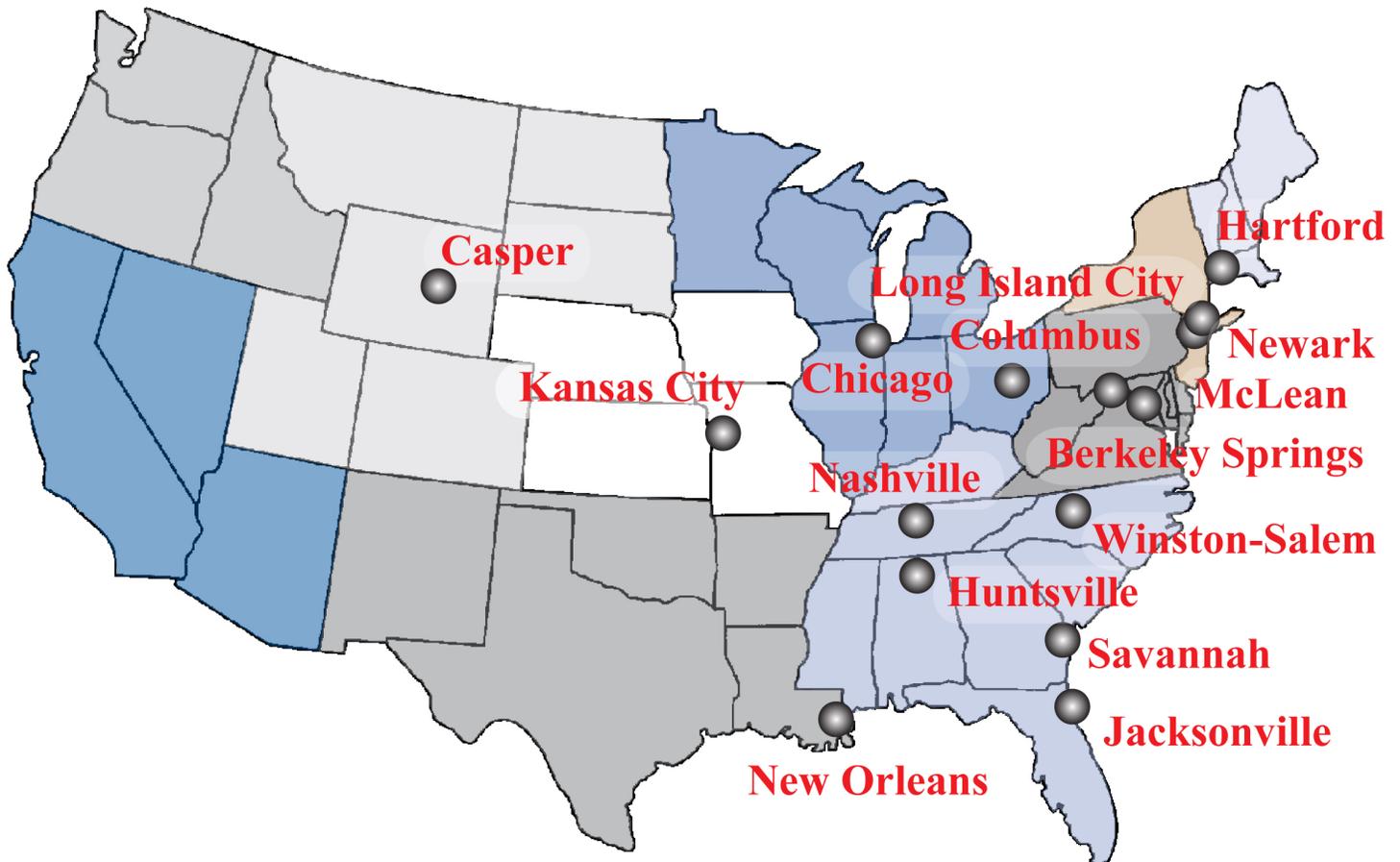
District and Regional SBA Offices support the work of RegFair Boards, serve as liaisons between ONO and small business owners, and promote hearings, roundtables, and other ONO-sponsored events around the country.

Office of Advocacy analyzes proposed regulations to estimate the economic impact of new regulations on small

business, proposes less burdensome but effective alternatives to draft regulations, and advances the interests of small businesses before Congress and Federal regulatory agencies on proposed regulations and agency rulemakings that precede regulatory implementation.

Small Business Development Centers (SBDC) and SCORE chapters provide counseling to America's small businesses and provide a range of resources when small companies seek advice on business development and other matters that are beyond ONO's mission.

Figure II-1. 2012 RegFair Roundtables



Agency Leadership Advances Regulatory Fairness in Compliance Assistance

ONO advocates for compliance assistance initiatives by agencies as an effective way to preempt regulatory violations and as an alternative to excessive penalties for first time infractions involving small businesses. Recognizing the compliance value of strong connections between regulators and the small businesses they regulate, many Federal agencies have committed significant resources to regulatory compliance assistance for small businesses, in the form of designated offices, personnel, programming, and other content specifically targeted to small businesses. Highlights of the compliance assistance programs of several agencies are outlined below.

The **Internal Revenue Service (IRS)** provides a toll-free telephone number for compliance assistance as well as a small business website, both of which receive millions of calls and web-visits each year. It produces video and audio presentations especially for small business and publishes more than two dozen free compliance assistance publications. The IRS also offers Tax Assistance

Centers which provide face-to-face assistance for small business owners. IRS continues to partner with SBA and the Department of Commerce to enhance business.usa.gov, a one-stop source for businesses to find federal resources that will help them succeed.

The **National Credit Union Administration (NCUA)** offers compliance assistance through its website, the NCUA Ombudsman, its Office of Small Credit Union Initiatives, and local workshops, as well as through its staff during periodic examinations. NCUA also provides training and briefings to credit unions at conferences and meetings sponsored by credit union associations around the country.

The **Securities and Exchange Commission (SEC)** maintains extensive web content as well as an Answer Desk and telephone number specifically for small businesses seeking assistance with regulatory compliance issues. The SEC's Office of Small Business Policy, within the Division of Corporate Finance, represents the concerns of small businesses as they relate to proposed regulations. Finally, the SEC publishes SBREFA-compliant guidance on new rules affecting small businesses.

Table II-1. 2012 RegFair Roundtables

SBA Region	Location	Date	Outreach Participants
4	Nashville, TN	October 4, 2011	Resource Partners & Federal Agencies
4	Nashville, TN	October 5, 2011	Baker Donelson Law Firm & Nashville Minority Business Center
3	Berkeley Springs, WV	November 2, 2011	SBA Region 3 Administrator & West Virginia Small Business Development Center Manager, Christina Lundberg & Representatives from the Internal Revenue Service and the U.S. Department of Labor, Occupational Safety and Health Administration Wage and Hour Division
2	Long Island City, NY	December 6, 2011	LaGuardia Community College with SBA Regional Administrator Jorge Silva-Puras: SBA Regional Advocate, Terri Coaxum and representatives from various Federal agencies
2	Newark, NJ	December 7, 2011	Brick City Development Corporation with SBA Regional Advocate, SBA Deputy District Director, SBA Public Information Officer and representatives from various Federal agencies
2	Long Island, NY	December 8, 2011	Long Island Office of Walter Oden & Pravina Raghavan
4	Jacksonville, FL	March 1, 2012	Regulatory Fairness Board Members, Bill Patton & Emilio Perez
3	McLean, VA	March 17, 2012	African American Roundtable sponsored by Senator Mark Warner's Office
6	New Orleans, LA	March 23, 2012	Regulatory Fairness Board Member, Ernest Johnson
4	Winston-Salem, NC	April 2, 2012	Senator Hagan's Office
4	Huntsville, AL	April 19, 2012	Regulatory Fairness Board Member, Cliftena Carter
4	Savannah, GA	April 24, 2012	Regulatory Fairness Board Chair, Bill Patton
5	Chicago, IL	May 16, 2012	Bishop Claude Porter & Board – Proviso Leyden Council of Community Action
5	Chicago, IL	May 16, 2012	Women's Business Development Center
5	Chicago, IL	May 16, 2012	Representatives of PUSH, Urban League & Business Owners

SBA Region	Location	Date	Outreach Participants
5	Chicago, IL	May 17, 2012	U.S. Department of Labor Regional Director, Ken Bennett, and Illinois Department of Employment & Securities
5	Chicago, IL	May 17, 2012	Small Business Development, Inc. – Catham Business Association
5	Chicago, IL	May 17, 2012	Ralph Moore, Chair/President, the Alliance of Business Leaders & Entrepreneurs
8	Casper, WY	June 19, 2012	
7	Kansas City, KS	June 21, 2012	Regulatory Fairness Board Member, Carisa McMullen
1	Hartford, CT	July 31, 2012	Regulatory Fairness Board Member, Kevin Maloney
5	Columbus, OH	August 8, 2012	Regulatory Fairness Board Member, Iris Cooper

TABLE II-2 2012 Meetings and Speaking Engagements

SBA Region	Location	Date	Type	Outreach Participants
4	Nashville, TN	October 4, 2011	Meeting	Department of Economic and Community Development
4	Gallatin, TN	October 5, 2011	Meeting	Tennessee State University College of Business, VRS Construction and CEO Dwayne Scott, a graduate 8a company located in a HUBZone
4	Nashville, TN	October 6, 2011	Meeting	Tennessee Commissioners of Labor and Workforce Development, Karla Davis and Assistant Commissioner, Illiff McMahan, Jr.
10	Seattle, WA	November 8, 2011	Speaking Engagement	Rainer Club
10	Seattle, WA	November 9, 2011	Speaking Engagement	Seattle Rotary Club
9	San Diego, CA	November 10, 2011	Speaking Engagement	National Black Contractor's Association
3	Norfolk, VA	November 18, 2011	Meeting	Hampton University President, William Harvey and Deputy Associate Administrator for Capital Access
3	Norfolk, VA	November 19, 2011	Panel Moderator	Senator Mark Warner, U.S. Health and Human Services Secretary Kathleen Sebelius and representatives from various Federal agencies
3	Washington, D.C.	January 11, 2012	Meeting	Mona Atkins Easley, Healthy Eating Index Program Lead, U.S. Department of Agriculture
3	Petersburg, VA	January 18, 2012	Meeting	President and Vice President of Virginia State University
3	Petersburg, VA	January 19, 2012	Speaking Engagement	Virginia State University business classes
3	Washington, D.C.	January 26, 2012	Meeting	Anna Harvey, Assistant Administrator for Women's Business Ownership, Stephanie Colbert and David Parker of the Internal Revenue Service
3	Washington, D.C.	February 16, 2012	Speaking Engagement	Howard University Law School
4	Orlando, FL	February 27, 2012	Meeting	John C. Hitt, President of the University of Central Florida
4	Jacksonville, FL	March 2, 2012	Meeting	Jacksonville District Office Staff
3	Washington, D.C.	March 6, 2012	Meeting	Immigration Attorney Alice Yardum-Hunter

SBA Region	Location	Date	Type	Outreach Participants
2	Washington, D.C.	March 30, 2012	Participant	10 Annual Policy Alliance Biennial Conference
3	Richmond, VA	April 11, 2012	Meeting	SBA District Director Jayne Armstrong
3	Richmond, VA	April 12, 2012	Speech / Meeting	National Association of Certified Government Business Enterprises
4	Huntsville, AL	April 20, 2012	Meeting	Faculty and students from the Entrepreneurship Association of the University of Alabama
3	Washington, D.C.	May 10, 2012	Speech	National Association of Black Women in Construction 2012 Industry Day
4	Knoxville, TN	July 10, 2012	Speaking Engagement	U.S. Department of Energy/National Nuclear Security Administration Regional Small Business Summit
5	Indianapolis, IN	July 16 – 18, 2012	Annual Reg-Fair Board Meeting	



Delivering Big Results for Small Business

The cases presented here reflect common regulatory dilemmas raised in submissions from small businesses during FY 2012. Recurring issues included:

- Regulatory Misapplication or Misinterpretation
- Miscommunication
- Administrative Errors and Delays
- Fines and Other Compliance Costs

Misapplication or Misinterpretation of Regulations

Small businesses experiencing perceived misinterpretation or misapplication of a regulation contact the National Ombudsman to obtain assistance. Often these situations are resolved once the agency reassesses the application of the regulation in the commenter's case.

Issue: A commenter received a large fine from the Department of Transportation (DOT) for shipping hazardous material. The company had never before shipped any hazardous material in its regular course of business and sought assistance through ONO because of the size of the fine -- equal to its yearly business income. A fine of that amount not only would have

devastated the commenter's business, but also would have put his family in financial hardship.

► **Outcome:** DOT reviewed the investigation report and opened communication with the Pipeline and Hazardous Materials Safety Administration's investigator and the commenter. After careful review, it was determined that the hazardous material had been shipped by the commenter in a personal capacity and not through the company's regular business operations or as inventory. The commenter further demonstrated that both he and his business had since been trained to recognize hazardous materials and understood how to ship them properly in the future. The notice and fine were withdrawn, replaced with a warning letter to the commenter individually, and the commenter's business was able to continue.

Issue: A Historically Underutilized Business Zone (HUBZone) firm was decertified for failing to meet eligibility requirements. The commenter argued that the SBA applied the incorrect regulation when determining its HUBZone eligibility, but asserted that under the correct regulation, the company met all

applicable requirements for continued HUBZone eligibility.

► **Outcome:** After review of additional documentation from the firm, the SBA identified an error in its original analysis and reinstated the company's HUBZone status.

Miscommunication

Small businesses reported numerous cases of regulatory burdens resulting from miscommunication or lack of accurate information from Federal agencies. Typically these matters were resolved by facilitating communication between the agency and the small business.

Issue: Commenter contacted ONO because the company's cash flow and financial viability had been significantly harmed due to unpaid invoices pending at the Defense Finance and Accounting Service (DFAS). DFAS had been unable to process the invoices submitted electronically by the company due to an incompatibility with the government payment systems.

► **Outcome:** DFAS provided the commenter with technical assistance on filing invoices. The issues were resolved and payment for all invoices was disbursed to the commenter.

Issue: The commenter's Medicare Provider Number was deactivated based on failure to revalidate Medicare Enrollment within 60 days following notification. Commenter, however, asserted that he never received that notification

from the Centers for Medicare and Medicaid Services (CMS). The deactivation prevented the commenter from providing critical services to patients.

► **Outcome:** Following review, CMS resolved the issue by contacting the National Supplier Clearinghouse, which reactivated the Medicare Provider Number. Commenter was able to resume providing critical patient services.

Issue: A sub-recipient of a grant from the National Oceanic and Atmospheric Administration (NOAA) filed a comment about a conflict between NOAA policy and an Office of Management and Budget (OMB) memo. NOAA's Federal Assistance Law Division advised that sub-recipients must have a Federally approved indirect cost rate to recover indirect costs, but the commenter produced an OMB memo to the contrary.

► **Outcome:** The Office of the General Counsel within the Department of Commerce stated that as a sub-recipient the commenter should list administrative costs as direct costs and submit those for reimbursement. Commenter was reimbursed.

Administrative Errors and Delays

The Ombudsman often helps small business owners to resolve administrative errors and delays by Federal agencies.

Issue: Commenter identified delays by a CMS contractor processing its health-care reimbursement claims. Due to a delay in payment for over nine months,

the commenter sought interest on the late paid claims.

► **Outcome:** CMS reviewed the comment and approved the commenter's request that the contractor pay interest on the claims.

Issue: The Occupational Safety and Health Administration (OSHA) inspected the commenter's job site and issued three citations for violations. At the time of the inspection the job site was being serviced by subcontractors and not staff of the commenter.

► **Outcome:** OSHA met with the commenter and the subcontractor who performed the work. When OSHA confirmed that the subcontractor's employees were at risk, the Citation and Notification of Penalty was deleted from the commenter's file and issued to the subcontractor.

Issue: According to the commenter, the paperwork for an SBA-guaranteed loan did not include the monthly payments and interest rate. After the loan was disbursed, the commenter received correspondence containing terms different from those previously described by the lender.

► **Outcome:** The SBA reviewed the case and found good cause for the borrower to receive an extended term of 30 years, thereby reducing the monthly payment amount.

Issue: Commenter contacted ONO because the company was owed money on a General Services Administration

(GSA) contract for work completed. The commenter explained that the GSA Contracting Officer disallowed any payments.

► **Outcome:** ONO facilitated communications and negotiations between GSA and the contractor. The contractor ultimately was paid for the work completed.

Fines and other Compliance Costs

Small businesses frequently request Ombudsman assistance with citations and penalties imposed for regulatory violations.

Issue: The commenter's company did not have the ability to pay the Fish & Wildlife Service (FWS) a per-shipment inspection fee for exporting its products. The company had been in operation for over 20 years and was not aware of the fees, which would preclude the company from exporting and require it to downsize. The commenter requested an exemption from the inspection fees.

► **Outcome:** As a result of the comment, the FWS issued an interim rule that exempts eligible companies from the inspection fee. FWS expects to issue a permanent rule after it reexamines the program and the applicable regulations.

Issue: Commenter spent over \$15,000 in legal and filing fees to obtain non-profit status from the IRS. After submitting its original application, it received two subsequent rounds of extensive, complicated questions from the IRS.

► **Outcome:** IRS reviewed the comment and worked with the company to obtain the necessary information to qualify the company for tax-exempt status. The commenter received non-profit status approval.

Issue: The commenter was fined \$2,400 by an OSHA investigator for a worker not wearing a safety belt. At the time of the incident, the commenter's son, who was not an employee of the business, was helping and was fined \$1,800 for not wearing a hard hat.

► **Outcome:** OSHA reviewed the matter and citations were waived due to the

employer's agreement to obtain safety training.

Issue: OSHA fined the commenter, a small subcontractor, \$5,100. Due to the small size of the business, the commenter's business operations were in jeopardy.

► **Outcome:** OSHA met with the commenter and offered a reduction in penalty as well as construction related safety and health training for the commenter and its employees. The commenter signed an informal settlement agreement, paid a reduced fine of \$2,800, and the case was closed.

IV Promoting Accountability and Regulatory Enforcement Fairness

The annual rating of Federal agencies is central to the National Ombudsman’s objective of ensuring a fair and effective regulatory environment for small business. Ratings are based on each agency’s responses to small business comments and on its responses to a brief questionnaire from the Office of the National Ombudsman.

Responsiveness to Small Business Regulatory Concerns

Each agency earns a letter grade in these areas based on its responsiveness to small business concerns:

- Timeliness of agency responses
- Quality of agency responses

SBREFA Compliance

Each agency also earns letter grades on the SBREFA compliance of its policies governing:

- non-retaliation against small business commenters
- provision of regulatory compliance assistance to small businesses
- provision of notice to small businesses of their rights under SBRE-

FA, including the right to comment with the Office of the National Ombudsman

Overall Rating

Agencies are rated “A” through “F” on each measure of responsiveness and SBREFA compliance (see Table IV-1). These individual measures form the basis for each agency’s annual composite rating.

Questionnaire

ONO’s Federal Agency Questionnaire asks five questions:

- Does your agency have a written non-retaliation policy available to all employees?
 - If yes, how is it disseminated throughout your agency? Please provide a hard copy.
- Does your agency have an online and/or a published non-retaliation policy available for viewing by small business concerns?
 - If yes, please provide the specific web address or a copy of the published policy.
- Does your agency have a compliance assistance website or any

published small entity compliance guides or information?

— If yes, please provide hard copy samples and/or pertinent website addresses and please explain how your agency implements this section.

■ Does your agency inform small business concerns about their rights under SBREFA (Small Business Regulatory Enforcement Fairness Act) and the availability of the National Ombudsman to receive their comments?

— If yes, how will a small business owner come by the information?

■ Does your agency provide written notice to small business concerns at the specific time a citation, notice of regulatory violation, charge of violation, or any equivalent or like notification is issued?

— Please include samples of the form, document, charging instrument or similar communication mechanisms that are issued to inform small business concerns about SBREFA rights.

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.

A: 30 days or fewer

B: 31-60 days

C: 61-90 days

D: 91-120 days

F: more than 120 days

2. Response Quality

ONO considers the level of specificity and detail provided in each agency's response and determines ratings according to the following criteria:

■ The agency provides detailed information showing 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 assessing 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 those 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 the following elements:

- 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.

Examples of agency non-retaliation policies follow:

Employees of the **Federal Energy Regulatory Commission (FERC)** are required to maintain the fact and appearance of objectivity in performing their responsibilities. These standards are disseminated through annual ethics training given to all employees. In addition, FERC maintains an enforcement hotline which accepts complaints about matters regulated by FERC and answers public inquiries and requests for assistance. Reports to the hotline can be made anonymously and information is treated as confidential.

The **National Labor Relations Board (NLRB)** non-retaliation policy affirms its commitment to an environment in which small entities, and all other parties to its proceedings, are free to raise questions or concerns, or complain about NLRB actions or policies. It

states clearly that no NLRB employee may take retaliatory action against a small entity solely for raising questions, concerns, or complaining about NLRB actions or policies. The NLRB website provides a point of contact for questions regarding this policy.

The **Pension Benefit Guaranty Corporation (PBGC)** disseminates its Small Business Non-Retaliation Policy through its website, by email to its compliance and enforcement staff, and in staff training sessions. The email to the compliance and enforcement staff includes a reminder of and a link to PBGC’s non-retaliation policy, emphasizes its importance, and offers additional staff training. The email also includes PBGC’s response to the Federal Agency Questionnaire.

4. Regulatory Compliance Assistance

To receive a letter grade of “A” for providing compliance assistance resources to small business, the agency must demonstrate the following elements. Ratings are reduced for deficient elements:

- 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.

Examples of agency compliance assistance initiatives follow:

The **Center for Medicare and Medicaid Services (CMS)** uses multiple means to provide compliance-related information to its providers. The main formal mechanism is its website, which offers a comprehensive set of interlinked compliance guides. There providers may access easy-to-use and authoritative information on regulatory requirements. Most CMS regulatory issuances involve modifications of existing regulations, so when changes occur, CMS provides substantial informational assistance. To provide actionable guidance, CMS posts a small entity compliance guide online for each regulation that is subject to Final Regulatory Flexibility Analysis.

The **Equal Employment Opportunity Commission (EEOC)** has developed fact sheets and publications, available online, specifically for small employers. These documents invite small employers to contact Small Business Liaisons at the EEOC for confidential assistance with compliance in specific situations. The Commission also provides no-cost education programs as well as fee-based training and technical assistance to all employers as part of its Small Business Initiative, which is among the performance standards of the EEOC's Strategic Plan. This initiative focuses specifically on providing small and new companies with compliance assistance that includes training and information needed to comply with the Federal EEO laws.

5. SBREFA Notice

Despite ONO's commitment to

outreach, many small business owners first learn of the National Ombudsman when they receive notice of their SBREFA rights during an enforcement action. Therefore, compliance with SBREFA's notice requirements remains critical to reaching all entities eligible for assistance through the Office of the National Ombudsman.

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

- 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.

An example of a SBREFA-compliant notice is contained in orders of compliance action and notices of civil penalty issued by the **Federal Energy Regulatory Commission**, which state:

"In accordance with the provisions of the Small Business Regulatory

Enforcement Fairness Act of 1996, the Small Business Administration has established a Small Business and Agriculture Regulatory Ombudsman and 10 Regional Small Business Regulatory Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on the enforce-

ment actions of the FERC, you may call 1-888-REG-FAIR (1-888-734-3247)."

Agency and Board Input

The Federal agencies and members of the Regulatory Fairness Boards were provided the opportunity to make comments on the draft report. This final report incorporates any substantive input provided.

Table IV-1. Rating of Agencies According to FY 2012 Criteria

Cabinet	Comments ^		Non-Retali- ation Policy	Compliance Assistance	Provision of SBREFA Information	Overall	Referrals of Nonenforcement Action-Related Comments
	Response Timeliness	Response Quality					
Agency (enforcement action-related comments)							
AGRICULTURE							6
Agricultural Marketing Service (1)	A	A	A	A	A	A	
COMMERCE							
National Oceanic & Atmospheric Administration (1)	A	A	A	A	A	A	1
DEFENSE							14
Defense Contract Management Agency (1)	A	A	X				
EDUCATION	N/C	N/C	A	A	A	A	
ENERGY	N/C	N/C	X				2
HEALTH & HUMAN SERVICES							1
Food & Drug Administration (4)	A	A	A	A	A	A	2
Centers for Medicare & Medicaid Services (17)	A	A	A	A	C	A	26
HOMELAND SECURITY							
Customs & Border Protection (6)*	F1	F	X				1
Immigration & Customs Enforce- ment (1)	A	A	A	A	A	A	
Citizenship and Immigration Services (2)	F	D	X				9
HOUSING & URBAN DEVELOPMENT							2
Rural Development (1)	A	A	A	A	A	A	
INTERIOR	N/C	N/C	A	A	B	A	3
JUSTICE	N/C	N/C	A	A	N/A	A	2
LABOR							
Occupational Safety & Health Administration (24)	A	A	A	A	A	A	
Wage & Hour Division (4)	A	A	A	A	A	A	
Mine Safety & Health Administra- tion (9)	B	A	A	A	A	A	
Employee Benefits Security Ad- ministration (1)	A	A	A	A	A	A	
Office of Federal Contract Com- pliance Program (1)	F	A	A	A	C	B	
STATE	N/C	N/C	A	A	A	A	
TRANSPORTATION							5
Pipeline and Hazardous Materials Safety Administration (1)	A	A	A	A	A	A	
TREASURY							1
IRS (7)	B **	A	A	A	A	B **	
IRS Self-Employed (2)	B	A	A	A	A	A	2
VETERANS AFFAIRS	N/C	N/C	X				2

Non-Cabinet	Comments ^		Non-Retali- ation Policy	Compliance Assistance	Provision of SBREFA Information	Overall	Referrals of Nonenforcement Action-Related Comments
	Response Timeliness	Response Quality					
Agency (enforcement action-related comments)							
Consumer Product Safety Commission	N/C	N/C	A	A	C	B	
Environmental Protection Agency (3)	A	A	A	A	A	A	1
Equal Employment Opportu- nity Commission	N/C	N/C	A	A	A	A	
Federal Communications Com- mission	N/C	N/C	A	A	C	B	1
Federal Deposit Insurance Corporation	N/C	N/C	A	A	N/A	A	
Federal Energy Regulatory Commission	N/C	N/C	A	A	A	A	1
Federal Reserve Board	N/C	N/C	A	A	C	B	
Federal Trade Commission	N/C	N/C	A	A	A	A	1
General Services Administra- tion	N/C	N/C	C	F	N/A	D	5
National Credit Union Admin- istration	N/C	N/C	A	A	C	B	
National Labor Relations Board	N/C	N/C	A	N/A	N/A	A	
Pension Benefit Guaranty Corporation	N/C	N/C	A	A	A	A	
Securities and Exchange Com- mission	N/C	N/C	A	A	A	A	
Small Business Administration (8)	C	A	A	A	A	B	50

FY 2012 Department and Agency Rating Notes

Note: A Cabinet Department's subordinate organizational unit is listed separately only 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, if any, provided to ONO as of 2/1/13, which is 120 days following the close of FY12 (120 days is the maximum time allowed for a response to receive a timeliness grade other than "F").

F: Indicates responses were provided, but were received more than 120 days late.

F1: Indicates failure to provide any response to enforcement action-related comments from small businesses.

X: The agency or subagency failed to provide any response to ONO's 5-question survey. Consequently, ONO could not obtain 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.

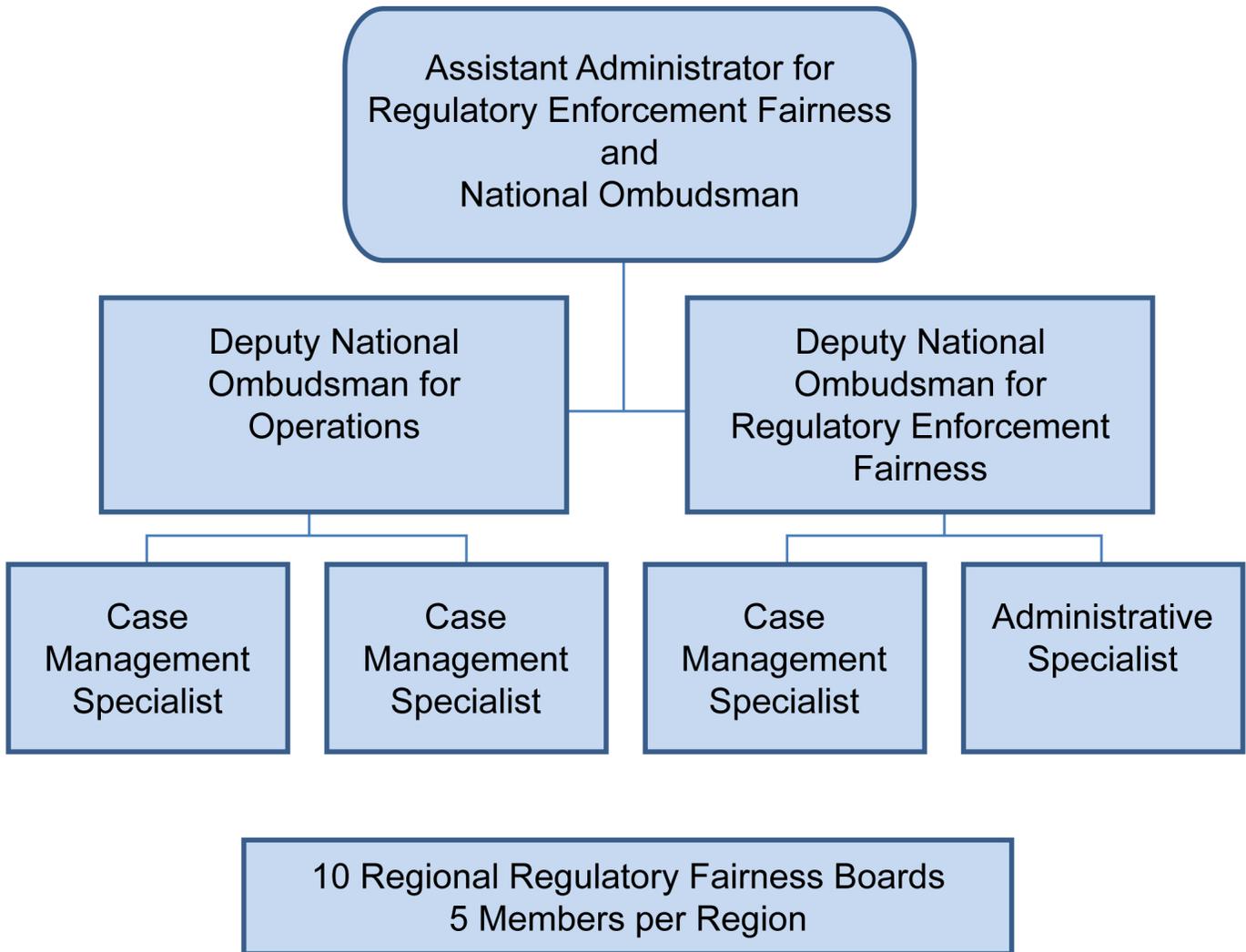
*: U.S. Customs and Border Protection is fully committed to improving this deficiency and is currently assessing internal processes to improve the timeliness and quality of agency responses to within a 30 to 45 day period.

** : Due to the average time for substantive responses from the IRS, which in FY 2012 was 209 days, this is a qualified grade. Based on past practice, until the IRS can provide a fully responsive answer to and report on the resolution of a comment, it sends "interim updates" to ONO every 30 days, indicating that the matter remains under review and requires additional time to fully resolve. This accommodation is based on the unique nature and posture of issues raised in IRS-related comments ONO receives, which the IRS describes as follows:

Although the number of SBREFA cases that come to the IRS is small, they usually present complicated issues and generally are referred only after the IRS has made an adverse decision that the small business is seeking to challenge. To help a small business obtain relief, TAS must carefully analyze the facts the taxpayer presents, determine whether there are related issues or arguments that the taxpayer did not present or the IRS did not consider, request documentation to support each of the taxpayer's arguments, help the taxpayer develop the arguments, and ultimately, where appropriate, persuade the IRS that it erred and should change its position. These steps typically require significant back-and-forth interactions with both the taxpayer and the IRS.

Accordingly, IRS has requested latitude with respect to application of the timeliness measure.

Appendix: Organizational Chart





U.S. Small Business Administration

U.S. Small Business Administration
Office of the National Ombudsman
409 Third Street, S.W.
Washington, D.C. 20416