



Fiscal Year 2008

National Ombudsman Report to Congress

Helping Small Business Start, Grow and Succeed

National Ombudsman's 2008 Report to Congress

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The ONO Mission

The National Ombudsman's primary mission is to assist small businesses when they experience excessive or unfair Federal regulatory enforcement actions.

The Office of the National Ombudsman (ONO), an office within the U.S. Small Business Administration (SBA), was created by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The law's provisions pertain to all small businesses that receive or are subject to any enforcement-related communication or contact by the Federal government, including audits, on-site inspections, and agency compliance assistance.

SBREFA fosters a small business-friendly enforcement environment by authorizing the National Ombudsman and the Regional Regulatory Enforcement Fairness (RegFair) Boards to:

- Conduct hearings in each of SBA's 10 regions to provide small businesses with public forums where they can voice their comments about Federal regulatory and compliance enforcement actions without fear of retaliation.
- Work with Federal agencies that have regulatory authority over small businesses, encouraging regulators to pay attention to entrepreneurs' comments about enforcement activities and address those concerns promptly.
- Establish a process for the ONO to receive comments from small businesses about unfair Federal compliance or enforcement activities. The National Ombudsman also refers these comments to the Inspector General of the affected agency in appropriate circumstances. Upon request, the ONO will maintain the anonymity of the person and/or small business filing such comments as guided by Section 7 of the Inspector General Act of 1978 (5 U.S.C. App.).
- File an annual report with Congress and affected Federal agencies in which the ONO rates Federal agencies based on substantiated comments received from small businesses and input from the RegFair Boards.
- Provide affected agencies with an opportunity to comment on the draft version of the annual report to Congress.

What is an unfair enforcement action?

It can be repetitive audits or inspections; unreasonable fines or penalties; threats by a Federal agency; and/or acts of retaliation by a Federal agency.

ONO Regional RegFair Board Members, FY 2008

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) authorizes creation of the National Ombudsman and 10 Regional Regulatory Enforcement Fairness (RegFair) Boards to assist small businesses when they experience excessive or unfair Federal regulatory enforcement or compliance actions. The Office of the National Ombudsman (ONO) submits the National Ombudsman's annual report to Congress based on testimony gathered at RegFair Hearings, as well as comments, concerns, and complaints filed with the Ombudsman about Federal compliance and/or regulatory enforcement activity. The ONO forums around the country encourage small business owners to voice their concerns directly to the RegFair Boards and the National Ombudsman.

The RegFair Boards also convene for an annual meeting to discuss matters of Federal regulatory enforcement. The meeting provides the ONO with the opportunity to assess trends and new regulatory issues for small businesses in each region.



RegFair Board members are appointed by the SBA Administrator. All members are small business owners, officers, or operators and serve on a volunteer basis. Achieving a diverse business background is a major goal in selecting RegFair Board members so that they reflect an accurate picture of the small business communities that they represent.

There is an ONO RegFair Board in each of SBA's 10 regions:

Region I

Andrew E. Markowski, Esq.,
Board Chairman
Gara & Markowski, LLC
Government Relations
Hartford, CT

Kathryn M. Weare
The Cliff House Resort & Spa
Ogunquit, ME

Bernard Featherman
Biddeford-Saco Chamber of Commerce &
Industry
Saco, ME

Leo R. Blais
P.V. Prescription and Surgical Center, Inc.
Coventry, RI

Region II

Howard Horowitz, Board Chairman
Elite Marketing
New Hyde Park, NY

Frank L. Misischia
FLM Graphics Corporation
Fairfield, NJ

Gloria Bryant
The Writing Company
Newark, NJ

Jonathan Weiss
Intermedia Group, Inc.
West Hempstead, NY

W. Timothy Howes
Howes & Howes
Raritan, NJ

Region III

Brooks Hulitt, Board Chairman
Drexel Hamilton
Philadelphia, PA

Tim R. Rupli
TR Rupli & Associates, Inc.
Washington, DC

Christopher D. Lord
Chris Lord & Associates, LLC
Washington, DC

Frank E. Williams, Jr.
Williams Enterprises of Georgia, Inc.
Merrifield, VA

Helen F. Corey
Altenae, LLC
Wilmington, DE

Region IV

Robert S. Latham, III, Board Chairman
LIST Company, Inc.
Piedmont, SC

Edwin A. Rodriguez
Connectiv Solutions, LLC
Tallahassee, FL

R. Bruce McCrory
Kiker Corporation
Mobile, AL

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

Jane R. Dennis
Specialty Contractors & Associates, Inc.
Gulfport, MS

Region V

Stephen L. Becher, Board Chairman
Home Owner's Resource Guide, Inc.
Burnsville, MN

John J. Hiller
Hiller Realty Inc.
Mequon, WI

Khalid Karadsheh
Mediterranean Island
Grand Rapids, MI

Joseph J. Montel
Montel Law Firm, PC
Carmel, IN

Bob Kulp
Kulp's of Stratford, LLC
Stratford, WI

Region VI

James R. Graham, Board Chairman
Hunt Realty Investments
Dallas, TX

Grant C. Humphreys
Humphreys Real Estate Investments
Oklahoma City, OK

Regina N. Hamilton
Jones, Walker, Waechter, Poitevent,
Carrère & Denègre, LLP
Baton Rouge, LA

Beth Sturgeon
AusTex Development Group
Canadian, TX

Jim R. Newell
Jim Newell & Associates, Inc.
Little Rock, AR

Region VII

Joe P. Balsarotti, Board Chairman
Software To Go
St. Peters, MO

Dr. Inez Y. Kaiser
Inez Kaiser & Associates, Inc.
Overland Park, KS

Brian E. Johnson
Capitol Consultants
Panora, IA

Scott Perkins
Western Air Maps, Inc.
Overland Park, KS

Region VIII

John H. Herd, Board Chairman
Aesir Group International
Colorado Springs, CO

Michael J. Stransky
Gillies Stransky Brems Smith, PC
Salt Lake City, Utah

Harold Jackson
Buffalo Supply, Inc.
Lafayette, CO

Region IX

James Settelmeier, Board Chairman
Settelmeier Ranches, Inc.
Gardnerville, NV

Zainul Abedin, Ph.D.
Environmental Engineering, Inc.
Glendale, CA

Ernest J. Reyes
Network Realty
San Diego, CA

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

Region X

Daniel Piccora, Board Chairman
Piccora's NY Pizza
Seattle, WA

Larry J. Pettingill
Mr. Mom's Fix It
Idaho Falls, ID

John Bradshaw
Portland Transmission Warehouse
Portland, OR

Anthony Welcher
Capital Park, LLC
Bellevue, WA

Message from the SBA Administrator

I'm pleased to present the SBA's Office of the National Ombudsman's 2008 Report to Congress.

Our National Ombudsman plays a key role in advancing one of the SBA's top priorities: serving as the strongest voice for America's entrepreneurs and small business owners. As you will see in this report, the Office continues to ensure a fair and effective regulatory environment that works for both small businesses and Federal agencies.

I am particularly pleased that the Office has implemented a new case tracking system to improve agency responsiveness to the comments, questions, and concerns we hear from America's small businesses. In fact, response time dropped from about 51 days to about 36 from 2007 to 2008.

In addition, the Office has made a concerted effort to reach out directly to small businesses across the nation. For example, the Ombudsman held 27 regional events where SBA representatives gathered advice and input from small business leaders regarding regulatory enforcement fairness. In addition, the SBA's 10 Regional Regulatory Enforcement Fairness Boards continue to serve as a conduit for important suggestions and innovative ideas they are hearing in their local small business communities.

These efforts, combined with others you will read in this report, continue to lead us toward better access to regulatory information, removal of unfair barriers, and—most importantly—a more effective and powerful partnership between the Federal government and America's entrepreneurs and small business owners.

We still have much work to do to promote both compliance and regulatory fairness, and our voice is getting stronger every day. I look forward to working with Congress and the Office of the National Ombudsman to build on our success in the coming months and years.



Karen G. Mills
SBA Administrator



I

FY 2008 Highlights

Small businesses are a cornerstone of a strong U.S. economy (see sidebar) and a crucial element in the nation's economic recovery. When an agency with regulatory authority over small businesses enforces rules through excessive or unfair actions, it can drain small companies' resources to the point of threatening their survival. Recognizing that an entrepreneur's energies are best spent creating jobs and fostering productivity, Congress passed the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) to create a more cooperative regulatory environment among agencies and small businesses.

SBREFA created the Office of the National Ombudsman (ONO) so that small businesses would have a place to address Federal compliance and regulatory enforcement issues. The ONO provides a variety of channels through which companies can file a comment describing their enforcement dilemmas. The ONO then delivers these comments to the appropriate Federal agencies, which

are requested to respond. The ONO serves as the ambassador of small business to the U.S. government by encouraging parties to reach a mutual understanding and a fair resolution.

SBREFA requires the ONO to file an annual report with Congress that rates how well each Federal regulatory agency is addressing small business enforcement concerns. This "National Ombudsman's 2008 Report to Congress" chronicles a year of diligence in bringing entrepreneurs' concerns to light, of dedication to encouraging positive agencies responses, and of ingenuity in broadening outreach to inform small business owners that the ONO stands ready to assist them. The ONO's commitment has produced the kind of results envisioned by the legislators who enacted SBREFA: significant progress toward a fair and effective compliance and regulatory environment in which small businesses have a chance to thrive.

The items in the following chart highlight a year of service for the ONO:

Small Businesses Drive Our Economy

Small businesses—those that are independently owned and operated with fewer than 500 employees—are vital to the health of the U.S. economy. The 27.2 million small businesses operating in the United States represent more than 50 percent of the nation's non-farm gross domestic product. They also:

- ✕ *Represent more than 99.7 percent of all employer firms.*
- ✕ *Employ about half of all private sector employees.*
- ✕ *Have generated 60–80 percent of the net new jobs over the past decade. In the most recent year with data (2005), firms with fewer than 500 employees created 979,102 net new jobs, or 78.9 percent.*
- ✕ *Create more than half of non-farm private gross domestic product (GDP).*
- ✕ *Made up 97.3 percent of all identified exporters and produced 28.9 percent of the known export value in FY 2006.*

Source: SBA Office of Advocacy "Small Business Research and Statistics," <http://web.sba.gov/faqs>.

FY 2008 ONO Accomplishments

- ❖ *Developed and issued the Small Business Ombudsman Model for States and Local Governments. The model is designed to assist governing entities in creating their own ombudsman's office to serve the interests of small businesses in their communities.*
- ❖ *Produced, published, and disseminated the "National Ombudsman's 2007 Report to Congress." Among other items, the report includes ratings of Federal agencies' responsiveness to small business comments.*
- ❖ *Implemented a new case management system and database to improve case responsiveness, cycle time, and recording accuracy.*
- ❖ *Increased collaboration with members of Congress and small business trade associations to address systemic issues of Federal regulatory enforcement concern.*
- ❖ *Conducted 27 Regional Regulatory Enforcement Fairness (RegFair) public events, including hearings, roundtables, speeches, panel participations, and key public meetings.*
- ❖ *Conducted the second annual National RegFair Hearing for trade associations and chambers of commerce, with representatives of 13 national organizations participating.*
- ❖ *Received and processed 420 small business comments and carried out 780 responses to the public and customer service assistance actions.*
- ❖ *Recruited and screened 12 RegFair Board applicants, then recommended candidates to the SBA Administrator to serve for a three-year appointment on the appropriate regional board.*
- ❖ *Organized and convened the legislatively-mandated annual RegFair Board conference.*

to the enforcement concerns of small businesses. The ONO rates agencies' performance in each of six categories:

1. Timeliness of response
2. Quality of response
3. Agency non-retaliation policy
4. Agency regulatory enforcement compliance assistance
5. SBREFA notice
6. Agency participation in RegFair hearings



In FY 2008, the ONO noted an overall improvement in Federal agency ratings, as well as progress in specific areas:

- Agencies continued their steady multi-year improvement in response time to small business comments, dropping to an average 36.1 days in FY 2008.
- Several Federal agencies chose compliance education over excessive enforcement in the regulatory arena. Chapter II presents a collection of creative and innovative agency best practices in meeting or exceeding the ONO's rating criteria in each category.

Chapter III. Small Business Speaks: Success Stories from Main Street

When small businesses are faced with Federal regulatory challenges, the ONO's comment process offers a forum where entrepreneurs can present their compliance and enforcement concerns, then work with the agencies involved toward a resolution.

Chapter II. Making the Grade: Agency Ratings Measure Enforcement Fairness

The ONO's annual rating of Federal agencies is an important measure of their progress toward compliance and regulatory fairness. **Chapter II** explains how the ONO arrives at an overall rating for each agency based on how effectively it has responded

When an entrepreneur files a comment with the ONO describing unfair practices, the ONO begins the process of seeking a resolution with the goal being effective regulation. Such a resolution must take into account small business concerns and agencies' regulatory obligations under the law. The ONO's small business cases reflect some common themes and perceptions that are at the heart of most compliance and regulatory dilemmas:

- Agency Errors
- Lack of Communication
- Compliance and Regulatory Requirements
- Compliance Costs
- Changing Regulations

Chapter III describes the ONO's comment process, followed by real-life success stories taken from comments submitted to the ONO and testimony given at RegFair hearings.

Chapter IV. RegFair Boards and Beyond: Strengthening Community Connections

Outreach is an essential part of the ONO's mission. No small business owner should struggle alone with regulatory burdens simply because the entrepreneur is unaware that a National Ombudsman exists to help. Connecting with business communities throughout the United States

enriches the ONO's understanding of enforcement challenges and spreads the word that entrepreneurs have an ally to turn to when faced with excessive or unfair regulation.

Chapter IV describes successful efforts to reach entrepreneurs with the message that the ONO stands ready to assist them by fostering a fair, effective Federal regulatory enforcement environment.

The ONO relies on its partners in the business community and Federal government to extend and amplify its outreach efforts:

- The 10 Regional Regulatory Enforcement Fairness (RegFair) Boards serve as the National Ombudsman's eyes and ears in local communities and make contact with small business owners where they live and work.
- The ONO collaborates with other SBA resource partners to enhance its mission of seeking compliance and regulatory enforcement fairness for small businesses.
- The ONO teams with national trade groups whose members have enforcement issues.
- The ONO continues to successfully encourage Federal agencies to recognize and take steps that lighten the burden of regulatory compliance on small entities.



The SBA Office of Advocacy presents the small business viewpoint while legislation and regulations are being developed.

Advocacy saved small businesses \$10.7 billion in regulatory costs in FY 2008 by helping Federal agencies comply with the Regulatory Flexibility Act (RFA). The RFA requires agencies to analyze the economic impact of proposed regulations on small entities and consider less burdensome alternatives that still reach the agencies' regulatory goals.



Business.gov—"the official business link to the U.S. government"—is managed by SBA and can link visitors to the names, phone numbers, and email addresses for all Federal regulatory agencies' SBREFA contacts, as well as the National Ombudsman.

Business.gov was updated in 2008 to remain current with web practices that

make government resources even more accessible. Site innovations include a green business search engine, green guides, and Web 2.0 social media and networking features. Chapter IV describes these innovations and lists the awards garnered by Business.gov for employing technology to provide plain language resources and government transparency for the small business community. Small business owners reported saving 3.96 million hours in FY 2008 by using Business.gov.



In May 2008, the ONO issued its Small Business Ombudsman Model for State and Local Governments. The model was prompted by entrepreneurs' frequent requests for help from the National Ombudsman in resolving state and local regulatory issues. The ONO has authority to review only Federal enforcement matters and has no jurisdiction in states and localities. Instead, the National Ombudsman can now offer a template for jurisdictions to create their own versions of the ONO.

II

Making the Grade: Agency Ratings Measure Enforcement Fairness

One of the most important duties of the Office of the National Ombudsman (ONO) is conducting its annual rating of Federal agency efforts to promote a fair and effective regulatory environment for small business. The ratings are intended to encourage agencies to make small business enforcement fairness a priority throughout the compliance and regulatory process.

The Agency Questionnaire

The rating process begins with a questionnaire sent to Federal agencies inquiring about their small business policies and interactions with their small business constituents. The ONO gives agencies letter ratings based on their answers to the following questions:

- Do you have a written non-retaliation policy available to all employees?
 - How is it disseminated throughout your agency?
- Do you have an online and/or published non-retaliation policy available for viewing by small businesses?
 - Please provide the specific web address or a copy of the published policy.
- Does your agency have a compliance assistance website and/or any published guidance or information available for small businesses?
 - Please provide hard copy samples and/or pertinent website addresses.
- Do you publish small entity compliance guides in conjunction with publication of a final rule that will impact small businesses per Section 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) as amended in 2007?
 - Please explain how your agency implements this section.
- Do you inform small businesses about their rights under SBREFA and the availability of the National Ombudsman to receive their comments?
 - How will a small business come by the information?
- Does your agency provide written notice to small businesses at the specific time a citation, notice of regulatory violation, charge of violation, or any equivalent or like notification is issued?

“Regulations are important and necessary to curb abuses and to protect consumers, but balanced against these important objectives is the survival and promotion of small business in America.”

*Iona Harrison, Chair,
National Association
of Realtors’ Regulatory
Issues Forum*

- Please include samples of the form, document, charging instrument, or similar communication mechanisms that are issued to inform small businesses about SBREFA rights.
- List the ONO hearings attended by a representative of your agency.
 - Please note whether the participation was in person or by conference call.

Federal Agency Rating Criteria for 2008

Once Federal agencies have returned their questionnaires, the ONO conducts the next step in the process—rating agencies’ responses to small business with a rating of A through F based on six criteria:

1. Timeliness of response
2. Quality of response
3. Agency non-retaliation policy
4. Agency regulatory enforcement compliance assistance
5. SBREFA notice
6. Agency participation in RegFair hearings

Each agency also receives a composite rating for the year (see Table II-1).

Timeliness of Response— **Criterion 1**

- 30 days or less = A
- 31-60 days = B
- 61-90 days = C
- 91-120 days = D
- Over 120 days = F

The ONO calculates response time from the day it forwards a small business comment to an agency until the day that the agency’s response is received. For rating purposes, “days” are defined as business days. Figure II-1 depicts the average number of days that agencies took to respond to small business comments. The National Ombudsman will take unusual circumstances into consideration when calculating timeliness.

The ONO performs a balancing act when rating an agency’s timeliness in responding to small business enforcement fairness concerns. The agency needs adequate time to thoroughly evaluate relevant aspects of an enforcement action in a way that meets legal requirements. The small business, meanwhile, may be on the verge of closing down as a result of proceedings that strain its limited resources. A prompt resolution of the enforcement issue may make the difference in the continuance of the business.

Providing timely responses to small businesses is an important goal of the outreach programs at the U.S. Department of Agriculture’s (USDA) **Marketing Order Administrative Branch** (MOAB). MOAB fields a steady stream of inquiries from importers about Section 8e of the Agricultural Marketing Agreement Act, which sets fruit, vegetable, and nut import requirements. MOAB answered more than 1,500 such

Figure II-1. Response of Federal Agencies

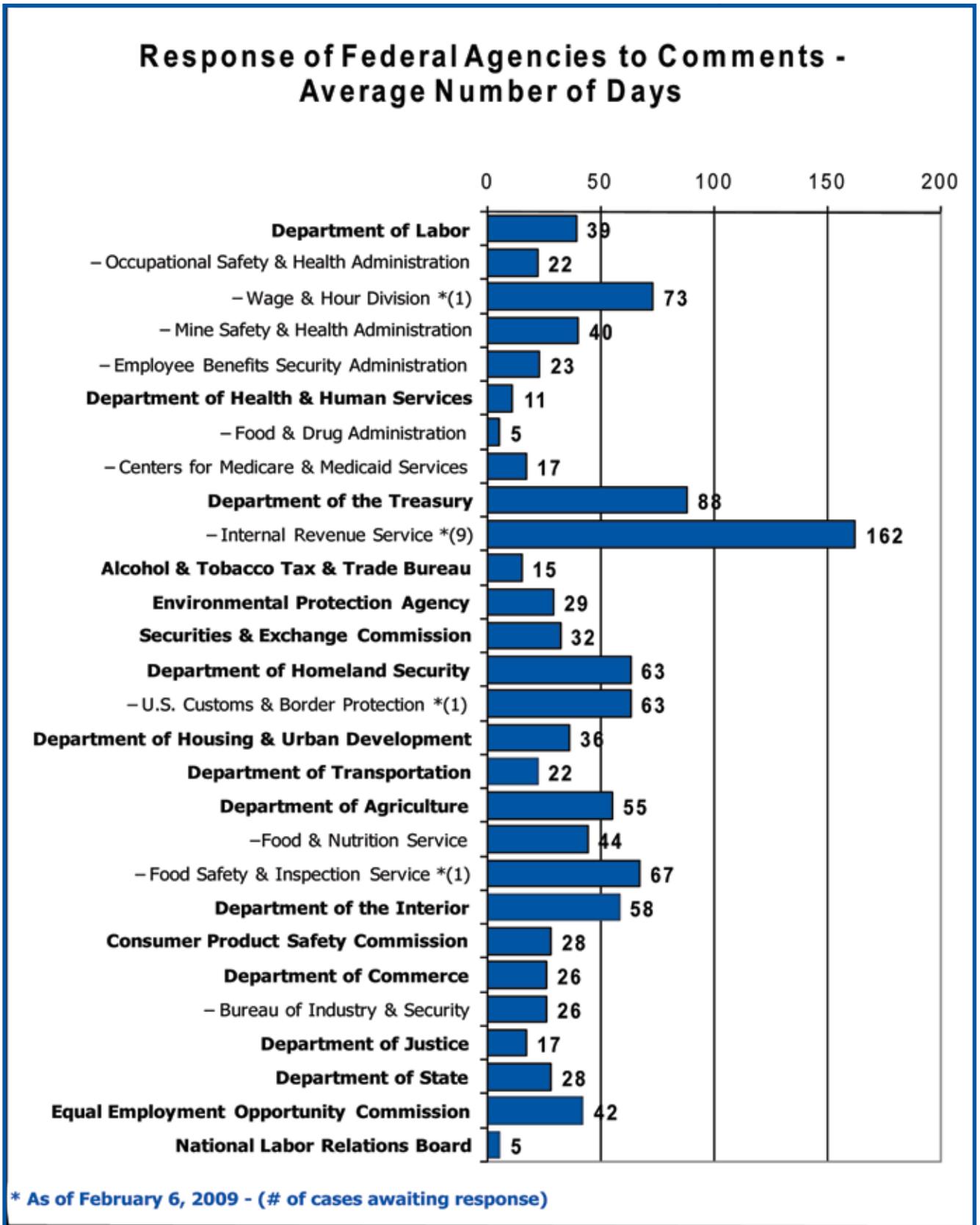
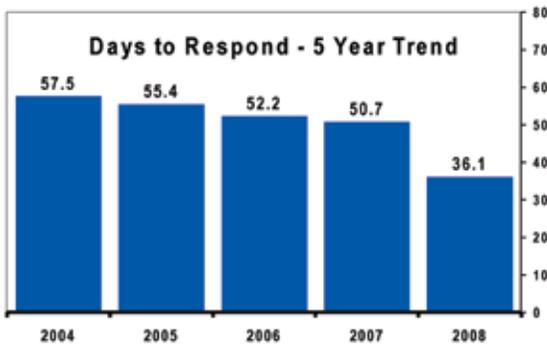


Figure II-2. Response Timeliness



inquiries in FY 2008, responding to virtually all questions within two business days.

Early intervention is an important way that the Department of Justice's (DOJ) **Office of Special Counsel**

(OSC) meets its goal to minimize the impact on small businesses of potential immigration-related employment discrimination issues. OSC offers a national toll-free telephone hotline for the exclusive use of employers with compliance concerns. The attorneys and equal employment opportunity specialists who staff the hotline can provide immediate guidance. OSC staffs a separate toll-free line for job applicants and employees to report discrimination information. The agency has found that prompt investigations of these calls can bring early, cost-effective resolution of employment disputes that may have been costly due to filing charges and litigation expenses.

Timeliness of response can have serious implications when it comes to the theft or loss of firearms, so DOJ's **Bureau of Alcohol, Tobacco, Firearms, and Explosives** has set up a system that allows small business to quickly and easily meet mandatory reporting requirements. The agency provides the licensed firearms industry a toll-free number for theft and loss reports during weekday business hours, as well as a 24/7 hotline for calling

in mandatory reports after normal business hours.

Agencies' attention to timeliness has continued to pay off as shown by the consistent drop in the average number of days taken by enforcement entities to respond to small business comments (see Figure II-2).

Quality of Response—Criterion 2

When the ONO receives a comment from a small business owner concerning a regulatory enforcement or compliance issue, it forwards that comment along with its documentation to the Federal agency(ies) involved. At the same time, the ONO may include correspondence with questions such as "Why and how did you take the enforcement action?" and "Did your agency consider alternatives, such as waiving penalties or reducing fines?" The answers assist the ONO in assessing the agency's responsiveness, how thoroughly it considered the effects of its actions, and whether any follow-up occurred.

The ONO addresses this correspondence to a high-level official within an agency. The ONO may refer any comments that allege unprofessional behavior to the agency's Inspector General. The ONO considers the level of specificity and detail provided in each agency's response and determines ratings according to the following criteria:

- The agency addresses all applicable questions posed in the ONO's

correspondence and responds to the specific comment made by the small entity.

- The agency provides detailed information showing that it looked into the facts of the specific case and the actions of the agency personnel involved in the enforcement activity.

The **Federal Deposit Insurance Corporation** (FDIC) attempts to respond to enforcement-related matters before they reach the level of formal sanctions. FDIC keeps banks informed at each step of the enforcement process and provides ample opportunity for small business owners to ask questions and raise concerns. The agency works with bankers at the early stages of an investigation to correct potential regulatory problems. After an examination, an FDIC official meets with bankers to discuss any alleged unsound banking practices or violations of rules or laws. Before the FDIC initiates an enforcement action, it sends a “15-day letter” setting out the facts and inviting comments from the subject bank or individual.

The **Internal Revenue Service** (IRS) has created an online “Rate the Product” survey to improve its response quality. Small business constituents rate educational products and the IRS website, then the agency revises its offerings based on the feedback about how it can better meet small business and self-employed community needs. Products that have benefited from small entity feedback include the Audit Technique Guides, which focus on

developing highly-trained examiners for specific market segments.

The **Pension Benefit Guaranty Corporation** (PBGC) aimed to improve its response quality in FY 2008 by creating two new premium requirements that anticipate and avoid compliance problems. One provision permits certain “very small employers” (with 25 or fewer employees) to pay maximum variable-rate premiums without having to provide the usual detailed support information. The second provision extends the due date for premium payments made by small plans (fewer than 100 participants) by 6½ months.

Agency Non-Retaliation Policy— Criterion 3

The ONO defines “non-retaliation” policies as those designed to prevent acts that punish a small entity for complaining or commenting about an agency action. An agency will receive a letter rating of A if it demonstrates that all of the following elements exist:

- The agency has adopted a formal written non-retaliation policy.
- The non-retaliation policy is available to all agency employees.
- The agency ensures that small entities have access to the non-retaliation policy through the agency’s website and/or other readily available public places.
- The agency provides a copy of its policy and the publicly available web address where the policy appears.

Well-enforced non-retaliation policies are critical if small businesses are to feel free to critique or question burdensome government rules. Small business owners should be able to tell the Federal government the good and the bad. The ONO encourages agencies to establish non-retaliation policies that specifically reference small businesses rather than rely on generalized ethics codes or standardized anti-discrimination rules.

Many agencies routinely distribute copies of non-retaliation policies during enforcement actions and outreach events to advise government employees and small businesses that entrepreneurs should not be punished for raising objections to perceived unfair treatment.

The Department of Homeland Security's **U.S. Citizenship and Immigration Services (USCIS)** adopted a small business non-retaliation policy in June 2008 and informed employees through a memo from the Acting Director and an item published in the agency's daily newsletter, *USCIS Today*.

PBGC sends regular emails reminding its compliance and enforcement staff about the importance of the agency's non-retaliation policy, how to assist small business owners who want more information, and the availability of staff training in non-retaliation whenever necessary.

Similarly, the USDA's **Food Safety and Inspection Service** includes non-retaliation as a performance goal of its Frontline Supervisor position. The job requirement states that supervisors must be "non-discriminatory and impartial toward those in the regulated industry" and specifically directs that SBREFA obligations must be met.

The non-retaliation policy of USDA's **Perishable Agricultural Commodities Act Branch (PACA)** states that before the agency initiates an enforcement action, it must first receive a complaint from an individual or firm. The person or entity filing the complaint may not be a USDA employee or agency responsible for administering PACA.

The **Department of Transportation (DOT)** relies on each of its agency's personnel systems to guard against retaliatory behavior, noting that "as a department, we are more interested in facilitating compliance with our rules and welcome input from regulated entities on ways we can improve. To our knowledge, we have never had an act of retaliation against a small business." An example of the DOT's philosophy in action is the **Federal Aviation Administration's** Flight Standards Service policy, which directs that decisions be based on relevant, objective regulatory requirements rather than retaliation, personality clashes, or other non-regulatory reasons. The service also has a process in place to resolve differences between its personnel and the businesses that it regulates.

The Office of Small Business

Programs (OSBP) serves as a liaison between the ONO and Department of Labor (DOL) agencies, and oversees the department's implementation of the SBREFA requirements. The OSBP has placed the non-retaliation policies of DOL agencies in a central area on its website. (www.dol.gov/osbp/programs/sbrefa.htm)

Agency Regulatory Enforcement Compliance Assistance— Criterion 4

Congress amended SBREFA in 2007 by adding stronger, more specific requirements for agency compliance assistance to small businesses. An agency must now demonstrate that all of the following elements exist to receive a letter grade of A. The ONO will reduce ratings accordingly for missing and/or non-existent elements:

- The agency provides compliance guides and assistance as described in the amended SBREFA.
- The agency provides small entities with a compliance assistance telephone number.
- The agency provides a compliance assistance website.
- The agency makes a compliance assistance contact available to small entities.
- The agency facilitates compliance assistance education.

With the National Ombudsman's encouragement, agencies are finding that prevention is the best prescription

for heading off small business enforcement problems. When entrepreneurs understand compliance expectations, the public is better protected and business thrives.

The **Environmental Protection Agency** (EPA) applied that principle in Kansas City, KS, when the agency discovered that many small businesses specializing in Hispanic and Asian goods stocked illegal pesticides on their shelves. Realizing that the small entities may not be aware of the violations, the EPA created fliers explaining pesticide compliance in Spanish, Vietnamese, Laotian, simple Chinese, traditional Chinese, Korean, and English. EPA sent the fliers to nearly 270 Hispanic and Asian marketplaces and posted the material on the web, where the flier received 1,850 hits in five months.

The DOL's **Mine Safety and Health Administration** (MSHA) notes that 99 percent of its regulated entities qualify as small businesses, so all of the agency's final rules fall under the stricter SBREFA requirements. Each final rule includes an analysis of its effect on small business and is mailed to all regulated businesses. MSHA dispatches Small Mine Office and Educational Field Services specialists to explain new rules and to help small businesses comply.

The **Federal Trade Commission** (FTC) publishes compliance guidelines for almost all of its rules that affect small entities. Areas covered by FTC

“The regulatory fairness program offers an incentive for agencies to change their culture and treat small businesses as partners. It is the current intent of the National Ombudsman to engender greater compliance by more consultation, communication, partnerships, accountability, and feedback on behalf of small businesses and Federal agency enforcement communities.”

*Giovanni Coratolo,
Executive Director,
Small and Mid-Market
Business Councils, U.S.
Chamber of Commerce*

rules include mail orders, franchises, funerals, telemarketing sales, telephone disclosure and dispute resolution, and used motor vehicles.

The **National Credit Union**

Administration also provides compliance assistance. The agency office that serves small credit unions issued 16 legal opinions, 23 letters, five regulatory alerts, and three risk alerts in the first nine months of FY 2008 to help small credit unions comply with new or complex rules.

The **DOJ** maintains a toll-free ADA Information Line to answer small business owners' questions about complying with the Americans with Disabilities Act (ADA). The line operates 24/7 for ordering educational materials. ADA information specialists are available from 9:30 am to 5:30 pm Monday-Friday (except 12:30 pm-5:30 pm on Thursday) to respond to individuals' questions about applying ADA requirements to specific situations. Through the Information Line, 50,500 callers received direct assistance from ADA information specialists.

Compliance guides and telephone help are already part of the **Department of Housing and Urban Development's** tools for helping small businesses with enforcement issues. The department is now adding an online users' forum where small entities can review regulation and compliance guides and engage in dialogue with program experts.

DOL has developed the FirstStep Recordkeeping, Reporting, and Notices Advisor. This tool helps employers determine which recordkeeping, reporting, and notice requirements apply to them under DOL's major laws. This new elaws Advisor has been integrated with the revised and expanded FirstStep Poster and FirstStep Employment Law Overview Advisors. Each Advisor simulates the interaction one might have with an employment law expert. It asks questions and provides answers based on responses given. There are more than 25 other elaws Advisors on topics ranging from workplace safety and health, minimum wage, and overtime to health and retirement benefits and fiduciary responsibilities.

The **Occupational Safety and Health Administration** (OSHA) also employs technology to assist small businesses through its specialized e-correspondence system. The agency's "Contact Us" web page includes a link to the form used to submit inquiries. An OSHA e-correspondence gatekeeper routes questions to the appropriate office. The system handled 9,337 inquiries in FY 2008, with the most popular subjects being blood borne pathogens, powered industrial trucks, indoor air quality, sanitation, hazard communication, medical services and first aid, ergonomics, respiratory protection, personal protective equipment, and permit-required confined spaces.

SBREFA Notice—Criterion 5

The ONO issues a rating based on whether an agency has established a policy to inform small entities of their SBREFA rights at the same time that the agency issues a citation or notice of compliance and regulatory violation:

- The agency must provide written notification of SBREFA rights to small businesses.
- The agency must inform small business owners about their right to comment on the enforcement/compliance process to the ONO.
- The agency must provide small entities with the National Ombudsman’s web address (www.sba.gov/ombudsman), and telephone and fax numbers, and deliver the information in writing and/or on appropriate website locations.
- A = A general public statement, usually on the agency website, and a specific written notice of SBREFA rights to small businesses at the same time that the agency issues a citation or compliance and regulatory violation notice.
- C = General information about small businesses’ right to comment about the agency’s enforcement/compliance process to the National Ombudsman’s office but no specific notification of SBREFA rights during a citation or compliance and regulatory violation notice.
- F = No mention of SBREFA or the National Ombudsman, either generally or during a specific action.

Despite the ONO’s expanding creative outreach efforts, too many small businesses remain unaware that the ONO exists to offer assistance when regulatory compliance issues loom. This underscores the importance of Federal agencies providing small business owners with both written and verbal notice of their SBREFA rights at the same time that a citation or notice of compliance and regulatory violation is issued.

The Department of Commerce’s **National Oceanic and Atmospheric Administration** (NOAA) adopted SBREFA language in June 2008 that the agency now includes in all notices of violations. NOAA has created a PDF file detailing how those charged with violations can contact the ONO and posts a flyer containing the same information in all Offices of Law Enforcement and in each General Counsel for Enforcement and Litigation office.

Enforcement and outreach often go hand-in-hand at **OSHA**, where inspections provide a prime opportunity for education. Following an inspection, SBREFA rights are presented to every employer in the form of the booklet, “Employer Rights and Responsibilities Following an OSHA Inspection.” In addition, at the end of every inspection in FY 2008, OSHA’s Compliance Safety and Health Officers distributed materials on pandemic influenza and emergency preparedness and encouraged employers to subscribe to *Quicktakes*,

OSHA's twice-monthly e-news memo with 65,272 subscribers as of September 2008.

The **Commodity Futures Trading Commission's** Division of

Enforcement provides small entities with information on their SBREFA rights and explains how having a small business status affects the agency's process for assessing a civil monetary penalty. Some violators also receive prior notice and a chance to file a statement within 14 days that addresses enforcement circumstances and any small business considerations that are relevant to the investigation. The commission has a long-standing policy on penalty reductions and waivers for violations committed by small entities.

Agency Participation in RegFair Hearings—Criterion 6

The ONO rates agencies on their participation in RegFair Hearings when testimony includes issues that are related to their agency's mission. The ONO attempts to notify an agency contact directly or through the ONO event website at least 48 hours prior to such a hearing. An agency representative may appear in person or through the ONO's ReadyTalk conference call system. The ONO rates agencies according to the following considerations:

- A = The agency does not miss any pertinent hearings.
- B, C, D = Calculated based on the percentage of pertinent hearings attended by the agency.
- F = Misses all pertinent hearings.
- The ONO will post a rating of N/A when no agency issues are presented at any hearings or if the prior notification period is too short to allow an agency's participation.

RegFair hearings benefit both Federal regulators and entrepreneurs by providing a neutral setting for addressing potentially contentious enforcement issues. Agency representatives get to hear about perceived unfair enforcement burdens and suggestions for better approaches. Small business owners can learn about agency compliance assistance to help them avoid violating Federal rules.

The **Equal Employment Opportunity Commission** (EEOC) sent representatives to six ONO events to seek in-person meetings with small businesses and an opportunity to provide information about EEOC.

The **FTC** sent a representative to the National Regulatory Fairness Hearing in Washington, DC, because the discussion covered access to the FTC-administered National Do-Not-Call Registry. The agency representative also noted another benefit of his RegFair attendance:

“The March hearing was a good opportunity to see how the Ombudsman facilitates constructive dialogue, interaction, and problem solving between small business owners and Federal agencies.”

—Federal Trade Commission

OSHA considers regular attendance at RegFair hearings to be a necessary part of its small business outreach. The agency cites its strengthening relationship with SBA as one way that OSHA meets small employers’ occupational safety and health needs. The **IRS** also continued its tradition in FY 2008 of regularly attending RegFair hearings in order to promote agency products and services and educate small businesses about their rights to fair regulatory treatment.

The **OSBP** serves as the Ombudsman for DOL pursuant to SBREFA and oversees the department’s implementation of the law. In this capacity, OSBP receives, reviews, and addresses comments from the ONO; it also notifies and encourages the attendance of DOL enforcement agencies at Regulatory Fairness Hearings. During FY 2008, the ONO held 19 Regulatory Fairness Hearings. OSBP attended, provided an overview, and consulted with small business constituents at 15 of these hearings. OSBP coordinates the attendance and participation at RegFair hearings to ensure that the relevant agency is in attendance when prior notice is given that a small business owner is scheduled to testify concerning an issue related to DOL.

Table II-1. Rating of Agencies According to FY 2008 Criteria

Cabinet Level Agency (# of comments)	Timeliness	Quality	Non-Retaliation Policy	Compliance Assistance	Informs about SBREFA	Hearing	Overall	Additional Complaints/Comments Referred
AGRICULTURE (4)	B	A	C	B	B	N/A	B	(14)
Food & Nutrition Service (1)	B	A	F	C	C	N/A	C	
Food Safety & Inspection Service (3)	C	A	A	A	A	N/A	B	(2)
COMMERCE (2)	A	A	A	A	A	N/A	A	(4)
Bureau of Industry & Security (2)	A	A	A	A	A	N/A	A	
National Oceanic & Atmospheric Administration	N/A	N/A	A	A	A	N/A	A	(2)
DEFENSE	N/A	N/A		(See note in box below)				(30)
EDUCATION	N/A	N/A	A	N/A	C	N/A	B	(1)
ENERGY	N/A	N/A	A	A	C	N/A	B	(1)
HEALTH & HUMAN SERVICES (4)	A	A	A	A	B	A	A	(486)
Food & Drug Administration (2)	A	A	A	A	A	A	A	(451)
Centers for Medicare & Medicaid Services (2)	A	A	A	A	C	A	A	(33)
HOMELAND SECURITY (13)	C	A	A	A	A	A	A	(13)
Coast Guard	N/A	N/A	A	A	A	N/A	A	
Citizenship & Immigration Services	N/A	N/A	A	A	A	A	A	(4)
Immigration & Customs Enforcement (3)	B	A	A	A	C	N/A	B	
Customs & Border Protection (10)	C	A	A	A	A	A	A	(1)
HOUSING & URBAN DEVELOPMENT (3)	B	A	A	A	A	N/A	A	(10)
INTERIOR (1)	B	A	A	A	A	N/A	A	(6)
JUSTICE (1)	A	A	A	A	C	A	A	(6)
LABOR (23)	B	A	A	A	A	A	A	(7)
Occupational Safety & Health Administration (8)	A	A	A	A	A	A	A	(2)
Wage & Hour Division (7)	C	A	A	A	A	A	A	(2)
Mine Safety & Health Administration (7)	B	A	A	A	A	N/A	A	(1)
Employee Benefits Security Administration (1)	A	A	A	A	A	A	A	
STATE (1)	A	A	A	A	N/A	N/A	A	(5)
TRANSPORTATION (3)	A	A	A	A	A	A	A	(7)
TREASURY (13)	C	A	A	A	A	A	A	(6)
Internal Revenue Service (12)	F	A	A	A	A	A	B	(3)
Alcohol and Tobacco Tax & Trade Bureau (1)	A	A	N/A	N/A	N/A	N/A	A	
VETERANS AFFAIRS				(See note in box below)				(4)

Non-Cabinet Level Agency (# of comments)	Timeliness	Quality	Non-Retaliation Policy	Compliance Assistance	Informs about SBREFA	Hearing	Overall	Additional Complaints/Comments Referred
Commodity Futures Trading Commission	N/A	N/A	A	A	A	N/A	A	
Consumer Product Safety Commission (1)	A	A	A	A	A	N/A	A	
Environmental Protection Agency (3)	A	A	A	A	A	A	A	(5)
Equal Employment Opportunity Commission (1)	A	A	A	A	A	A	A	
Federal Communications Commission	N/A	N/A	A	A	C	N/A	B	(3)
Federal Deposit Insurance Corporation	N/A	N/A	A	A	*C	N/A	B	(1)
Federal Energy Regulatory Commission	N/A	N/A	A	A	A	N/A	A	
Federal Reserve Board	N/A	N/A	A	A	*C	N/A	B	(3)
Federal Trade Commission	N/A	N/A	A	A	A	A	A	(5)
General Services Administration	N/A	N/A		(See note in box below)				(4)
National Credit Union Administration	N/A	N/A	A	A	*C	N/A	B	(1)
National Labor Relations Board (1)	A	A	A	A	N/A	N/A	A	(1)
Pension Benefit Guaranty Corporation	N/A	N/A	A	A	A	N/A	A	
Small Business Administration	N/A	N/A	A	A	A	A	A	(63)
Securities and Exchange Commission (1)	A	A	A	A	A	N/A	A	(1)

* These three agencies are Federal Financial Institution Regulators. The agencies have established Ombudsman functions pursuant to the Riegle Community Development and Regulatory Improvement Act. To receive an 'A' rating in this category from the National Ombudsman, an agency must directly make reference to the National Ombudsman at the Small Business Administration on both its public website and at the time a citation or notice of regulatory violation occurs.

PLEASE NOTE: As originally stated in the National Ombudsman's 1999 Report to Congress, Section 222 of SBREFA is part of "Subtitle B—Regulatory Enforcement Reforms." Section 221 contains the "definitions" applicable to Subtitle B. Section 221 adopts the Freedom of Information Act definition of "agency." That definition states that agency means "each authority of the Government of the United States, whether or not it is within or subject to review by another agency..." (5 U.S.C. §551). Accordingly, the National Ombudsman, with advice from the regional RegFair Boards, has concluded that Section 222 applies whenever a Federal agency as defined above exercises regulatory fairness enforcement or compliance authority with respect to a small business concern (15 U.S.C. §657 (b)(2)(B)).

The Department of Defense, the General Services Administration, and the Department of Veterans Affairs are not rated because they do not report the necessary information. These agencies contend that SBREFA does not apply to them because they are not regulatory agencies.

Table II-2. Breakdown of Agency Attendance at ONO RegFair Hearings, 2008

<p>Austin, TX (1/22/08) Environmental Protection Agency Equal Employment Opportunity Commission Department of Treasury Internal Revenue Service Department of Labor Wage and Hour Division Department of Justice Department of Transportation Department of Health and Human Services Centers for Medicare and Medicaid Services Department of Homeland Security Customs and Border Protection Small Business Administration</p>	<p>Washington, DC NATIONAL HEARING (3/12/08) Federal Communications Commission Equal Employment Opportunity Commission Department of Treasury Internal Revenue Service Department of Labor Federal Trade Commission Pension Benefit Guaranty Corporation Department of Agriculture Department of Commerce Department of Health and Human Services Centers for Medicare and Medicaid Services Food and Drug Administration Department of Homeland Security Customs and Border Protection Department of Housing & Urban Development Department of State Environmental Protection Agency Consumer Product Safety Commission Department of Justice National Labor Relations Board Small Business Administration</p>	<p>Occupational Safety and Health Administration Environmental Protection Agency Small Business Administration</p> <hr/> <p>St. Louis, MO (5/6/08) Department of Treasury Internal Revenue Service Department of Labor Wage and Hour Division Occupational Safety and Health Administration Environmental Protection Agency Department of Health and Human Services Food and Drug Administration Department of Homeland Security Customs and Border Protection Department of Transportation Department of Defense Department of Veterans Affairs General Services Administration Small Business Administration</p>
<p>San Francisco, CA (2/5/08) Environmental Protection Agency Department of Homeland Security Customs and Border Protection Equal Employment Opportunity Commission Department of Treasury Internal Revenue Service Department of Labor Occupational Safety and Health Administration Small Business Administration</p>	<p>Wichita, KS (3/20/08) Department of Agriculture Food Safety & Inspection Service Environmental Protection Agency Department of Treasury Internal Revenue Service Department of Labor Wage and Hour Division Occupational Safety and Health Administration Department of Homeland Security Customs and Border Protection Federal Emergency Management Agency Federal Motor Carrier Safety Administration Small Business Administration</p>	<p>Concord, NH (5/29/08) Equal Employment Opportunity Commission Department of Treasury Internal Revenue Service Department of Labor Wage and Hour Division Occupational Safety and Health Administration U. S. Department of Defense General Services Administration Small Business Administration</p>
<p>Chattanooga, TN (2/20/08) Department of Treasury Internal Revenue Service Department of Labor Wage and Hour Division Occupational Safety and Health Administration Equal Employment Opportunity Commission Environmental Protection Agency Department of Agriculture Food Safety & Inspection Service Department of Housing & Urban Development Department of Homeland Security Customs and Border Protection Department of Transportation Small Business Administration</p>	<p>Omaha, NE (4/15/08) Department of Treasury Internal Revenue Service Department of Labor</p>	<p>Kansas City, MO (7/22/08) Department of Labor Wage and Hour Division Occupational Safety and Health Administration National Labor Relations Board Environmental Protection Agency Department of Treasury Internal Revenue Service Equal Employment Opportunity Commission Department of Homeland Security Customs and Border Protection Small Business Administration</p>

Agency Comments Regarding Ratings

The ONO presented a draft of this report to the agencies and RegFair Board members for their comments. The Internal Revenue Service (IRS) provided the following comment:

The National Ombudsman's 2008 Report to Congress (RTC) notes that in referring small business comments to Federal agencies, the ONO expects an agency to substantively engage the small business and to take specific action to resolve a problem. The RTC also notes that in rating an agency's responsiveness to a small business, the first criterion it considers is timeliness. The ONO expects a complete response in 30 business days or less. Because the average response time from the IRS was greater than 120 days, the IRS is graded "F" on timeliness.

As we have discussed with your office previously, it is impossible in most cases for the IRS to provide a complete response within 30 days. The majority of comments referred from the ONO to the IRS involve a small business's dispute about its tax liabilities. The ONO refers all case specific comments to the Taxpayer Advocate Service (TAS) through Jim Leith, the Local Taxpayer Advocate for Washington, DC (D.C. LTA). TAS makes every effort to comply with the ONO's expectations in responding to these referrals.

The ONO's evaluation of TAS timeliness disregards the work TAS performs. The ONO focuses on the timeliness of the TAS response to the ONO instead of the timeliness of the TAS response to the small business.

In all cases, TAS notifies the ONO within 30 days that a referral was received and assigned to a TAS office where the small business is located. Within that same timeframe, a TAS Case Advocate contacts the small business to advise that TAS is responding to the comments submitted to the ONO and that TAS will provide assistance in resolving the problem. The Case Advocate then communicates regularly with the small business owner until all issues are resolved.

Solving problems with the IRS is a complex and time-consuming process. Many cases require extensive documentation and formal requests for assistance from other IRS functions. TAS employees must comply with relevant sections of the Internal Revenue Code, operate within the limits of their delegated authorities, and utilize normal IRS functions and procedures.

TAS currently receives about 250,000 cases a year, and our quality standards emphasize resolving the taxpayer's case correctly, addressing all related issues so that the case is fully resolved, and taking initial and all follow-up actions in a timely manner. While the aggregate number of days it

takes to resolve a case is an indicator of timeliness, reducing aggregate response time is not, per se, a TAS objective. In fact, the use of aggregate response time as a quality measure in other IRS functions is sometimes the reason why cases end up in TAS. When response time itself is made the priority objective, an incentive arises for caseworkers to close out cases prematurely.

TAS implemented several changes to the SBREFA program to increase the efficiency of IRS efforts. First, program responsibility was moved to the D.C. LTA office to give the SBREFA cases priority attention and to facilitate a degree of specialization in working the cases. Second, the process was streamlined by reducing the number of program managers reviewing cases before they are forwarded to the National Taxpayer Advocate. Third, through this streamlined procedure,

TAS is more effective and more efficient in engaging the local TAS offices, TAS Attorney-Advisors, and the TAS Offices of Case Advocacy and Systemic Advocacy to address issues raised through the SBREFA referral process.

Enforcement Fairness as Economic Stimulus

Federal regulations are most effective when a small business clearly understands its obligations under the law. The ONO's agency ratings are meant to convey this message by guiding Federal regulators toward enforcement fairness. The American people benefit each time that an agency provides compliance assistance rather than resorting to enforcement actions—the agency accomplishes its Congressionally-mandated mission and small businesses have a chance to thrive in an effective enforcement environment.

III

Small Business Speaks: Success Stories from Main Street



When small businesses are faced with Federal regulatory challenges, the comment process of the Office of the National Ombudsman (ONO) offers a forum where entrepreneurs can present their compliance and enforcement problems, then work with the agencies involved toward a resolution.

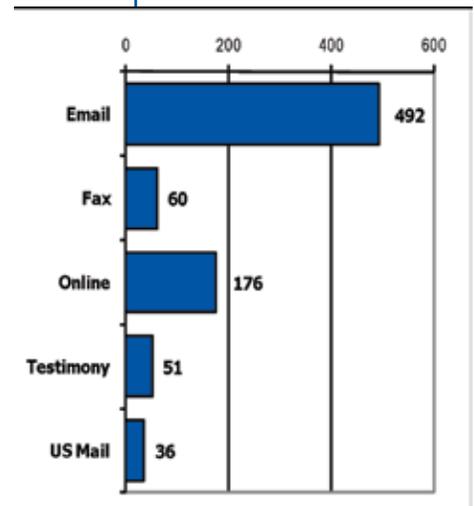
When an entrepreneur files a comment with the ONO describing unfair practices, the ONO begins the process of seeking a resolution that leads to effective regulation. Such a resolution must take into account both small business concerns and agencies' regulatory obligations under the law.

Federal agencies are often unaware of the cumulative effect of regulations. Entrepreneurs, on the other hand, focus their time and energy on growing their business, thereby growing their local economy. Their limited resources are often unequal to the task of keeping up with all relevant regulations.

A Focus on Fairness

The National Ombudsman stands ready to act as a liaison between entrepreneurs and Federal agencies through its Regulatory Enforcement Fairness Comment Process (see Figure III-2). The ONO receives comments regarding the enforcement actions of more than 35 Federal departments and agencies and provides small entities with multiple avenues for submitting comments, with email filing generating the largest number of comments in FY 2008 (see Figure III-1). The National Ombudsman's website (www.sba.gov/ombudsman) is the most popular online filing venue, allowing small business owners to begin the process simply by clicking on "How to File a Complaint or Comment."

Figure III-1. How Comments Were Received



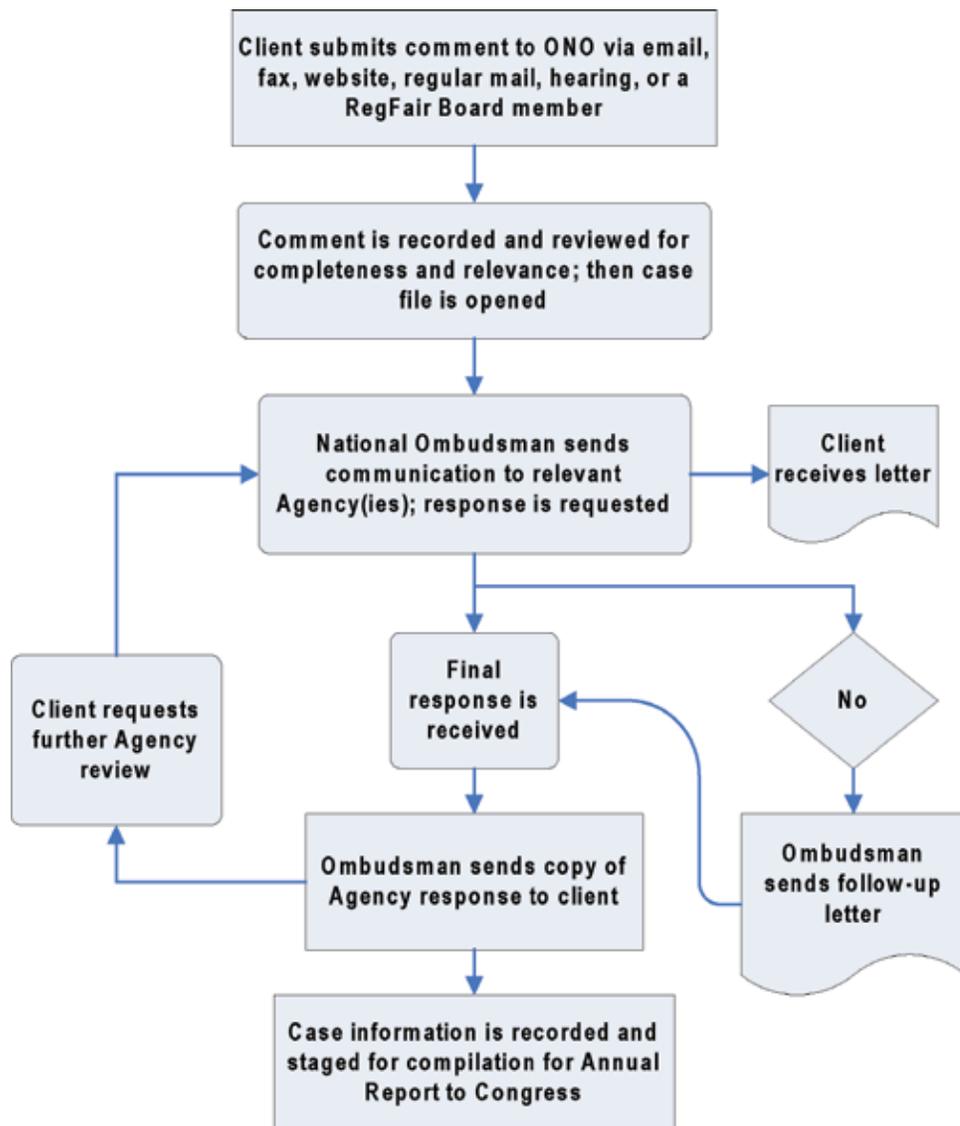
The National Ombudsman assists thousands of businesses with their compliance and regulatory challenges, but the ONO and RegFair Board members cannot:

- ❏ *Serve as a small entity's attorney. The ONO does not legally represent the organization filing the comment.*
- ❏ *Guarantee a positive outcome.*
- ❏ *Overrule, stop, or delay a Federal action (such as halting an IRS audit). The agency involved is the only one that can change a regulation.*

After receiving pertinent small business comments and complaints, the ONO directs them to the relevant Federal agency, appropriate SBA office, or other governmental entity for a high-

level review (see sidebar) and requests that Federal agencies consider the fairness of their enforcement actions. The ONO sends a copy of the agency's response to the small business owner.

Figure III-2. The ONO Regulatory Enforcement Fairness Comment Process



Comments Make the Case

The small business cases presented in this chapter reflect some common themes and perceptions that run through comments and are at the heart of most compliance and regulatory challenges:

- Agency Errors
- Lack of Communication
- Compliance and Regulatory Requirements
- Compliance Costs
- Changing Regulations

Agency Errors

Minor mistakes in the compliance and regulatory enforcement process can produce a heavy financial or logistical burden for a small business. Even with the best intentions and strongest quality control, agencies can make enforcement errors with consequences that are potentially damaging enough to threaten a small operation's ability to stay in business.

Comment: Such was the case when the Department of Health and Human Service's Centers for Medicare and Medicaid Services (CMS) built up \$75,000 worth of unpaid claims to a Nevada physical therapy facility with CMS provider status. The unpaid claims began to accumulate right after the state chose a new company as Medicare Administrator. The physical therapy facility filed a comment with the National Ombudsman declaring

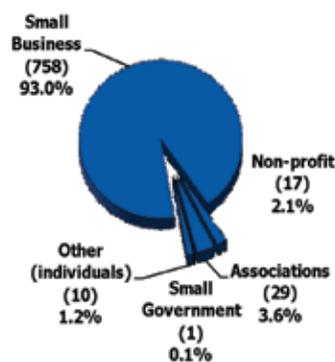
that "we are now faced with the probability of closing our doors in the next two weeks," and adding that even a partial CMS payment "would allow our business to stay open."

► **Outcome:** After being contacted by the National Ombudsman, CMS reviewed the facility's enrollment system file and updated the information for more accurate claims processing.

Comment: Computer glitches are a common category of agency errors that can wreak havoc with a small business's day-to-day operations. One example involves a chemical company and its repeated requests to the Defense Finance and Accounting Service (DFAS) to reactivate the company's expired Commercial and Government Entity (CAGE) code, which is a unique identifier assigned to vendors, government agencies, and other organizations. The small business wanted its CAGE code reactivated in order to submit partially unpaid invoices to the Department of Defense.

► **Outcome:** When informed of the issue by the ONO, DFAS began working directly with the small business to resolve the payment issue. The agency identified a processing error in its information system, took immediate action to create a work-around solution that would expedite payment of the outstanding invoice, and issued a trouble ticket to the system administrator to correct the

Figure III-3. Breakdown of Who Filed Comments



“The more small business owners know about us and what we can do to help, the more they will take advantage of our services. Participation from the regulated community is key. If even just a handful of small businesses bring a particular regulatory concern to light, their participation and input ultimately benefits everyone.”

*Andrew E. Markowski,
RegFair Board Chairman
Region I*

deficiency. DFAS paid the \$17,328 due to the chemical company, as well as a separate interest penalty a month later, adding that “we apologize for our error and the hardship this situation has caused.”

Comment: Agencies work diligently to implement laws passed by Congress, but in some cases, government officials misapply a law’s provisions. In one such instance, a community care facility contacted the National Ombudsman when a Department of Labor (DOL) overtime investigation found the small business in violation of the Fair Labor Standards Act (FLSA) and directed the facility to pay 16 caregiver employees a total of \$35,168.93 in overtime back wages. Management countered that they were complying with FLSA and that employees were paid under the law’s companionship exemption. A DOL investigation concluded that the exemption did not apply.

► **Outcome:** The DOL’s Wage and Hour Division reviewed the determination at the ONO’s urging and rescinded the request for payment of back wages. “District Office management found no violations of the FLSA,” according to the Wage and Hour Division review. “Specifically, the firm’s employees were found to be exempt from the minimum wage and overtime provisions under FLSA due to the nature of the services provided by the employer and the nature of the work performed by the employees.”

Comment: Federal agencies may

also err when interpreting their own regulations. In one example, an Oregon mining organization commented to the National Ombudsman that one of the group’s members “has been the subject of harassment” by a state office of the Department of Interior’s (DOI) Bureau of Land Management (BLM). The Oregon State Office had informed the miner of its intent to impose civil penalties.

► **Outcome:** After being contacted by the ONO, the DOI investigated the allegations and determined that the Oregon BLM “misinterpreted certain regulatory requirements” for filing notices of exploration and mining activities on public land. The Oregon BLM had mistakenly applied state geological rules to BLM filings. As a result, “the Oregon state Board of Geologist Examiners withdrew its notice of intent to impose civil penalties” against the mining company.

Lack of Communication

Busy entrepreneurs and Federal regulators have different perspectives, and some miscommunication might be expected. The trouble arises when misperceptions or misplaced messages impact the vitality of a small company. When accurate, complete information fails to flow between small companies and their regulators, serious consequences can be magnified for a business with slim profit margins and limited resources. The ONO strives to help reopen clear communication channels between agencies and their constituents.

Comment: The ONO stepped in to clear up miscommunications when a custom painting company owner commented that the IRS was withholding his 2007 refund and a stimulus check and instead applying them to a penalty that the agency said had been accruing for some time. According to the owner, the IRS had never informed him about the penalty.

► **Outcome:** ONO intervention led to the company owner receiving both his 2007 refund and other payments that the IRS had applied to the penalty, which was dropped. The company owner now “understands the filing and payment requirements regarding employment taxes for his business,” commented the IRS, and he can do his part to avoid similar confusion in the future.

Comment: A small Army vendor commented to the National Ombudsman that he was having difficulty getting an invoice processed by a particular command. According to the entrepreneur, the command was deploying into combat and his invoicing issue was getting lost in the internal transitions.

► **Outcome:** In a letter of response to the ONO, the U.S. Property and Fiscal Office (USPFO) noted that payment was delayed because the original invoice displayed an incorrect purchase order number. USPFO paid the invoice less than 30 days after receiving paperwork displaying the correct number.

Comment: On occasion, ONO involvement not only clears communication channels, it inspires an agency to make regulatory improvements beyond the single case brought by the National Ombudsman. In one such instance, a laboratory owner described for the ONO his difficulty in obtaining a Medicare provider number through a CMS intermediary. The laboratory owner complained that the intermediary failed to respond promptly and adequately to repeated inquiries.

► **Outcome:** Prompted by the ONO, CMS processed the contractor’s application and mailed a confirmation letter within two days. “CMS appreciates your bringing this matter to our attention, and we regret any inconvenience this may have caused,” the agency wrote in its reply letter. “We have spoken with the contractor to ensure that this does not continue in the future, and we are working to make improvements to the provider enrollment process.”

Compliance and Regulatory Requirements

Fines and inspections meant to foster good business behavior and protect the public can result in serious financial setbacks to a small business. When agencies enforce a regulation, they may fail to realize that the same provisions and penalties needed to keep large companies in check can prove unnecessarily harsh for a small business.

Comment: A quarry owner commented to the ONO that DOL's Mine Safety and Health Administration (MSHA) inspectors "are on a fining spree without considering the future consequences of their actions." According to the quarry owner, some MSHA officials "have made it a personal mission" to close down businesses, with one inspector "using his position in power to maliciously and intentionally seal the fate of our small community." The small businessman acknowledged that some of the citations had merit but argued that 45 citations over a three-day period are "excessive, unfair, and not warranted."

► **Outcome:** A letter from the National Ombudsman prompted a review of the 45 citations by MSHA's District Manager. MSHA's response showed that the agency was willing to review its actions; and, as a result, six citations were vacated and 17 were modified. "It has been determined that this inspector did conduct himself unprofessionally," DOL said in its reply to the ONO. "Appropriate action has been taken to address this issue, and MSHA has expressed disappointment with the inspector's conduct. An

invitation has also been extended to the company to take full advantage of MSHA's assistance in providing a safety and health program tailored to fit its needs."

Comment: An import company owner contacted the National Ombudsman after the Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) selected one of his containers for intensive inspection. CBP placed the cargo on hold because the articles were not properly marked with the country of origin and issued a marking notice.

► **Outcome:** CBP reviewed its citation at the ONO's urging and informed the National Ombudsman that "no penalties or fines were issued and the merchandise was released [to the importer] to properly mark the imported articles with the country of origin." The entrepreneur followed up with a note to the National Ombudsman: "Thank you for the wonderful follow-through and assistance with this matter. We did receive the marking notice and were given the opportunity to correct the shipment. It has now been cleared, and my experience with the officer in charge was a very positive one."

Feature III-1. RegFair Hearing Leads to Resolution

“That one hearing turned something around.”

An auto body shop owner frustrated with an Occupational Safety and Health Administration (OSHA) inspection brought his case before the Region VII RegFair Board Hearing held in May 2008 in St. Louis, MO.

“He did not protest the violation,” relates Board Chairman Joe P. Balsarotti, “He contested the way that the inspector went about her inspection. She did not even know about the rights of the business owner, including the right to be present while the inspection is done.”

As the entrepreneur related his experience, an OSHA regional official listened in the hearing audience. “The two went out in the hallway afterwards and had a very lengthy conversation,” says Chairman Balsarotti. As a result:

- ◆ *The owner received an OSHA CD with compliance information tailored to his industry.*
- ◆ *Copies of the CD were made for distribution to state auto body association members, who did not know that such a resource is available.*
- ◆ *The OSHA representative spoke at an association event about OSHA’s requirements for the body shop industry.*

“That one hearing turned something around not just for the one body shop owner but for everyone in his association and for OSHA,” notes Chairman Balsarotti. “It made OSHA look good, like the agency that is out to help small businesses understand their responsibilities. There is a far less adversarial relationship now between OSHA and the people in that industry.”



Compliance Costs

A rule that appears reasonable to regulators can result in costly and frustrating hurdles for businesses with small staffs and limited financial resources. Compliance costs that large companies take in stride as the price of doing business may place a small firm in financial jeopardy.

Comment: The case of a rural developer illustrates how a seemingly reasonable regulation can create hardship. The entrepreneur

commented that regulations issued by the Department of Housing and Urban Development (HUD) ban construction within one mile of above ground storage tanks (AGST). The builder noted that most rural homes in the county have AGSTs for cooking and heating fuel. The developer wanted to build rental units for middle to low-income people affected by Hurricane Katrina, but he contended that potential tenants would be adversely affected unless HUD granted a waiver to its regulation.

► **Outcome:** After being contacted by the ONO, the department decided to grant a waiver of its rules and approve the HUD-assisted projects, provided that the AGSTs contain liquid propane gas in tanks not exceeding 250 gallons and are located off-site.

Comment: Relatively small monetary amounts can make a big difference to a small business. Such was the case with a beauty salon owner who held a Small Business Administration loan and requested that the agency waive a pre-payment penalty.

► **Outcome:** In its response to the commenter, SBA's Office of Capital Access stated that the fee is not applicable in the salon owner's case. The lender got a rebate on the fee and passed it on to the small business owner.

Comment: The ONO came to the aid of another SBA loan holder who was in danger of losing a house. The homeowner fell behind on mortgage payments and was notified of imminent foreclosure. The commenter contacted the SBA to get a release on the property in order to use the \$20,000 expected to be made on the sale of the home as a down payment on another house. The commenter would then use the new home as collateral for the SBA loan.

► **Outcome:** After ONO intervention, the SBA allowed the loan holder to keep the equity in her home for a down payment on another house.

SBA gave her one month to find a house but after further review, granted the commenter an additional six months to find a home in a satisfactory location.

Changing Regulations

Small businesses often struggle to interpret compliance and regulatory complexities and keep up with new requirements.

Comment: One set of agency regulations is often daunting enough, but a small business can become even more enmeshed when dealing with two contradictory sets of rules. A sand and gravel quarry owner experienced such complexities when the Environmental Protection Agency (EPA) alleged that his company violated the Clean Water Act (CWA) by operating without a permit. The commenter told the National Ombudsman that his company had voluntarily sought a permit but was told by the Army Corps of Engineers (ACE) that it was not needed. The owner contended that the EPA suspended the processing of his CWA permit for two years and three months, denying him due process. The commenter also stated that the EPA is pursuing further enforcement action and that he has shut down his operations pending resolution of the matter.

► **Outcome:** EPA responded positively to the National Ombudsman, acknowledging that the ACE "did not comprehensively define the mining activities that were and

were not exempt from Section 404 of the CWA.” The ACE processed the quarry’s permit application. Once again, the ONO served as a catalyst for regulatory change beyond a single case: “EPA discussed this issue with Corps district staff and has worked with [them] to develop language that more carefully communicates Section 404’s requirements to businesses of all sizes, to ensure that such misunderstandings are less likely to occur in the future.”

Comment: Some cases before the ONO involve agencies that get tangled in their own regulatory complexities and mistakenly apply a rigorous condition that is not appropriate for the small business involved. A commenter brought such a situation to the National Ombudsman’s attention when the businessman tried to buy property with a complex ownership history. The property was currently owned by the county because the former owner failed to pay property taxes. That owner also apparently failed to pay Federal taxes because there was a lien against the property, as well. The Internal Revenue Service (IRS) refused to reveal the lien balance, citing privacy regulations. The potential buyer could not locate the former owner to get permission for disclosure of the lien amount.

► **Outcome:** After the ONO presented the IRS with the entrepreneur’s comment, the agency’s Disclosure Office confirmed that the financial information fell under a Notice of Federal Tax Lien (NFTL), meaning that it is a matter of public record and may be disclosed to anyone upon request. The IRS faxed the small businessman a copy of the NFTL release, and he stated that he was satisfied with the response.

Comment: One commenter, a specialty surgical practice, came to the ONO with a backlog of Medicare reimbursement claims. The small business owner said that she had failed “in diligent attempts” to contact the new Medicare CMS contractor to explain her reimbursement problem. “There are hundreds of providers just like us having trouble,” she wrote to the National Ombudsman. “We have been frustrated for almost 90 days, and we are no closer to solving our problem.”

► **Outcome:** Upon receiving the comment, the CMS consulted with the Common Electronic Data Interchange (CEDI) contractor to resolve the surgical facility’s reimbursement difficulty. The small business received a vendor identification and CEDI password in order to resubmit its claims.

IV

RegFair Boards and Beyond: Strengthening Community Connections

Outreach is an essential part of the Office of the National Ombudsman's (ONO) mission. No small business owner should struggle alone with regulatory burdens simply because the entrepreneur is unaware that a National Ombudsman exists to help. Connecting with business communities throughout the United States enriches the ONO's understanding of enforcement challenges and spreads the word that entrepreneurs have an ally to turn to when faced with excessive or unfair Federal regulatory enforcement actions.

The ONO relies on its partners in the business community and Federal government to extend and amplify its outreach efforts:

- The 10 Regional Regulatory Enforcement Fairness (RegFair) Boards serve in local communities and make contact with small business owners where they live and work.
- The ONO collaborates with other SBA resource partners to enhance its mission of seeking compliance and regulatory enforcement fairness for small businesses.
- The ONO teams with national trade groups whose members have enforcement issues.

- The ONO continues to successfully encourage Federal agencies to recognize and take steps that lighten the burden of regulatory compliance on small entities.

RegFair—Peer-to-Peer Support

Because RegFair Board members are business owners, operators, and officials themselves, they empathize with their peers and encourage entrepreneurs to speak out about unfair compliance and regulatory actions without fear of retaliation. As part of their duties, the National Ombudsman and RegFair Boards host two types of forums:

Hearings are town hall type open forums focused on collecting comments and hearing testimony from individual entrepreneurs and/or small business service associations (see Table IV-1 and Figure IV-1), as well as educating the community on the Federal regulatory hurdles that small businesses face. Federal agency representatives are invited to attend hearings to keep abreast of small business regulatory issues, particularly when they directly concern an agency's enforcement responsibilities. At the

Table IV-1.

2008 RegFair Hearings (H)/ Roundtables (R)

Bel Air, MD (R)

Austin, TX (H)

San Francisco, CA (H)

Las Vegas, NV (R)

Chattanooga, TN (H)

Washington, DC (H)

Rogers, AR (R)

Wichita, KS (H)

Columbia, SC (R)

Charleston, WV (R)

Jacksonville, FL (R)

Omaha, NE (H)

Cheyenne, WY (R)

Albuquerque, NM (R)

St. Louis, MO (H/R)

Concord, NH (H)

Gulfport, MS (R)

Hattiesburg, MS (R)

Jackson, MS (R)

Kansas City, MO (H)

Chicago, IL (R)

“I wish that more people would testify at RegFair Hearings so that we can find out the challenges of specific industries and find them the help that they need.”

*Joe P. Balsarotti,
Chairman, Region VII
RegFair Board*

annual National RegFair Hearing in Washington, DC, small business group leaders describe their members’ regulatory challenges and learn what the ONO can do to help (see Feature IV-2).

Roundtables bring together the small business community and business and

trade associations for an information exchange. Sometimes agencies participate and explain their regulatory and compliance assistance programs. Business representatives discuss enforcement concerns and the impact of government rules from a small company’s point of view.

Figure IV-1. 2008 RegFair Hearing Locations



Table IV-2. ONO Media Efforts Outlet Circulation

ONO Event	Radio /TV	Print
Las Vegas, NV		<i>Sun Herald</i> - 40,000 Daily / Sunday <i>Las Vegas Business Press</i> - 12,500
Wichita, KS		<i>Wichita Business Journal</i> - 5,551 Weekly <i>Wichita Eagle</i> - 79,233 Daily / Sunday
Charleston, WV		<i>The State Journal</i> - 10,000 Weekly
St. Louis, MO		<i>Kansas City Star</i> - 239,358 Daily / Sunday
Concord, NH		<i>The New Hampshire Union Leader</i> - 51,268 Daily / Sunday <i>The New Hampshire Business Review</i> - 13,000 Bi-weekly <i>The Portsmouth Herald</i> - 11,459 Daily / Sunday
National Outreach		<i>The Seattle Post-Intelligencer</i> - 316,332 Daily / Sunday
National Outreach	WDRC (Radio) Connecticut - 2.6 Share **	
National Outreach		Forbes.com - 666,667 (includes magazine) Online-Daily, Magazine-Monthly
National Outreach		<i>The Washington Post</i> - 622,714 Daily / Sunday
National Outreach		Inc.com - 724,110 (includes magazine) Online-Daily, Magazine-10 issues/year
National Outreach		<i>El Paso Times</i> - 69,208 Daily / Sunday

**2.6 share means 2.6% of the 1,051,800 listeners in the market area listen to WDRC.

The National Ombudsman and Board members often capitalize on publicity surrounding these forums to give speeches, presentations, and media interviews that extend the ONO message to a larger audience.

RegFair Boards also monitor the Federal agency enforcement issues that arise in their region and use their network of business contacts and affiliations with trade associations to spread the word that entrepreneurs need not struggle alone with

compliance and regulatory challenges.

As members of the local community, RegFair Board members can attract media attention both before and after hearings and roundtables to publicize the ONO's mission and the various ways that the National Ombudsman can assist small companies.

Board members also brief Congressional small business liaisons and local elected officials to keep government representatives abreast of small business enforcement challenges.

Feature IV-1. Board Member Outreach

The Best Kept Secret Resource

“The ONO is the best kept secret resource for small businesses,” declares Stephen L. Becher, Region V RegFair Board Chairman, in describing the importance of outreach. “The ONO is a fantastic resource that we need to increase the awareness of.”

Becher has met with his National Federation of Independent Business' State Leadership Council, his local SCORE board, his Congressional representatives, and the individual businesses with which he comes into contact. “I mention it to people as I'm networking,” he explains. “I tell them, ‘If you know anybody who needs it, this is a great resource.’” Howard Horowitz, Region II RegFair Board Chairman, also worked in 2008 to spread the word, contacting elected officials in his home area—Nassau County, NY—to set up meetings to inform small business owners about the help available from the ONO and SBA.

RegFair Board members are following the National Ombudsman's lead and steering entrepreneurs toward the help they need even when the issue falls outside the Small Business Regulatory Enforcement Fairness Act.

“If you have a small business on the line and you can help them, you help them. I am an outreach resource for SBA as a whole,” explains Brooks Hulitt, Region III RegFair Board Chairman. “The IRS and immigration are usually the most popular areas but with the economic situation, last year was all about SBA loans. You say ‘SBA’ and everybody says ‘loan guarantees.’ I keep SBA loan information on hand.”

Although Chairman Hulitt cannot directly handle small business loan issues, he can use the contact to inform fellow entrepreneurs about what the ONO offers. “It is still true that not enough businesses know about the ONO,” he says. “If it's a regulatory enforcement issue, most businesses still go directly to lawyers. Outreach is our biggest issue.”

Feature IV-2. National RegFair Hearing

Leaders Tell Regulators: Unburden Our Rank and File

Small business leaders described the regulatory challenges of their rank and file on March 12, 2008, at the ONO's second annual National Regulatory Enforcement Fairness (RegFair) Hearing in Washington, DC. With economic indicators increasingly pointing toward trouble, the nation's entrepreneurs presented suggestions for fair, effective enforcement:

Organization: National Federation of Independent Business (NFIB)

Membership: 350,000 small businesses

Regulatory Message: "The work you do here is heroic, and I commend you for your willingness to serve. The ONO and RegFair Boards assisted dozens of NFIB members [in 2008] in situations ranging from relatively minor to those that were a matter of life and death for the member's business."

Andrew Langer, former Senior Manager of Regulatory Policy

Organization: U.S. Chamber of Commerce (the Chamber)

Membership: 3 million businesses and organizations; 96 percent of members are businesses with less than 100 employees

Regulatory Message: The Chamber presented results of its evaluation of Federal agencies based on business-friendly regulatory enforcement and auditing procedures:

- 1. Fear of retaliation is still real—especially among government contractors.*
- 2. Several agencies have become even more aggressive in their enforcement efforts toward small businesses without implementing adequate safeguards.*
- 3. Many regulatory fairness complaints involve government contracting. Problem areas include duplicative information requirements, multiple audits that interfere with contract performance, and slow payments.*
- 4. Abuses increase when Federal agencies rely on state enforcement structures.*

Giovanni Coratolo, Executive Director, Small and Mid-Market Business Councils

Organization: Credit Union National Association (CUNA)

Membership: Approximately 90 percent of the nation's 8,400 credit unions and their 90 million members

Regulatory Message: CUNA advocates regulatory hurdles removed so that credit unions can increase their participation in SBA lending. CUNA is also advocating for Credit Union Regulatory Improvements Act reforms, such as less restrictive access to underserved areas and net worth requirements that are in line with those of other financial institutions. CUNA also supports raising the statutory ceiling on credit union member business lending as an important mechanism to help support small businesses get started and grow.

Mary Mitchell Dunn, Senior Vice President and Deputy General Counsel

Organization: *National Association of Mortgage Brokers (NAMB)*

Membership: *25,000 mortgage brokers*

Regulatory Message: *NAMB opposes the Federal Reserve Board's proposed revisions to "Regulation Z" that would increase disclosure requirements for small mortgage brokers and put them at a disadvantage with larger competitors.*

Anthony Atkins, President-Elect, Mississippi Association of Mortgage Brokers

Organization: *National Association of Realtors (NAR)*

Membership: *1.2 million real estate agents*

Regulatory Message: *NAR cites three sets of regulations that impose unfair compliance and enforcement burdens:*

- 1. Lead-Based Paint Disclosure Act regulations from the Environmental Protection Agency (EPA) that impose onerous paperwork and notification procedures.*
- 2. Do-Not-Call Registry rules from the Federal Trade Commission that carry disproportionately high compliance costs for small businesses.*
- 3. Real Estate Settlement Procedure Act rules enforced by the Department of Housing and Urban Development that have caused widespread compliance uncertainty compounded by inadequate education and outreach.*

Iona Harrison, Chair, NAR Regulatory Issues Forum

Organization: *Air Conditioning Contractors of America (ACCA)*

Membership: *More than 4,000 members—many of them small businesses—who design, install, and maintain indoor environmental systems*

Regulatory Message: *ACCA is pressing the Treasury Department to update its tax code by lowering the depreciation period for commercial heating, ventilation, air conditioning, and refrigeration equipment from 39 years to a more realistic 15 years.*

David Kyle, Board of Directors

Organization: *National Association of Home Builders (NAHB)*

Membership: *235,000 members*

Regulatory Message: *NAHB wants the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to settle on permanent regulatory language for protecting endangered species habitat. "Interim guidance" is causing uncertainty and delays.*

David Crowe, Senior Staff Vice President, Federal Regulatory and Housing Policy

Organization: *Associated Builders and Contractors, Inc. (ABC)*

Membership: *25,000 employers in the commercial and industrial construction industry, more than 70 percent of which are small businesses*

Regulatory Message: *The Department of Labor (DOL) enforces the Davis-Bacon Act requirement that contractors pay the “prevailing wage rate” for each job classification, but DOL does not provide clear and available information as to what these rates are.*

Robert Hirsch, Director of Legal and Regulatory Affairs

Organization: *National Roofing Contractors Association (NRCA)*

Membership: *4,000 roofing, roof deck, and waterproofing contractors, and associated industries*

Regulatory Message: *Because the Department of Homeland Security’s immigrant worker eligibility regulations are confusing, burdensome, and difficult to enforce, states and localities are developing their own increasingly complex web of immigration laws to fill the vacuum.*

Craig Brightup, Vice President, Government Relations

Organization: *National Coalition of Pharmaceutical Distributors (NCPD)*

Membership: *4,500 small, independent pharmaceutical distributors*

Regulatory Message: *A Federal court has struck down a Food and Drug Administration (FDA) regulation that blocks small companies from achieving Authorized Distributor status and obtaining pharmaceuticals directly from manufacturers. NCPD wants the FDA to withdraw its appeal of this court ruling so that small distributors can compete with larger companies.*

Karen Moody, President

Organization: *National Cable & Telecommunications Association (NCTA)*

Membership: *Cable operators—including small and mid-sized operators—that serve more than 90 percent of the national cable TV subscribers*

Regulatory Message: *The Federal Communications Commission is skirting the Regulatory Flexibility Act’s directive to assess the economic impact of rules on small entities. The agency is also creating barriers to small entities entering new lines of business.*

Lisa Schoenthaler, Vice President, Office of Rural/Small Systems

SBA Partners— Extending Outreach

The ONO is an important component in SBA's mission to serve small business and so are the Federal agency partners that support the National Ombudsman in working toward regulatory enforcement fairness:

- SBA District and Regional field offices support RegFair Board members in publicizing hearings and serving as liaisons to small business owners. Field office staff are often those listed as points of contact for hearings, roundtables, and other ONO-sponsored events.

- SBA Office of Advocacy presents the small business viewpoint while legislation and regulations are being developed. For example:

- Advocacy saved small businesses \$10.7 billion in regulatory costs in FY 2008 by helping Federal agencies comply with the Regulatory Flexibility Act (RFA). The RFA requires agencies to

analyze the economic impact of proposed regulations on small entities and consider less burdensome alternatives that still reach the agencies' regulatory goals.

- Advocacy continued its State Regulatory Flexibility Initiative, a piece of model legislation similar to the Small Business Regulatory Enforcement Act to which state lawmakers can refer when writing their own laws. To date, 22 states have adopted enforcement fairness laws. As a result of this success, Advocacy has begun working with small business communities, state legislators, and state government agencies to assist them with implementing their regulatory flexibility laws.

- Small Business Development Centers and SCORE serve as rich resources when small companies make requests for start-up advice that is not within the ONO's jurisdiction. These SBA resource partners can help entrepreneurs set the stage for success.

“Volunteer boards such as ours, comprised of citizens and business owners, will always have a place in a society where our governmental structure is founded on a series of checks and balances, public input, and due process. It is possible to achieve a healthy balance of government enforcement and compliance along with entrepreneurship and free enterprise.”

*Andrew E. Markowski,
Chairman, Region I
RegFair Board*

Feature IV-3. Assistance in Resolving State and Local Regulatory Issues

ONO Issues Ombudsman Model for State and Local Governments

In May 2008, the ONO issued its Small Business Ombudsman Model for State and Local Governments: Preserving Transparency and Fairness in Regulatory Enforcement for America's Small Businesses.

The model was prompted by entrepreneurs' frequent requests for help from the National Ombudsman in resolving state and local regulatory issues.

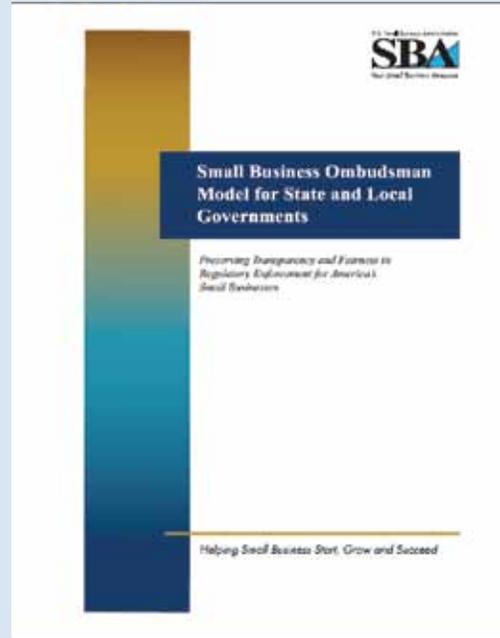
The ONO has authority to review only Federal enforcement matters and has no jurisdiction in states and localities. Instead, the National Ombudsman can now offer a template for jurisdictions to create their own versions of the ONO.

"Fostering a small business-friendly regulatory environment across all levels of government will make it easier for small business to grow and succeed," according to an ONO statement. "The Office of the National Ombudsman is sharing its successful tools so other governing entities can come away with a better understanding of how the office is a vital small business resource."

The model includes:

- ◆ *An overview of the ONO program that walks readers through its organization and processes.*
- ◆ *Examples of authorizing legislation that state and local governments can use to create their own small business ombudsman service.*
- ◆ *Sample documents used by the ONO to create its program.*

The ONO now has a practical response when entrepreneurs seek assistance with state and local dilemmas—"a collection of the best practices and resources for providing small businesses with the transparency that they deserve in the regulatory and compliance process."



Trade Group Alliances— Amplifying the Message

When the ONO and RegFair Board members team with business and trade associations, the ONO strengthens its credibility and broadens its message within the small business community. These groups continued to support the ONO mission in 2008 by speaking on behalf of their members (see Feature IV-2), providing feedback on compliance and regulatory

enforcement issues and making it possible for the ONO to assist more small businesses.

The U.S. Chamber of Commerce, for example, uses information from the ONO to create email blasts sent to its small business membership database, announcing each upcoming RegFair Hearing and encouraging company owners' participation. Groups publicize the ONO's mission and events and encourage members to speak out about enforcement fairness problems.

Feature IV-4. Business.gov Website

Business.gov: Plain language resources and government transparency for the small business community

FY 2008 Awards and Recognition

- ✧ *Excellence.gov Award*
- ✧ *Government Computer News Technology Leadership Award*
- ✧ *Government Information Technology Executive Council Project Management Excellence Award for delivering mission critical services*
- ✧ *Association for Federal Information Resources Management Leadership in e-Government Award*
- ✧ *Search Engine Strategies Award for best use of local search*
- ✧ *American Council for Technology Intergovernmental Solutions Award*
- ✧ *Web Managers Best Practice Award*

Business.gov—the official business link to the U.S. Government—provides innovative information services to the small business community that save time and money, create conversation, and enable collaboration. Business.gov harnesses technology to put regulatory and related information online and make it transparent to the public. The website also offers users multiple ways to comment on its functionality and make suggestions for improvement.

The website, which is managed by SBA in partnership with 21 other Federal agencies, reduces the amount of time and money that business owners spend on complying with Federal regulations and associated paperwork so that entrepreneurs can direct more resources toward running their businesses.

In FY 2008, Business.gov implemented innovative technologies to bring the business community additional capabilities, such as customized search applications, that provide government information within a business context.

Business.gov innovations:

- ◆ *Enhanced 'Permit Me' feature allows business owners to search by city, state, or zip code.*
- ◆ *State and local search engine improves on Google.com by providing search results specific to business owner locations.*
- ◆ *Green business guides promote government services and resources to help small businesses adopt environmentally friendly and energy efficient practices.*
- ◆ *Green business search engine helps entrepreneurs locate additional resources for adopting environmentally sound practices.*



◆ *Small Business Guide to Energy Efficiency supports SBA's statutory requirement to comply with the Energy Independence and Security Act of 2007 by working with EPA's ENERGY STAR program.*

◆ *Social media and networking (Web 2.0) features:*

- *Business.gov page on Wikipedia.*
- *Bookmarking that allows site visitors to add Business.gov links to networking sites, such as del.icio.us, Facebook, Digg, and MySpace.*

• *Business.gov "Gadget" for immediate access to essential online tools and resources.*

◆ *Google Maps help locate small business development centers and federal offices in local communities.*

◆ *Implementation of content management system shortens cycle time for posting new content.*

The best measure of the website's value is the 3.96 million hours that small business owners reported saving in FY 2008 by using Business.gov.

Agency Outreach— Education Before Enforcement

Federal regulations are most effective when small business owners understand their obligations under the law and feel comfortable seeking agency assistance to head off compliance difficulties before they develop. The ONO's ultimate partners in regulatory fairness are those Federal agencies that protect the public good by emphasizing compliance education before resorting to enforcement. The National Ombudsman encourages agency outreach programs such as those below to promote an effective regulatory environment:

■ U.S. Department of Agriculture's **Food Safety and Inspection Service** (FSIS) launched the Office of Outreach, Employee Education, and Training in March 2008 to advance the agency's priority of responding to small/very small plant needs. Outreach initiatives include:

- Conducting online scientific and technical education meetings and posting them on the FSIS website.
- Issuing guidance on making regulatory appeals so that plant owners understand how to dispute inspection results.
- Launching Small Plant News, a monthly publication to inform meat, poultry, and egg producers about food safety rules and issues related to homeland security.

■ The **Department of Justice** (DOJ) developed a meeting series designed to reach smaller communities and neighborhoods in mid-sized cities. "Accessible Neighborhood Businesses: Information Exchange" events bring together local neighborhood businesses, disability rights advocates, and high school and college business education programs to conduct Americans with Disabilities Act training and discuss accessibility concerns specific to each community. Meetings in 2008 were held in Pittsburg, KS; Birmingham, AL; and Great Falls, MT.

■ The **Occupational Safety and Health Administration** (OSHA) forms Strategic Partnerships with a variety of organizations—including small businesses—to draw up three- to five-year customized agreements for improving employee safety and health. These agreements may be national, regional, or local in scope and must contain goals, strategies, and performance measures. OSHA considers its partnerships a success:

"[The program] moves away from traditional enforcement methods and embraces collaborative agreements with industries, professional or trade associations, labor organizations, state governments, and others. This different approach is proving to be effective in reducing fatalities, injuries, and illnesses in the workplace."

—Occupational Safety and Health Administration (OSHA)

■ The Department of Labor's **Office of Small Business Programs (OSBP)** has taken direct action to expand educational outreach to small business owners around the country by implementation of the "Employer Compliance Assistance Forum: Understanding DOL Rules and Regulations." In coordination with DOL enforcement agencies' representatives from the National and Field Offices, OSBP coordinated more than 20 educational forums around the country. These forums provided business owners an opportunity to engage in dialogue with the DOL representatives about various regulations that affect the operation of their businesses on a daily basis, such as overtime payment, work hours, exempt employees, independent contractors versus employees under the Fair Labor Standards Act; the Family and Medical Leave Act; and workplace safety under the Occupational Safety and Health Act. These forums were started in 2006 and are an integral part of DOL's outreach efforts towards small businesses. RegFair board members have also participated in the forums and have provided an overview of the SBREFA programs to small business owners. Information regarding the locations for future Employer Compliance Assistance Forums is located at <http://www.dol.gov/osbp>.

■ The **Environmental Protection Agency (EPA)** published a rule in January 2008 that will require auto body shops—many of which are small businesses—to reduce hazardous air

emissions by 2011 from paint stripping and surface coating operations.

The agency has begun a two-year nationwide compliance program in every region of the country, with an emphasis on small businesses. EPA is providing free training workshops, extensive web resources, and special outreach specific to each region. These include a training DVD, free health screenings for auto shop workers, information on safer alternatives to toxic chemicals, and one-on-one site assistance visits.

■ The **Internal Revenue Service (IRS)** "continues to be aggressive in its efforts" to develop small business compliance programs, according to the agency. New for FY 2008/2009 is a tax code instruction program designed specifically for new businesses started by women and members of ethnic minority groups—the two largest categories of new small business owners. The program focuses on employers who hire workers with disabilities and is a collaborative effort among organizations within and outside the IRS, including the National Disability Institute.

■ The **Drug Enforcement Administration (DEA)** has developed a website with expanded information related to its Diversion Control Program. Entrepreneurs can easily locate items of interest, such as contact information for small business specialists at headquarters and field offices, drug and chemical program information, and meeting

and conference dates. The website was visited 3.5 million times from January to September 2008 and averaged 12,608 visits per day.

■ The **Federal Reserve System** (Fed) reaches out to small entities whether they are the providers or the consumers of banking services. The Fed's web-based catalog of compliance guidelines

allows owners to view the guides by clicking on the appropriate regulation. Agency staff members are available to answer follow-up questions. For banking customers—including small businesses—the Fed maintains a website with comprehensive compliance information and toll-free phone numbers, faxes, and postal addresses for filing complaints.

Appendix: Media Outreach

Event	Location	Date	Radio/TV Interviews	Print Media Articles	Internet
Roundtable	Bel Air, MD	11/6/07			
Hearing	Austin, TX	1/22/08			1/23/2008 The National Small Business Association published an article that refers to the roundtable and features the program and services of the Office of the National Ombudsman. (www.nsba.biz)
Hearing	San Francisco, CA	2/5/08		2/13/2008 The American Small Business League issued a press release highlighting its Communication Director's testimony at the hearing.	
Roundtable	Las Vegas, NV	2/7/09			1/23/08 <i>Sun Herald</i> published a Press Advisory to promote the hearing. (www.sunherald.com) 1/23/08 State House News Service published a Press Advisory to promote the hearing. (www.statehousenews.com) 2/19/08 <i>Las Vegas Business Press</i> featured an article recapping the hearing. (www.lvbusinesspress.com)
Hearing	Chattanooga, TN	2/20/08		The Chattanooga Area Chamber of Commerce promoted the hearing in its marketing materials for its 2008 Business Expo.	1/15/2008 Article promoting hearing posted on www.chattanooga.com. Article promoting the hearing was posted on the National Federation of Independent Business (NFIB)/Tennessee website. (www.nfib.org/tn)
Speaking Event	Colorado Springs, CO	2/21/08		2/21/2008 Rep. Doug Lamborn's (CO) office issued a press release featuring Nicolas Owens, former National Ombudsman, participating in a business luncheon regarding small business concerns.	

Event	Location	Date	Radio/TV Interviews	Print Media Articles	Internet
National Hearing	Washington, DC	3/12/08			
Roundtable	Rogers, AR	3/18/08			The Rogers-Lowell Area Chamber of Commerce (Arkansas) promoted the hearing on its website. (www.rogerslowell.com)
Hearing	Wichita, KS	3/20/08		3/12/2008 <i>The Wichita Business Journal</i> published an article to promote the hearing. 3/13/2008 <i>The Wichita Eagle</i> published an article to promote the hearing. 3/21/2008 <i>The Wichita Eagle</i> published an article recapping the hearing.	
The El Paso Hispanic Chamber of Commerce 2008 State of Small Business Conference	El Paso, Texas	3/27/08		3/25/2008 <i>The El Paso Times</i> published an article to promote State Small Business Conference hosted by the National Federation of Independent Business and the El Paso Chamber of Commerce. The article mentions Nicholas Owens, former National Ombudsman, as a keynote speaker.	El Paso Inc. featured an interview with Nicholas Owens, former National Ombudsman. Article highlights the 2008 Economic Stimulus Package and its effect on small business.
Roundtable	Columbia, SC	4/1/08			
Roundtable	Charleston, WV	4/8/08		<i>The State Journal</i> (Charleston, WV) published an article highlighting the assistance available to small business owners through the Office of the National Ombudsman.	
Roundtable	Jacksonville, FL	4/11/08			
Rubber Manufacturers Association Annual Meeting	St. Augustine, FL	4/12/08			
Hearing	Omaha, NE	4/15/08			
Roundtable	Cheyenne, WY	4/17/08			KGWN-TV (Wyoming) published an article on its website recapping the hearing. (www.kgwn.tv)
OSHA 2008 Annual On-Site Consultation Conference	Seattle, WA	4/28/08			
Roundtable	Albuquerque, NM	5/2/08			
Roundtable	St. Louis, MO	5/6/08			

Event	Location	Date	Radio/TV Interviews	Print Media Articles	Internet
State / Federal Hearing	St. Louis, MO	5/6/08			
Hearing	Concord, NH	5/29/08		5/2/2008 <i>The New Hampshire Business Review</i> published an article to promote the hearing. 5/22/2008 <i>The New Hampshire Union Leader</i> published an article to promote the hearing. 5/22/2008 <i>The Portsmouth Herald</i> promoted the hearing in its calendar of events.	<i>Nashua Telegraph</i> published an article on its website to promote the hearing. (www.nashuatelegraph.com) The Women's Business Center (Portsmouth) published an article on its website to promote the hearing. (www.womenbiz.org) The New Hampshire Bar Association published an article on its website to promote the hearing. (www.nhbar.org)
Roundtable	Jackson, MS	6/28/07			
Roundtable	Gulfport, MS	7/18/08			
Roundtable	Hattiesburg, MS	7/21/08			
Hearing	Kansas City, MO	7/22/08		7/29/2008 <i>The Kansas City Star</i> published an article to recap the hearing. August 2008 The U.S. Small Business Administration's Office of Field Operations included a picture with caption from the hearing in the office's newsletter.	
Roundtable	Chicago, IL	7/31/08			

National Outreach

Date	Radio/Television Interviews	Print Media Articles	Internet Articles	Purpose of Media
10/30/07			Inc.com	Interview with Nicolas Owens, former National Ombudsman. Article highlights improved Federal agency responsiveness to small firms.
12/21/07		<i>The Seattle Post-Intelligencer</i>		Article published about Daniel Piccora's pizza business. Mr. Piccora is Chairman of the Region IX Regulatory Fairness Board.
1/16/08	National Association of Manufacturers Radio			Interview with Nicholas Owens, former National Ombudsman.
3/6/08	WDRC Radio (Connecticut)			Host Phil Mikan interviewed Nicholas Owens, former National Ombudsman, about the Office of the National Ombudsman.
4/23/08			Keep Me Current website – www.keeptocurrent.com	Published an article written by Bernard Featherman, Regulatory Fairness Board Member, Region I.

Date	Radio/Television Interviews	Print Media Articles	Internet Articles	Purpose of Media
6/9/08			Forbes.com	Interviewed Nicholas Owens, former National Ombudsman, and published an article on the program and services of the Office of the National Ombudsman.
7/14/08		<i>Washington Post</i>		Published information on Tools and Tips for small businesses. Information included assistance for state and local governments via the Office of the National Ombudsman's Small Business Ombudsman Model for State and Local Governments.
July 2008		The Santa Ana District Office Newsletter		Newsletter included pictures and an article on former National Ombudsman Nicholas Owens' participation in the office's Memorandum of Understanding signing ceremony with two Native American organizations.
9/12/08			Occupational Safety and Health Administration (OSHA) website (www.osha.gov)	Article included on OSHA website to promote its quarterly small business forum. Nicholas Owens, former National Ombudsman, was a featured panelist.

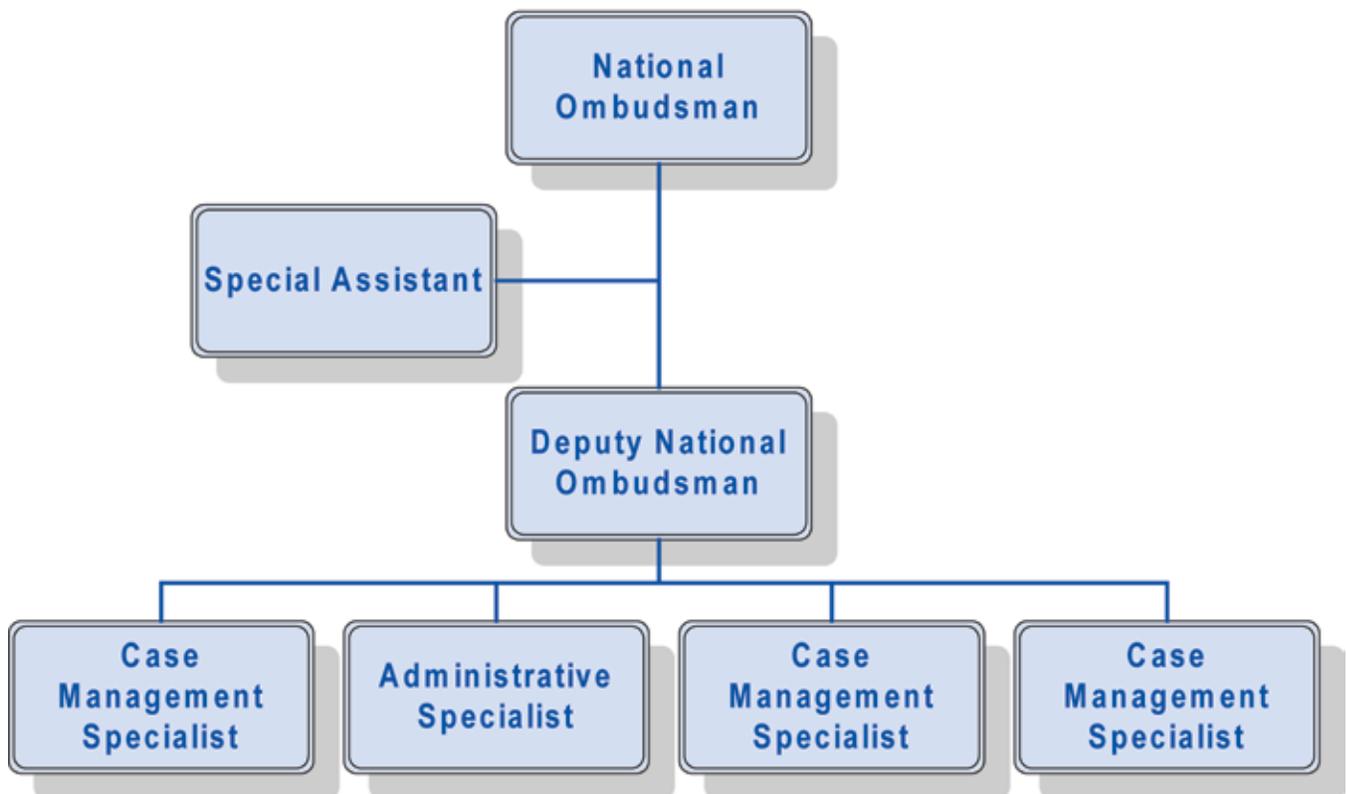
Other:

November 15, 2007—SBA issued a news release about the National Ombudsman's recognition of six federal agencies for regulatory enforcement and compliance assistance.

May 6, 2008—SBA issued a news release about the availability of the Office of the National Ombudsman's Small Business Ombudsman Model for State and Local Governments.

July 11, 2008—Sen. Olympia Snowe's (ME) office issued a press release praising the Office of the National Ombudsman for its 2007 Annual Report to Congress.

Appendix: ONO Organizational Chart





U.S. Small Business Administration

**U.S. Small Business Administration
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