

## Independent Regulatory Agencies' Compliance with the Regulatory Flexibility Act

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### Purpose

The Office of Advocacy is often asked if there is a noticeable difference in the RFA compliance patterns of independent agencies compared with executive-branch agencies. Independent federal agencies are subject to the Regulatory Flexibility Act, as amended (RFA) (see table for a list of independent agencies with abbreviations). Because they fall outside of presidential authority, however, independent agencies are not subject to executive orders concerning regulatory impact analysis or to OMB review of analysis.

The objective of this study is to characterize and assess the RFA compliance of independent agencies.

### Overall Findings

- As a group, independent federal agencies do less rigorous regulatory flexibility analysis than executive-branch agencies. The independent agencies rarely perform analyses of costs and impacts.
- About a third of the independent agencies do not regulate small businesses, or do not regulate at all. These agencies are the FEC, the FHFA, the NIGC, the PRC, and the RATB.
- Independent agencies generally provided enough details for basic compliance activities, but the degree of variability in the details provided is significant. For example, the FCC analyses consistently had the least information and details about costs and impacts.
- Overall, almost all independent federal agencies had at least one rule in which there was a measure designed to minimize burdens on small entities.
- Independent agencies regulate more large entities than executive-branch agencies. Five independent agencies—the CFTC, FERC, NRC, FCA, and FMC—regulate primarily large businesses.

- A majority of rules developed by most independent agencies were either exempt from the RFA or were certified as not having a significant impact on a substantial number of small entities. The basis for certification was generally plausible.

### Independent Regulatory Agencies Subject to the RFA\*

Commodity Futures Trading Commission (CFTC)  
Consumer Product Safety Commission (CPSC)  
Farm Credit Administration (FCA)  
Federal Communications Commission (FCC)  
Federal Deposit Insurance Commission (FDIC)  
Federal Election Commission (FEC)  
Federal Energy Regulatory Commission (FERC)  
Federal Housing Finance Agency (FHFA)  
Federal Maritime Commission (FMC)  
Federal Mine Safety and Health Review Commission (FMSHRC)  
Federal Reserve System (The Fed)  
Federal Trade Commission (FTC)  
National Credit Union Administration (NCUA)  
National Indian Gaming Commission (NIGC)  
National Labor Relations Board (NLRB)  
Nuclear Regulatory Commission (NRC)  
Occupational Safety and Health Review Commission (OSHRC)  
Postal Regulatory Commission (PRC)  
Recovery Accountability and Transparency Board (RATB)  
Securities and Exchange Commission (SEC)  
Surface Transportation Board (STB)

\*As amended, 5 USC § 602.

- For those rules implemented by independent agencies that were anticipated to have a significant impact on a substantial number of small entities, the evaluation of impacts and the devising of regulatory alternatives rarely produced quantitative analyses. Only one agency in the study period, the NCUA, did a quantitative impact analysis complete enough to produce cost estimates. The FCC explicitly rejected the idea of impact analysis in its response to comments.

- In many rulemakings during the study period, independent agencies reported no comments on the initial regulatory flexibility analysis. For the rules that did lead to comments, independent agencies generally responded with a reasoned explanation for the suggestion(s) or took some action to address the issue. The FCC, however, repeatedly rejected commenters' suggested regulatory alternatives without explanation.

## Policy Implications

There is an obvious need for independent agencies to be more focused on RFA compliance and to produce more rigorous analysis in their rulemakings. To that end, additional RFA training at these agencies is warranted.

## Scope and Methodology

The study was based on a review of final rules of the independent agencies over an 18-month period. Regulations were reviewed if:

- They were listed in the Spring 2010, Fall 2010, or Spring 2011 Unified Agenda as a "Final Rule Stage" or "Completed Action," and
- The rulemaking actually had a final rule published.

This report was peer-reviewed consistent with Advocacy's data quality guidelines. More information on this process can be obtained by contacting the director of economic research by email at [advocacy@sba.gov](mailto:advocacy@sba.gov) or by phone at (202) 205-6533.

## Additional Information

The full text of this report and summaries of other studies of the U.S. Small Business Administration's Office of Advocacy are available at [www.sba.gov/advocacy/7540](http://www.sba.gov/advocacy/7540).

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