

Annual Report to Congress

2018

Creating a More Friendly Business Environment



Office of the
NATIONAL OMBUDSMAN

Creating a More Friendly Business Environment

2018 ANNUAL REPORT TO CONGRESS

**UNITED STATES SMALL BUSINESS ADMINISTRATION
OFFICE OF THE NATIONAL OMBUDSMAN**

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U.S. SMALL BUSINESS ADMINISTRATION

OFFICE OF THE NATIONAL OMBUDSMAN

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Message from the SBA Administrator

The U.S. Small Business Administration (SBA) is proud to recognize the work the Office of the National Ombudsman (ONO) does to ensure Federal regulations are fair and properly enforced. Through extensive outreach, ONO educates entrepreneurs about regulatory compliance and provides a forum in which small business owners can share their concerns. For more than two decades, ONO has provided small businesses with the resources and support they need to start, grow and expand in a fair regulatory climate.

Regulatory reform has been a top priority of this Administration since President Donald J. Trump was inaugurated in January 2017. His goal: reining in the overly burdensome regulations that stifle economic growth and kill jobs by forcing businesses to spend excessive amounts of time and money on compliance. He has signed 16 pieces of legislation that cut regulations across a vast array of industries, and he has slowed the growth of new regulations. These actions provide a framework in which small businesses have the freedom to invest in their operations and their employees without the unfair burden and expense of regulatory compliance. They are increasing productivity and wages for American workers and saving businesses and consumers billions of dollars a year. As a result of these cost-saving measures, the White House estimates household income has increased by \$3,100 a year,¹ putting more money into the pockets of American families. This is helping to unleash American businesses and fuel our booming economy.

As the regulatory environment evolves, small businesses need a trusted source of information. ONO has done extensive outreach to ensure small businesses are aware of the services it provides. In FY2018, ONO has focused its outreach on innovation hubs, economically distressed regions, and cities with a high concentration of small businesses facing regulatory challenges. It held roundtables across the country, met with officials from 27 Federal agencies, and contacted 100 trade associations, leading to new relationships with approximately 5,300 small business owners. ONO has also established Regional Regulatory Fairness Boards in each of the SBA's 10 regions, which monitor regulatory issues specific to industries or regions and identify widespread trends that can be addressed at the Federal level. I am proud to welcome Stefanie Wehagen to the SBA as National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness. She and the ONO team are committed to helping small businesses succeed through the fair implementation of Federal policy.

Regulatory reform is just one Administration initiative that is spurring our Nation's booming economy. Trade agreements are being renegotiated to make American businesses more competitive on a global scale. Through the President's landmark Tax Cuts and Jobs Act, companies are investing in their businesses and their employees – raising wages, increasing benefits and creating jobs. The unemployment rate is nearly the lowest in almost 50 years.²

Nearly every demographic — including African-Americans, Hispanic-Americans, veterans, and people with disabilities — has recently posted record-low rates of unemployment.³ As our Nation's economy grows, more people are taking part in its prosperity.

We at the SBA like to say we power the American Dream. That dream is never more apparent than seeing entrepreneurs starting and growing small businesses of their own. The SBA is working to promote entrepreneurship in underserved communities, particularly rural areas and those designated as Opportunity Zones, and in underrepresented populations like veterans and people with disabilities. The SBA provides the resources and support entrepreneurs need to thrive and contribute to our vibrant economy. A favorable regulatory climate with fair enforcement will help us achieve these goals.

Sincerely,



Jovita Carranza
SBA Administrator

Note: Please refer to Appendix G for references for economic data.

Executive Summary

Established in 1996 to assist small businesses when they encounter excessive or unfair Federal regulatory enforcement actions, the U.S. Small Business Administration (SBA) Office of the National Ombudsman (ONO) serves as an impartial liaison for both government and business. ONO creates a business friendly environment by representing the interests of small businesses and allowing their voices to be heard in the governmental space.

In doing so, ONO uses its strong partnerships with other Federal agencies, Regional Regulatory Fairness Board members, and offices within SBA to increase outreach, grade agencies, and mitigate excessive fines, penalties, or unfair Federal regulatory enforcement actions that may impede the growth and success of small businesses.

FY2018 Accomplishments

Throughout FY2018, ONO demonstrated a high level of efficiency in the management of cases, forging of interagency partnerships, and coordination of outreach efforts to targeted areas of need for regulatory relief.

ONO has received nearly 400 complaints each year on average over the past 5 years. In FY2018, ONO intervened on behalf of 347 small businesses that had formally filed complaints. ONO reviewed these submissions and transmitted them to the appropriate Federal agencies, requesting a high-level review. Leveraging its strong relationship with Federal agencies, ONO requested responses on behalf of small businesses within 30 days. In many instances, ONO's intervention resulted in positive outcomes for small businesses in the form of waived penalties, fine reductions, recovered claims payments, and/or reversals of decisions by Federal agencies.

ONO focused outreach strategies around innovation hubs that may lead to job creation, economically disadvantaged areas, and mid-tier cities with a high concentration of small businesses facing regulatory challenges. ONO completed 118 outreach events, allowing ONO to hear from small business owners, entrepreneurs, and lenders representing a wide variety of industries in various forums.

Additionally, ONO conducted 10 Regional Regulatory Fairness Roundtables across five of SBA's 10 regions and met with senior representatives of 100 trade associations that represent more than two million small business owners and SBA resource partners. ONO established new relationships with

these leaders at the national and local levels, which allowed the SBA's resource partners to more effectively communicate with the small business owners tied to these associations.

Board members remained keenly aware of regulatory concerns that are unique to their specific industry or region. They listened to small business owner concerns, asked probing questions to identify the underlying issues and their root causes, and brought these issues to the attention of the Office of the National Ombudsman, who raised them to Federal regulators. ONO's board members also monitored trends associated with systemic issues that span across regional boundaries and impact small businesses across multiple states and industries.

In FY2018, ONO connected with senior officials representing 27 Federal agencies. The increased levels of engagement resulted in 11 invitations from Federal agencies for an ONO representative to serve as a keynote speaker or panelist at Industry Day events or for the SBA to have a presence at these events as an exhibitor. These forums enabled ONO to raise awareness of its mission to approximately 5,300 small business owners, Federal contractors, innovators, and inventors.

Through these partnerships, ONO brought systemic regulatory issues to the attention of various Federal agencies, and, when appropriate, advocated for action to relieve undue regulatory burdens on small businesses. This work is done with the goal of creating a more friendly business environment.

Accomplishments at a Glance



outreach events
in **18** states



5 national
teleconferences



347
comments filed



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Top Comment Submissions

Top States

Comment Submissions

36 Florida

33 Texas

26 California

19 Virginia

16 Michigan & Pennsylvania

11 Georgia, Ohio, & New York

Top Agencies

Case Referrals

82 U.S. Small Business Administration

37 U.S. Department of Health and Human Services

32 U.S. Department of Defense

28 U.S. Department of Homeland Security

16 U.S. Department of Labor

13 U.S. Department of the Treasury

13 U.S. Department of Transportation

8 U.S. Department of State

6 U.S. Department of Veteran Affairs

5 General Services Administration

3 U.S. Environmental Protection Agency

Chapter 1

Fostering Fair Regulatory Oversight of Small Businesses



Fostering Fair Regulatory Oversight of Small Businesses

The U.S. Small Business Administration (SBA) Office of the National Ombudsman (ONO) was formed as a result of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Its mission is to create a level playing field and business friendly environment by advocating on behalf of small businesses when they are subjected to unfair or excessive enforcement actions taken against them by Federal agencies. Examples of excessive enforcement include repetitive audits or investigations, unreasonable fines, penalties, threats, retaliation, or other unfair enforcement action. ONO acts as an impartial liaison when these actions occur, referring comments submitted by small businesses to the appropriate Federal agency for a high-level fairness review and working across the Federal government to address those concerns to help small businesses succeed.

HOW ONO CREATES FRIENDLY BUSINESS ENVIRONMENTS

In FY2018, ONO extended its reach to, and impact on, a greater share of America's 30 million small businesses. The business environment these small business owners face in starting or scaling their businesses is full of potential obstacles. Industry type, location, and other factors sculpt the environment in which these businesses exist. Owners recognize that the massive volume of Federal regulations specific to small businesses, costs, compliance requirements, and taxes are key issues that affect their growth. ONO raised visibility of these issues in order to make this economic environment a friendlier place to cultivate a successful business.

ONO strengthened its collaboration with the SBA Office of Advocacy, Program Offices, resource partners, Regulatory Fairness Board members, and state and local counterparts to advance the SBA Administrator's priorities. SBA formed new relationships with national and local trade association leaders and leveraged its resource partners to collaborate with the small business owners with whom they interact. ONO met directly with small business leaders and industry groups at 118 outreach events in 18 states, listening to their comments and complaints and passed them along to Federal agencies. ONO hosted five national teleconferences to increase access to these outreach events and hear from a larger number of affected businesses and stakeholders.

Each year, ONO disseminates a questionnaire to all Federal agencies and uses the feedback received and criteria, such as timeliness and quality of responses, to rate the agencies. Throughout the year, ONO maintained a confidential, user-friendly ombudsman process to receive complaints from small businesses and continue to build trust with Federal regulators with the goal of securing fair, favorable resolution of issues for small businesses. ONO received a total of 347 comments from small businesses throughout the fiscal year. ONO intervenes on behalf of small businesses, seeking to lessen their burden and shape the regulatory environment in a way that encourages their success.

HOW ONO ASSISTS SMALL BUSINESSES

ONO promotes and facilitates procedural fairness in regulatory disputes between small businesses and Federal agencies. ONO maintains a streamlined, effective, and user-friendly process for small businesses to file complaints and work with Federal agencies to resolve specific regulatory compliance and enforcement issues.

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

ELECTRONIC FORM (recommended approach)

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

PAPER FORM

Download a printable Federal Agency Comment Form (SBA Form 1993) from the Office of the National Ombudsman website at sba.gov/ombudsman/comment. Submit a signed comment form and supporting documentation via email (preferred), mail, or fax.

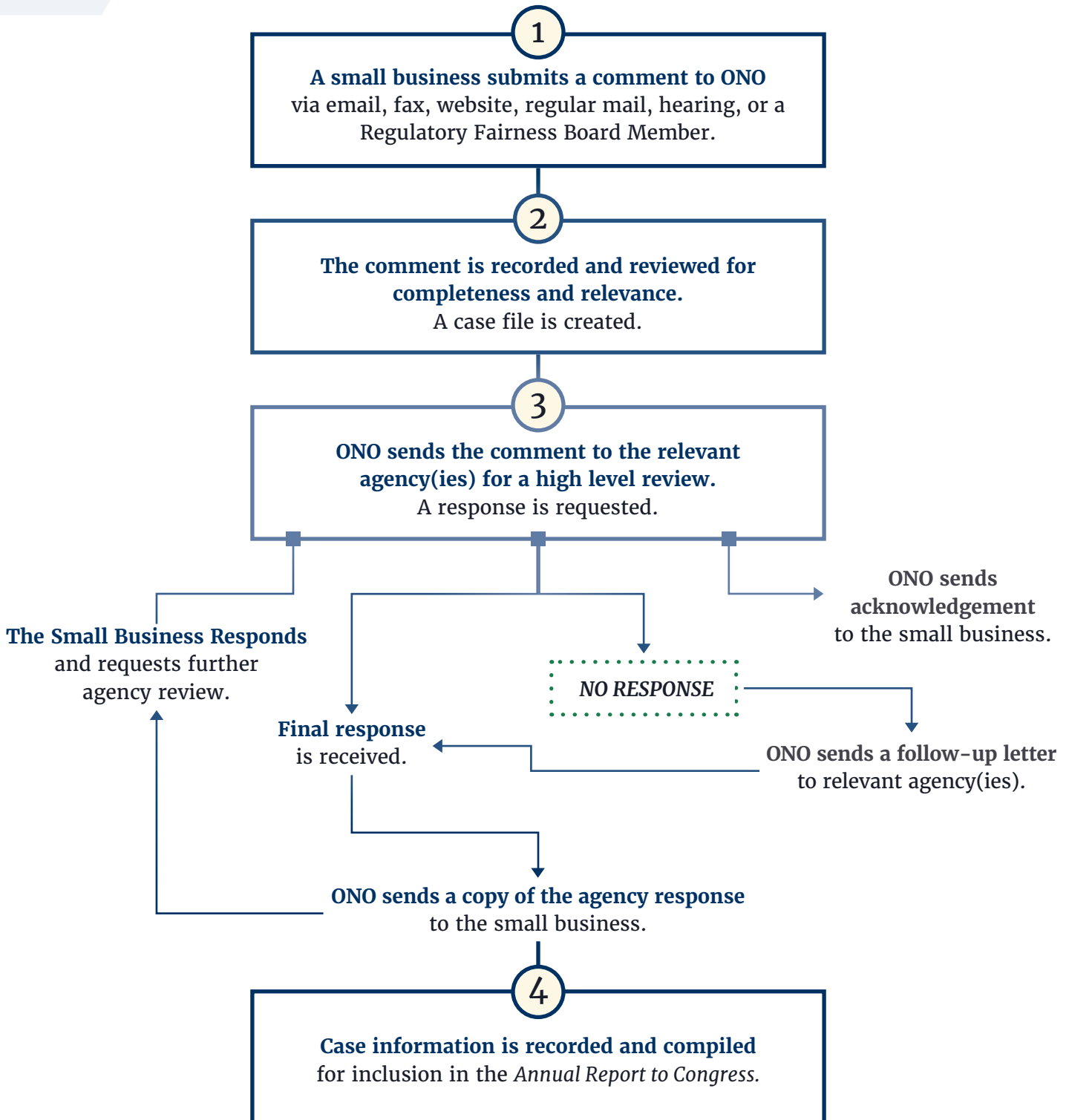
Email: ombudsman@sba.gov

Fax: (202) 481-5719

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

How ONO's Comments/Complaint Filing Process Works:

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



How ONO Creates a Small Business Friendly Environment

After receiving a Federal Agency Comment Form from a small business, ONO:

- 1) Reviews the Federal Agency Comment Form (SBA Form 1993), which authorizes the Ombudsman to proceed, and any supporting documentation for completeness, including signatures.
- 2) Determines how ONO can assist, then advises the small business of expected next steps and parameters of the SBREFA review.
- 3) Contacts the Federal agency involved to initiate the SBREFA review process.
- 4) Follows up with the Federal agency and the small business to provide a timely and responsive answer on the issue(s) reported, as appropriate.
- 5) Communicates to the small business owner the actions that ONO has taken to assist.

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

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

“ONO serves as an advocate for small business during tough times when Federal Regulations may be hitting them hard...Small business is what drives the economy, ONO helps to ensure through tough times small business continues to flourish and grow.

David Rambhajan, Region V

Chapter 2

Regulatory Fairness Boards: A United Front for Regulatory Fairness



Regulatory Fairness Boards: A United Front for Regulatory Fairness

When seeking success in the challenging business environment, small businesses appreciate the opportunity to voice regulatory concerns in person by those who understand their burden. The Office of the National Ombudsman (ONO) carries out its mission by promoting continuous community outreach nationwide. ONO engages with trade associations, field offices, and SBA resource partners and maintains Regional Regulatory Fairness Boards in each of SBA's 10 regions.

In FY2018, ONO conducted 10 Regional Regulatory Fairness Roundtables across five SBA regions. During these events, board members acted as a sounding board for their small business peers and allowed ONO to receive real-time feedback, bringing attention to industry- and region-specific issues and ideas. Board members met small businesses at the source to facilitate open and honest conversations, leading discussions and representing ONO in front of large audiences to bring attention to small business concerns and avenues for addressing them. Board members analyzed these concerns, asking discerning questions to identify their underlying issues and root causes. The issues were then brought to the attention of the National Ombudsman who raised them to Federal regulators.

These board members assisted ONO in advocating for small businesses' interests by extending ONO's reach across the nation, identifying additional outreach opportunities, and advancing the Administrator's priorities. They monitored trends associated with systemic issues that span regional boundaries and impact small businesses across multiple states and industries. Regulatory Fairness Board members are held to a high standard, and the same is expected from board vacancy nominees. Appointments are made by the SBA Administrator based upon recommendations from a variety of sources, including, but not limited to, the Chair and Ranking Members of the U.S. Senate Committee on Small Business and Entrepreneurship and the House Small Business Committee, the National Ombudsman, the Regulatory Fairness Board, and SBA field offices. Candidates may also self nominate. ONO did not receive enough qualified nominations to fill all current and projected vacancies during FY2018 due to transitions in leadership but is building a pipeline of highly qualified candidates for the incoming Administrator's consideration.



10 Regions



10 Boards



23 Board Members



Credentials

- Award-winning business professionals, advisors, and trustees
- Accountants, brokers, developers, engineers, lawyers, policy analysts

Leadership Positions

- State economic development
- Boards of directors
- Business and trade associations
- Chambers of commerce
- Elected officials

Industry Diversity

- Professional, Scientific, and Technical Services
- Finance and Insurance
- Real Estate
- Transportation and Warehousing
- Health Care and Social Assistance
- Accommodation and Food Service
- Agriculture, Forestry, Fishing, and Hunting
- Information Technology
- Construction

Board Members who Served in FY2018

(10/1/17 – 09/30/18)

Region I

Gary Ezovski
President and Owner
Lincoln Environmental
Properties
Slatersville, RI

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

Deborah Osgood, PhD
CEO
Knowledge Institute
Exeter, NH

Richard Snow
President
Maine Indoor Karting
Scarborough, ME

Wendy Traub
Corporate Secretary
Hemlock Directional Boring,
Inc.
Torrington, CT

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Region II

Kenneth Franasiak
*Co-Founder, President, and
CEO*
Calamar Enterprises, Inc.
Wheatfield, NY

Christopher Harvell
Co-Founder
Dental Kidz, LLC
Newark, NJ

Region III

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

Cynthia (Cindy) Towers
CEO
JURISolutions
Philadelphia, PA

■ ■ ■ ■ ■

Region IV

Dennis Bradford
Broker
Island Investment Realty
Anna Maria, FL

Cliftena Carter
Owner & President
CSCI
Fayetteville, TN

Albert Edwards
*Founder & Managing
Director*
Corporate Environmental Risk
Management (CERM)
Atlanta, GA

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

Moises Montanez
Founder & General Manager
ALTA Home Remodeling CO
Miami, FL

Region V

Zach Adamson
Owner
Urban Designs Indy
Indianapolis, IN

Keith Ashmus
Partner
Frantz Ward, LLP
Cleveland, OH

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

David Rambhajan
President
Industria Construction Services
Chicago, IL

■ ■ ■ ■ ■

Region VI

**Dr. Ralph “Trey”
Baucum III**
Doctor
Advanced Cardiovascular
Specialists
Shreveport, LA

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

Arthur Price
Director
Badger Oil Corporation
Lafayette, LA

Brook Schaaf

CEO & Owner
FMTC.co
Austin, TX



Region VII

Jeffrey Koenig

Owner
Open 4 Business, LLC
Manhattan, KS



Region VIII

Allison Brown, PhD

President & CEO
NAVSYS Corporation
Colorado Springs, CO

Christopher Phelen

Founding Partner and Chief
Executive Offic
Art & Science Collaborative, LLC
Denver, CO

Region IX

Reginald Baker, Jr.

Managing Member
Reg Baker & Co.
Honolulu, HI

Kimberly Daniels

President
Mercantile Logistics &
International Trade, Inc.
Henderson, NV

Kristine Kassel

President
Benefits by Design
Tempe, AZ

Lily Otieno, MS, PMP

President and Chief Executive
Offic
Infinity Business Solutions
Buena Park, CA

Jerome Toliver

Chief Executive Offic
RMJ Technologies
San Marcos, CA

Region X

Michael Ballantyne

Managing Partner
Thornton Oliver Keller
Commercial Real Estate
Eagle (Boise), ID

**James (Jim) Howard
Houser, Jr.**

Founder & Owner
Hawthorne Auto Clinic, Inc.
Portland, OR

Christine Williams

Managing Partner
Outlook Law, LLC
Anchorage, AK

“Having consulted [with] hundreds of small businesses in my work, I am aware of numerous stories of small businesses that have been driven out of business by regulatory enforcement actions due to no...fault of their own. The sheer magnitude of enforcement resources utilized by [the] government dwarfs the resources these small businesses have to defend themselves. I agreed to serve on a Regulatory Fairness Board to give a voice to those who are pressed enough as it is to eke out a profit for their work ”

Jeff Koenig, Region VI

Chapter 3

Building Relationships to Reduce Regulatory Burdens



Building Relationships to Reduce Regulatory Burdens

The Office of the National Ombudsman (ONO) recognizes that establishing and maintaining strong partnerships is integral to creating a regulatory environment in which small businesses are free to thrive and grow. ONO holds outreach events with the assistance of Federal agencies, trade associations, and SBA resource partners that serve to strengthen awareness of ONO's services. These outreach events give small businesses the opportunity to have their voice heard in the Federal arena, informing them of steps they can take to unleash their true potential.

ONO's FY2018 outreach strategies focused on three distinct areas. Holding events in these areas allowed us to interact with small business owners and entrepreneurs representing a range of industries in a variety of venues. These areas were:

- 1) Innovation hubs that represent the sources of job creation;
- 2) Economically distressed regions; and
- 3) Mid-tier cities with a high concentration of small businesses facing regulatory challenges.

Throughout the year, ONO engaged with senior officials representing 27 individual Federal agencies and opened lines of communication with senior representatives of 100 trade associations representing more than 2 million small business owners and SBA resource partners nationwide. ONO's increased levels of engagement resulted in 11 invitations from Federal agencies for an ONO representative to serve as a keynote speaker or panelist at Industry Day events or for ONO to have a presence at these events as an exhibitor. These forums enabled ONO to raise awareness of its mission by reaching approximately 5,300 small business owners.

In addition to these events, the National Ombudsman was regularly invited throughout FY2018 to speak in front of large audiences comprised of small businesses. The number of speaking invitations continues to grow year-over-year, which aids ONO in communicating the importance of reducing regulatory burdens on small businesses. As the voice for small businesses, these opportunities aided ONO in bringing attention to the possible adverse impact of regulatory enforcement actions on small businesses.

ONO worked diligently throughout FY2018 to remove those obstacles that could threaten small businesses' ability to find success in the marketplace. As a result of ONO's efforts, Federal agencies have become more aware of the need to balance regulations that protect the health and safety of workers and consumers with the importance of creating a regulatory environment in which small businesses may flourish. By making outreach a priority, ONO exceeded its goal of holding 100 outreach events in FY2018 and hosted 118 events throughout the year. ONO utilized its partnerships with Federal agencies, trade associations, and SBA resource partners to raise awareness of the services ONO makes available to small businesses.

FY2018 Success Stories

SYSTEMIC ISSUES



NEW YORK

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

ISSUE:

A small mental health services provider expressed concerns regarding the significant impact of the 21st Century Cures Act on Licensed Mental Health Counselors (LMHC). Under the Act, the provider is required to be enrolled with state Medicaid programs to obtain a Medicaid number in order to bill services. However, LMHC practitioners in New York are not included in the group of professionals that are allowed to enroll to request a Medicaid number. The provider would no longer be able to provide care to its Medicaid patients and be pushed out of the market.

OUTCOME:

The New York State Department of Health clarified that LMHC practitioners are not currently a provider type that enrolls in the New York State Medicaid Program. Therefore, according to CMS, LMHCs in New York are not required to enroll with Medicaid and would not be subject to termination. The commenter could continue to provide and bill for services to Medicaid patients.



CALIFORNIA

U.S. Department of Defense
U.S. Department of the Air Force

ISSUE:

A company expressed concerns regarding issues with a U.S. Department of the Air Force Small Business Technology Transfer (STTR) Solicitation issued by the Air Force Research Laboratory (AFRL) and AFRL's Air Force Office of Scientific Research (AFOSR). Six months after submission of its proposal to Solicitation Topic 1, the company received an email rejection. The company contacted the Air Force and requested a debriefing but did not receive a response to its request. The company also submitted a proposal to Topic 2 and did not receive a debriefing for that topic either. Air Force STTR Solicitation instructions did not provide a firm debriefing timeline.

OUTCOME:

The Air Force Research Laboratory (AFRL) agreed to provide the company an in-person debriefing within 14 days. In addition, AFRL has agreed to develop STTR debriefing procedures establishing firm notice of debriefing dates and timelines to the maximum extent practicable. This effort, according to the Air Force, will draw on the latest Congressional debriefing reforms, on FAR Parts 15 and 33, and on the Office of Management and Budget's guidance. AFRL agreed to publish the revised debriefing procedures. NOTE: SBA's 2019 SBIR/STTR Policy Directive superseded the systemic aspects of this corrective action.

SYSTEMIC ISSUES



FLORIDA

U.S. Department of Defense
Defense Logistics Agency

ISSUE:

The owner of a small woman-owned business was placed in a hardship situation due to non-payment of invoices by the Defense Logistics Agency (DLA).

OUTCOME:

After investigating this issue, DLA set out to accomplish three things:

- 1) Ensure all company's outstanding invoices were being paid;
- 2) Identify any systemic issues related to the invoicing process; and
- 3) Establish measures to mitigate any non-payment issues.

DLA also provided the following information:

Previously, under a FARS Deviation (FARS DEV 2015-04), (which has since expired), DLA permitted use of fast payment procedure on certain orders with CONUS based delivery. Under fast payment, vendors could submit invoices and get paid without a posting a receipt.

DLA changed its invoicing process to comply with Federal Acquisition Regulations (FAR) 13.4, Fast Payment Procedure. Under Prompt payment procedures, the Government will make payment within 30 days of receipt of a proper invoice from the contractor for which a matching goods receipt has been posted in the system.

CONTRACT ISSUES – PAYMENT



VIRGINIA

U.S. Environmental
Protection Agency

ISSUE:

A small furniture store in Alexandria, VA, provided installation services to the EPA for the amount of \$17,862. EPA's non-payment of this invoice put a financial hardship on the small business.

OUTCOME:

EPA reviewed, approved, and paid the invoice in question in the total amount of \$17,862.



GEORGIA

U.S. Department of Defense
Defense Logistics Agency

ISSUE:

A firm expressed concerns regarding non-payment of an invoice in the amount of \$40,000 by the Defense Logistics Agency (DLA). Although the Defense Contract Management Agency's (DCMA) Inspector inspected and signed the shipment prior to shipping, DLA Pennsylvania denied the payment. DLA's non-payment had a significant adverse financial impact on the firm. The firm requested immediate payment of the amount owe

OUTCOME:

The contract in question was paid in full after a high-level DLA review.

CLAIM DENIED/CLAIM PROCESSING



MULTIPLE STATES

Centers for Medicare and Medicaid Services (CMS)

ISSUE:

11 medical providers based in MI, PA, SC, IN, NC, MO, and IL expressed concerns regarding denial, recoupment, underpayment, and delay in the processing of Medicare claims by Medicare Advantage Organizations due to the following reasons:

- Randomly selected audits
- Administrative errors
- Cost estimation discrepancies
- Diagnosis codes not updated in Local Coverage Determination
- Over-restrictive claims procedures

OUTCOME:

Upon completion of a high-level review of the records and receipt of the requested information by the Medicare Advantage Organizations, the Medicare claims were reprocessed, enabling providers to recover over \$86,000 in aggregate.

REFUNDS



COLORADO

U.S. Small Business Administration
Office of Financial Assistance

ISSUE:

Even though all payments were current, the IRS took a small business owner's tax refund and garnished his family members' Federal employment and Social Security payments because one of the business owners failed to sign the modified SBA loan contract. After obtaining the missing signature and returning the completed document, the business owner contacted SBA to inquire about the return of the tax refund. The business owner was informed that the tax refund would be applied to the loan principal. The business owner asked that the tax refund be returned.

OUTCOME:

SBA brought the loan current and back into good standing. The SBA recalled the loan, and all collection efforts stopped. In addition, the SBA took action to refund the amounts offset from the business owner's tax refund.



NEBRASKA

U.S. Small Business Administration
Office of Financial Assistance

ISSUE:

A business owner received a letter from the Bureau of Fiscal Service advising that the agency would begin garnishing the business owner's Social Security benefits for unpaid obligations on an SBA loan. The business owner made monthly payments to the loan and expressed frustration as this is not the first time that this has happened. The business owner stated that "it took months to reverse the levy" and caused financial harm. The business owner asked SBA to fix this problem so that it does not happen again.

OUTCOME:

SBA contacted the U.S. Department of Treasury and identified a system error. SBA requested that the matter be corrected and processed a request for Treasury to refund the amount offset from the business owner's Social Security payments.

DECISION REVERSED



VIRGINIA

U.S. Department of Housing and Urban Development

ISSUE:

The business owner completed all the deliverables, went above and beyond, and exceeded expectations on its contract with the U.S. Department of Housing and Urban Development (HUD). The business owner disagreed with HUD's assessment of the company in the Contractor Performance Assessment Reporting System. The business owner explained that the company "delivered an outstanding and cost-effective solution and met all deliverables" in the first year of a five-year project and believes that the assessment should be "excellent" for Quality and Management.

OUTCOME:

HUD revised its recommendation statement to indicate that the agency would recommend the company for similar requirements in the future.



OREGON

U.S. Small Business Administration
Office of Financial Assistance

ISSUE:

A small business owner received a letter regarding payment for an SBA loan for which the business owner co-signed. The business owner contacted the SBA after the loan origination company went bankrupt and was assured that the agency would be in contact to set up a new payment plan. Approximately two years later, the business owner received a letter with a different loan number and an amount due of half the original loan amount. The business owner contacted the SBA and was informed that the loan status was pending and the reason for the letter uncertain. The business owner requested "clarification of [the] amount due and instructions on who to contact to pay off small business loan.

OUTCOME:

SBA contacted the business owner, removed the loan from the Treasury Offset Program and placed the loan in regular servicing status.



UTAH

U.S. Small Business Administration
HUBZone Program Office

ISSUE:

A small business owner concluded that SBA did not base its decision to deny its HUBZone application on the documents supplied by the company. As an example, the small business owner stated that SBA used an expired driver's license for one of its employees rather than the updated license that the company provided. The business owner also explained that the lease contract provided with its application was for a student living off campus. The addresses shown on the lease contract were the renting office address and the resident's parent's home address rather than the resident's apartment address which is in a HUBZone. The business owner asked that SBA's decision to decline the application be overturned.

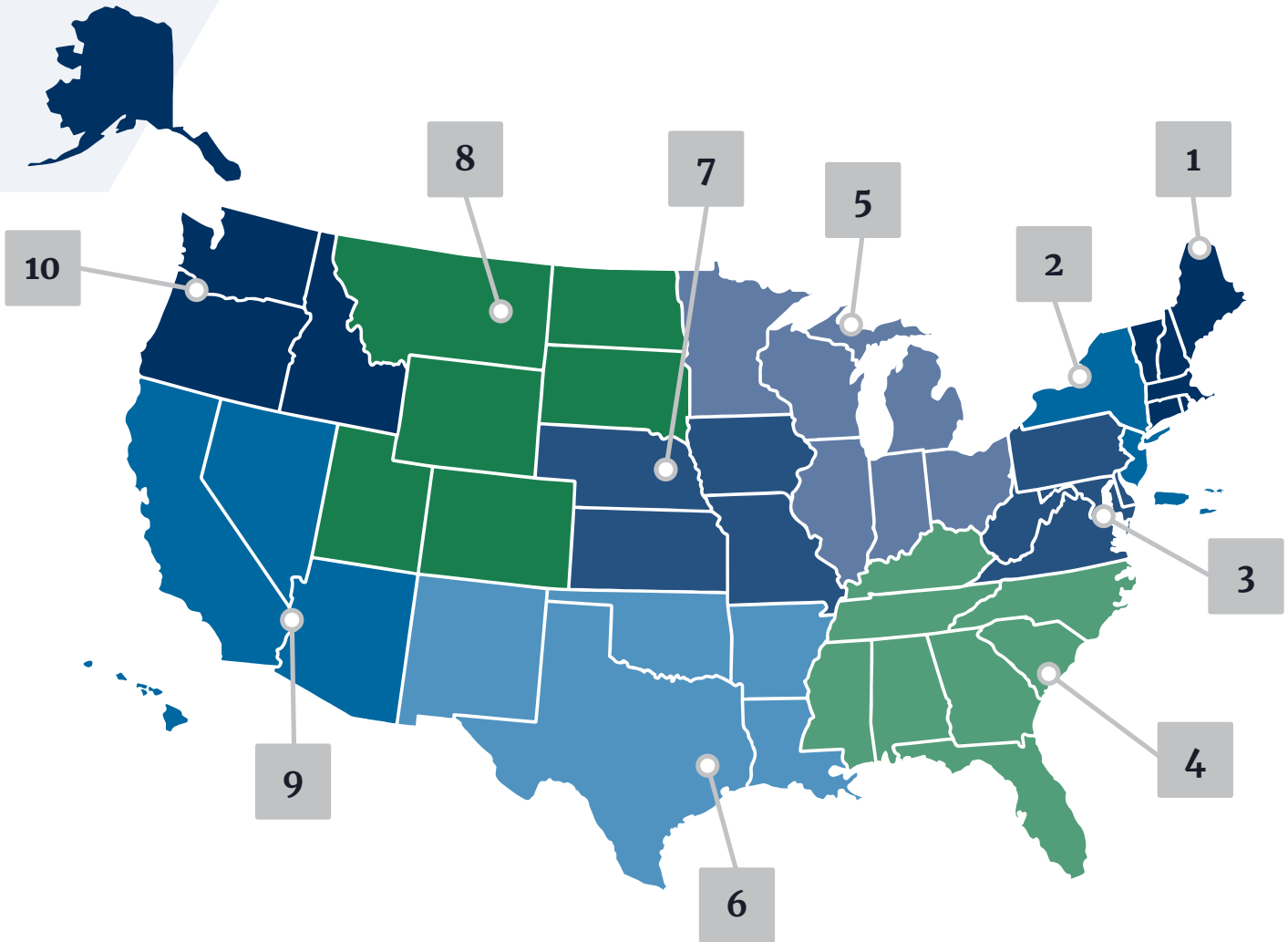
OUTCOME:

SBA reversed its decision and approved the company's HUBZone application.

Other Success Stories

| FEDERAL AGENCY | STATE | INDUSTRY | ISSUE | OUTCOME |
|--|------------|----------------------------|---|---|
| Department of the Air Force | Georgia | Technology | Air Combat Command (ACC) issued Non-Conformance Report (NCR) to its professional services contractor with regards to staffing levels | To avoid future NCRs or default notices, the Air Force and company agreed to discuss changes to the company's contract price and performance work statement |
| Small Business Administration | Florida | Non-durable goods | Repayment for a loan sought from a former spouse of a deceased borrower | SBA filed a claim against decedent's estate |
| Small Business Administration | New Jersey | (unknown) | Delay in correcting loan closing file documents | SBA sent borrower corrected loan documents |
| Small Business Administration | Omaha | Restaurant | Garnishment letter issued in error | SBA contacted the U.S. Treasury, identified a system error and processed a tax return refund |
| Small Business Administration (11 cases) | Various | Various | Delayed disaster loan disbursements | SBA contacted the borrowers, identified the issues and disbursed the loans |
| Small Business Administration | Texas | Homeowner | Bill issued for a paid-in-full loan | SBA reviewed borrower's file, corrected its system and provided borrower with a Release of Lien |
| Small Business Administration | California | Homeowner | A lien was placed on property for a borrower deemed ineligible | SBA provided documentation to release lien on property |
| Department of Veterans Affairs | Texas | Medical Device Distributor | Delayed VetBiz registration | VA identified business owner as a Service Disabled Veteran and added company to VetBiz |
| Small Business Administration | Texas | Day Care | Borrower deemed ineligible by SBA lender | SBA determined the borrower was eligible for an SBA loan |
| Department of the Air Force | Colorado | Manufacturing | Air Force query to DFAS mistakenly caused DFAS and Treasury to place lien on company due to an ostensible overpayment by the Government | Air Force determined the lien was not valid and obtained removal of the company from the Treasury Offset and Cross Servicing Programs list |

Regional Snapshot



5 National Teleconferences

Region 1

States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, & Vermont

17 Comments

Board Members:

Gary Ezovski, Slatersville, RI
Juliette Mayers, Quincy, MA
Deborah Osgood, PhD, Exeter, NH
Richard Snow, Scarborough, ME
Wendy Traub, Torrington, CT

Region 2

*States: New Jersey & New York
U.S. Territories: Puerto Rico & U.S. Virgin Islands*

26 Comments

3 Outreach Events

Board Members:

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

Region 3

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

54 Comments

84 Outreach Events

Board Members:

Marilyn Landis, Pittsburgh, PA
Cindy Towers, Philadelphia, PA

Region 4

States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

72 Comments

8 Outreach Events

Board Members:

Dennis Bradford, Anna Maria, FL
Cliftena Carter, Fayetteville, TN
Albert Edwards, Atlanta, GA
Rollie Leo James, Cherokee, NC
Moises Montanez, Miami, FL

Region 5

States: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

51 Comments

6 Outreach Events

Board Members:

Zach Adamson, Indianapolis, IN
Keith Ashmus, Cleveland, OH
Alex McQuillen, Whitewater, WI
David Rambhajan, Chicago, IL

Region 6

States: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

47 Comments

2 Outreach Events

Board Members:

Dr. Ralph “Trey” Baucum III, Shreveport, LA
Thomas Briones, Albuquerque, NM
Arthur Price, Lafayette, LA
Brook Schaaf, Austin, TX

Region 7

States: Iowa, Kansas, Missouri, Nebraska

11 Comments

Board Members:

Jeffrey Koenig, Manhattan, KS

Region 8

States: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

15 Comments

Board Members:

Alison Brown, PhD, Colorado Springs, CO
Christopher Phelen, Denver, CO

Region 9

*States: Arizona, California, Hawaii, Nevada
U.S. Territories: Guam & American Samoa*

39 Comments

9 Outreach Events

Board Members:

Reginald Baker, Jr., Honolulu, HI
Kimberly Daniels, Henderson, NV
Kristine Kassel, Tempe, AZ
Lily Otieno, MS, PMP, Buena Park, CA
Jerome Toliver, San Marcos, CA

Region 10

States: Alaska, Idaho, Oregon, Washington

15 Comments

1 Outreach Event

Board Members:

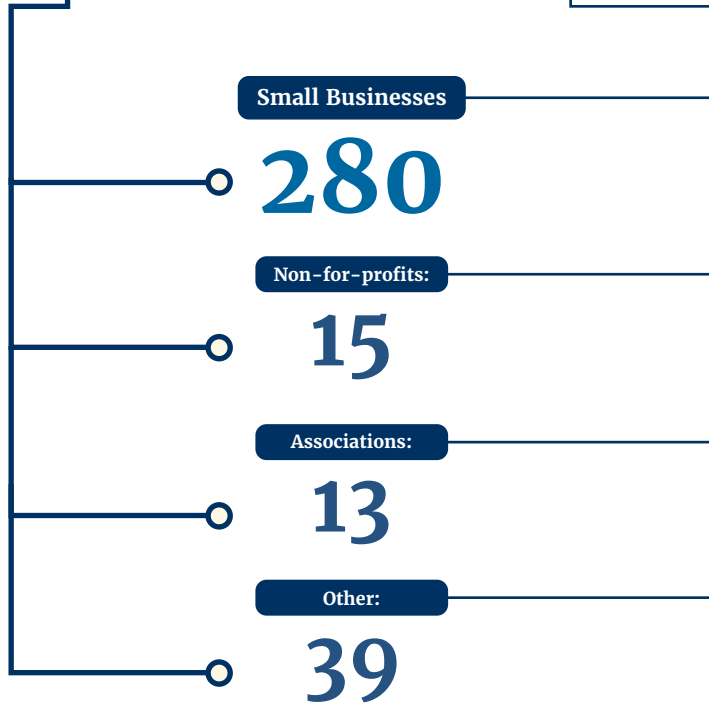
Michael Ballantyne, Eagle (Boise), ID
James (Jim) Howard Houser, Jr., Portland, OR
Christine Williams, Anchorage, AK

Ombudsman Activities

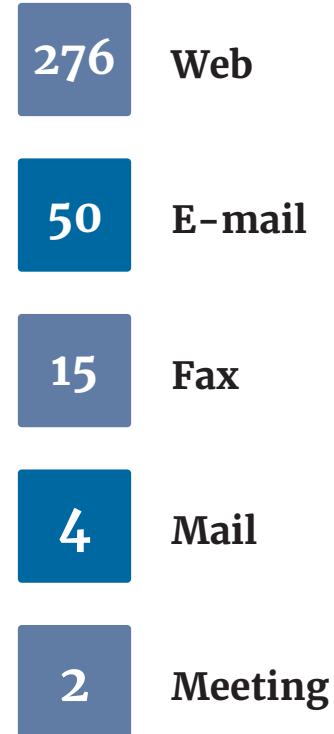
Total Number of
Comments (FY2018):

347

Who Filed
The Comments?



Comments Received Via:



223

Non-Enforcement Related Cases

99

Enforcement Related Cases



outreach events in **18** states

Chapter 4

Interagency Partnerships Excelling in Small Business Support



Interagency Partnerships Excelling in Small Business Support

Aiding in the effort to continually improve the regulatory oversight of the Federal Government, the Office of the National Ombudsman (ONO) rates Federal agencies at the end of each fiscal year on their compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). Agencies not only have the inherent responsibility to support small businesses by fulfilling their obligations under the SBREFA, but they should also be able to utilize this rating information to further their efforts in alleviating undue regulatory burdens on small businesses.

The SBREFA scorecard allows Congress, small business owners, and the public to easily reference improvements as compared with the previous year and see where efforts are currently being made to ease the regulatory burden on small businesses.

In the annual scorecard, ONO assigns ratings in five different categories, as well as an overall grade for each Federal agency. Each Federal agency is graded on the following criteria:

- How timely was the agency in responding to comments from small businesses?
- How thorough were the agency's responses to comments, and did the agency take appropriate action?
- Did the agency have a written non-retaliation policy that small businesses and the agency's employees can easily access?
- How much guidance and assistance did the agency provide to help small businesses comply with its regulations?
- How well did the agency follow SBREFA's notice requirements?

Utilizing multiple sources and a fair and transparent grading process, ONO evaluates each agency based on their responsiveness to small business concerns and the quality of those responses, as well as the information reported in response to the annual questionnaires sent out asking about their SBREFA-related practices.

This process results in an accurate and objective grading of each agency's SBREFA compliance. By issuing these Agency Ratings, ONO encourages a friendly business climate within Federal agencies and delivers compliance education while providing avenues for small businesses to make their voices heard.

This report lists the [FY2018 Agency Ratings on pages 35–37](#). The rest of this chapter will explain the ratings criteria and categories in greater detail.

Agency Questionnaire Highlights

ONO sent the following questionnaire to each Federal agency it interacted with in FY2018. ONO considered a range of information when determining the ratings for each agency's FY2018 scorecard, including their responses to the questionnaire and responsiveness to small business concerns. ONO instituted changes to the Federal agency questionnaire this year based on feedback received from the U.S. Senate Committee on Small Business and Entrepreneurship and the U.S. House Small Business Committee.

1. Non-retaliation Policies

- A. Internal: Does the agency have a written policy regarding non-retaliation against small businesses available to all employees?

Yes No

If yes, please provide a copy and indicate how the policy is disseminated and what, if any, employee training or education pertaining to non-retaliation against small businesses is provided.

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

Yes No

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

2. Compliance Assistance

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

Yes No

If yes, please provide copies and indicate how the guidance is disseminated (include web link(s)).

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

Yes No

If yes, please state the name and/or contact information of the designated agency compliance contact(s).

- C. Did the agency publish any rule(s) in FY2018 and hence, was required to publish, post, and distribute small entity compliance guides in FY2018?* (If NO, please skip to Question 3).

Yes No

- D. If and when a final rule has been issued, has the agency published one or more small entity compliance guides on the date of publication of the final rule (or as soon as possible after that date) and not later than the date on

which the requirements of that rule become effective, as mandated by Section 212 of SBREFA?

For each rule issued in FY2018, please specify:

Name of Rule:

Published one or more small entity compliance guide associated with that rule?

Yes No

Guide was published by the required timelines noted above?

Yes No

Please attach additional sheets if there was more than one rule published.

- E. Will the agency submit a 2018 Annual Report on Small Entity Compliance Guides to the U.S. Senate Committee on Small Business and Entrepreneurship and the House Small Business Committee no later than Feb 1, 2019, as required by Section 212 of SBREFA?

Yes No

3. SBREFA Notification

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

Yes No

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

- B. If and when the agency issues a citation, notice of regulatory violation, charge of violation, or the like to a particular small business, is written notice of small entities' SBREFA rights included in the issuance?

Yes No

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

*Note: Please see pages 30-34 for the results of this question.

Grading Categories and Rating Criteria

1. Timeliness

ONO calculates response time from the day a small business comment is forwarded to the agency until a response is received by ONO. Timeliness is measured in businesses days, not calendar days.

- *A – 30 days or fewer*
- *B – 31 to 60 days*
- *C – 61 to 90 days*
- *D – 91 to 120 days*
- *F – Over 120 days*

ONO may accept requests for additional time to respond and/or interim responses if circumstances warrant. In these instances, ONO takes into consideration the specific circumstances in assessing the agency's timeliness.

2. Quality of Responses

ONO provides a rating based on the detail and specificity the agency provided in its responses to small business comments. Grades are differentiated based upon the quality of the information provided in the agency response and the extent to which the response has adequately addressed the small business filer's concern. The rating assigned depends on whether the agency:

- Addressed all of the applicable questions posed in ONO's letter and responded to the specific comment made by the small entity;
- Presented sufficiently detailed information demonstrating that they have investigated the facts of the specific comment and the actions taken by agency personnel involved in taking the enforcement or compliance action; and
- Provided a response from a high-level representative, such as an individual from the agency with SBREFA responsibilities or someone from the program office with oversight responsibilities related to the comment.

ONO compiles and rates the timeliness and quality of agency responses based on a review of actual case filings.

3. Agency Non-Retaliation Policy

"Non-retaliation" policies are designed to prevent acts that punish small businesses for complaining or commenting about an agency action. As a result of SBREFA, small

businesses are allowed to comment on or complain about an agency’s action without fear of retaliation. ONO assigns an “A” rating to an agency if it can demonstrate that:

- The agency has a written non-retaliation policy available to all agency employees; and
- Small entities have access to a published non-retaliation policy via a readily available source such as the agency’s public website.

EXAMPLES OF NON-RETALIATION POLICIES

Consumer Product Safety Commission

The U.S. Consumer Product Safety Commission (Commission or CPSC) is committed to fair regulatory enforcement practices, supports the right of the regulated and small business community to raise concerns about regulatory enforcement actions without the fear of retaliation, and will investigate any allegations of retaliation and take appropriate corrective action to ensure it is not repeated.

Because of the critical importance of these issues, CPSC staff must immediately report any allegation of retaliation to the Office of the Executive Director. In addition, anyone with concerns about retaliation or related issues should contact, or be referred to, the Office of the Executive Director. Matters will be treated in confidence, and the Office of the Executive Director will work with other agency offices to address all relevant issues.

The Office of the National Ombudsman of the U.S. Small Business Administration (SBA/ONO) is responsible for administering and enforcing the Small Business Regulatory Enforcement Fairness Act (SBREFA). The SBA/ONO has asked all Federal agencies to make clear that if a small business entity requests its assistance on a matter, or otherwise questions or complains about a Federal agency action, the agency will not retaliate in response.

While the Commission will investigate any allegation of retaliation, a complaint to the Office of the Executive Director or the SBA/ONO will not stop or delay agency investigations and legal or administrative proceedings as part of the Commission’s ongoing responsibility to enforce Federal laws and regulations. If you are a small business under investigation or otherwise subject to a legal or administrative proceeding by the CPSC, any obligation you might have with respect to an enforcement or compliance action is not affected by the filing of your comments with the Office of the Executive Director or the SBA/ONO; and the filing of your comments with the Office of the Executive Director or the SBA/ONO is not a substitute for any legal options you believe are in your best interest.

Small businesses regulated by the Commission may direct comments regarding regulatory enforcement actions to the SBREFA point-of-contact. The Commission’s contact is the [Small Business Ombudsman](#). Alternatively, small businesses may choose to contact the SBA/ONO directly by calling 1-888-REG-FAIR (1-888-734-3247), or [visit the Small Business Administration’s Office of the National Ombudsman’s \(SBA/ONO\) website](#).

General Services Administration

GSA is committed to maintaining an environment in which small businesses and others that participate in programs that are regulated by GSA are free to raise questions or concerns, or complain about GSA actions or policies in full confidence and without fear of retribution.

No GSA employee shall take any type of retaliatory action against a small entity for raising questions, concerns, or complaining about GSA actions or policies. Employees must provide good customer service to small entities at all times by acting in a professional manner and responding appropriately to small entity concerns.

Department of Labor/Employee Benefits Security Administration

If a small business requests assistance from the U.S. Small Business Administration's Office of the National Ombudsman on a matter or otherwise comments about a Federal agency action, the Federal agencies, including the Employee Benefits Security Administration (EBSA), will not retaliate in response. EBSA is committed to fair regulatory enforcement practices, supports the right of the regulated community to raise concerns about regulatory enforcement actions without the fear of retaliation, will investigate such concerns, and will take corrective action, if appropriate. A comment to the Ombudsman will not affect EBSA's authority to investigate, enforce, or otherwise seek compliance as part of its ongoing responsibility to enforce Federal laws. Small businesses regulated by EBSA may direct comments regarding regulatory enforcement actions to the Small Business Administration's Office of the National Ombudsman in writing at 409 3rd St SW, MC 2120, Washington, DC, 20416, or by calling 1-888-REG-FAIR (1-888-734-3247).

4. Regulatory Compliance Assistance

Federal agencies might provide guidance, educational resources, and additional information to aid small entities in complying with their specific regulations. To receive an "A" rating in this category, the agency must have made the following resources available:

- A compliance assistance telephone number, website, and/or point of contact available to small businesses; and
- Documented compliance assistance education.

Also, beginning in FY2018, agencies' responses to these three new evaluation factors marked with an asterisk (*) were considered in determining their Federal Agency Ratings:

- Published small business compliance guides and assistance as described in Section 212 of SBREFA, if required;*

The small business compliance guides and assistance were published on the date of publication of the final rule(s) (or as soon as possible after that date) and not later than the date on which the requirements of that rule(s) became effective in compliance with SBREFA;* and

An FY2018 Annual Report on Small Entity Compliance Guides submitted to the U.S. Senate Committee on Small Business and Entrepreneurship and the House Small Business Committee no later than February 1, 2019, as required by Section 212 of SBREFA.*

EXAMPLES OF AGENCY COMPLIANCE ASSISTANCE INITIATIVES

Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission (FERC) provides a series of guides containing assistance in all areas regulated by FERC on [its website](#).

Housing and Urban Development

[HUD's compliance assistance website](#) provides full details of the implementation of agency compliance initiatives.

When new HUD legislation is enacted, the Office of General Counsel prepares an implementation guide that provides guidance to the program offices of regulatory action or other type of guidance or notice that is required by the statutory provisions.

If a rule or group of related rules issued by HUD is determined to have a significant economic impact on a substantial number of small entities, and consequently determined to require a regulatory flexibility analysis, the HUD program office with responsibility for implementation and enforcement of the regulation will undertake the following: (1) solicit and review for feasibility alternative strategies for rule implementation which may mitigate impacts on small entities; and (2) prepare a compliance guide to assist small entities in complying with the rule.

Additionally, the program offices will continue to be responsible for answering inquiries by small entities concerning information on, and advice about, compliance with applicable statutes and regulations. HUD proposes to maintain a specific users forum on the Internet where small entities may review the rule and the compliance guide, and engage in an online dialogue with program experts to seek clarification and guidance on the rule.

The OSDBU, as HUD's Ombudsman for small business, will monitor and assist the program offices throughout the development and implementation process and act as an honest broker for small businesses seeking additional information or who express concerns during development and implementation.

Department of Homeland Security/Customs and Border Protection

CBP has a number of ways it provides compliance assistance to small business entities. In addition to our [Informed Compliance Publications](#), CBP offers other programs that can be found on our www.CBP.gov website with programs including; Account Management, Focused Assessment Program (FA); Managing Trade Risk, Suspension and Debarment and Trade Compliance Measure (TCM) Program Overview.

Centers of Excellence and Expertise: Account Management through our Centers of Excellence and Expertise (Centers) was created as a method to increase compliance while reducing costs and inefficiencies for CBP and the trade. The Account Manager serves as a primary point of contact to the account for trade related issues and also serves as a primary point of contact for the account within CBP, to establish and support smooth-working relationships among the many CBP disciplines that interact with the account. The Account Manager also provides guidance and assistance to the account and collaborates with other CBP disciplines to create and implement comprehensive strategies to manage and segment risk, solve problems, and increase efficiencies. As part of CBP's trade transformation efforts, each Account Manager is now a core member of 1 of the 10 Centers of Excellence and Expertise. Information on the Centers can be found on [the CBP website](#).

CBP RegFair Program: Through its CBP RegFair program, the Office of Trade Relations (OTR) provides outreach and educational opportunities by hosting Small Business Industry Trade Days, Small Business Roundtables and webinars in coordination with other Partner Government Agencies, small business entities, and associations to educate small business owners on areas related to importing and exporting. OTR has coordinated events and discussions with the Small Business Administration (SBA), Center for International Trade and the Centers for Small Business Development. The Office of Trade Relations can be contacted directly at (202) 344-1440, tradeevents@dhs.gov, cbpsrelations@cbp.dhs.gov and www.cbp.gov.

Department of Veterans Affairs

VA OSDBU maintains a library of documents that provide guidance on regulatory compliance on its website. The following list is an example of guidance that is provided:

- [Laws and Executive Orders, Information Letters](#)
- [Non-manufacturer Rule](#)
- [Small Business Subcontracting Plans](#)
- [Verification Guides and Popular Resources, Verification Laws and Regulations](#)

VA OSDBU provides compliance assistance in a variety of methods. VA has an agreement with the Association of Procurement Technical Assistance Centers to train and provide Verification Assistance Counselors located in each state available at no cost to Veterans. VA also provides the following web-based education:

- [Pre-Application Webinar and Town Hall, Preparing for Reverification Webinar and Town Hall, How to Stay Verified Webinar and Town Hall](#)

- [Module 5: Framework for Success Business Model “Procurement Mechanisms”](#), [Module 6: Framework for Success Business Model “Performance”](#)

5. SBREFA Notice

It is essential that small businesses be informed of their ability and right to access ONO for assistance. ONO assigns a rating in this category based on whether the Federal agency has provided public notice of small businesses’ SBREFA rights, including contact information for ONO. The agency must also provide written notice to small businesses about their right to comment about the enforcement/compliance process to ONO when each citation or notice of regulatory violation is issued. The assigned rating is also affected by whether the agency displays or communicates its notice generally or if it only does so when issuing this citation, charge, or notice of regulatory violation.

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

SUPPLEMENTAL INFORMATION

Agencies are encouraged to submit additional information that demonstrates how they have met the aforementioned SBREFA requirements. This may include specific examples illustrating how the agency has promoted regulatory enforcement and compliance fairness for small entities, including individualized compliance assistance, the amount of fines abated, and/or other forms of regulatory relief provided to the small business based on its size and/or other considerations.

Compliance Assistance Guides

The following agencies responded “yes” to Question 2C of the FY2018 Small Business Regulatory Enforcement Fairness Act Questionnaire. All have indicated that they published one or more entity compliance guides and submitted the required 2018 Annual Report on Small Entity Compliance Guides to the U.S. Senate Committee on Small Business and Entrepreneurship and the House Small Business Committee as required by Section 212 of SBREFA.

| AGENCY | NAME OF RULE(S) |
|--|---|
| Customs and Border Protection | <ul style="list-style-type: none"> • ACE Drawback Guidance |
| Consumer Financial Protection Bureau | <ul style="list-style-type: none"> • Prepaid Accounts rule (83 FR 6364) • Home Mortgage Disclosure Act rule (83 FR 45325) • Truth in Lending – Real Estate Settlement Procedures Act (TILA-RESPA) Integrated Disclosures rule (83 FR 19159) • Optional Internet Availability of Investment Company Shareholder Reports • Amendments to Smaller Reporting Company Definition • Investment Company Liquidity Disclosure • Inline XBRL Filing of Tagged Data • Disclosure Update and Simplification • Mortgage Servicing rule (83 FR 10553) • Loan Originator rule • Home Ownership and Equity Protection Act (HOEPA) rule |
| Centers for Medicare and Medicaid Services | <ul style="list-style-type: none"> • Medicare Program; Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs (CMS-1678-FC, November 13, 2017 at 82 FR 52356-52637) • Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2018; Medicare Shared Savings Program Requirements; and Medicare Diabetes Prevention Program (CMS-1676-F, November 15, 2017 at 82 FR 52976-53371) • Medicare Program; Durable Medical Equipment Fee Schedule Adjustments To Resume the Transitional 50/50 Blended Rates To Provide Relief in Rural Areas and Non-Contiguous Areas (CMS-1687-IFC, May 11, 2018 at 83 FR 21912-21925) |

| AGENCY | NAME OF RULE(S) |
|--|--|
| Centers for Medicare and Medicaid Services | <ul style="list-style-type: none"> • Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2019 Rates; Quality Reporting Requirements for Specific Providers; Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs (Promoting Interoperability Programs) Requirements for Eligible Hospitals, Critical Access Hospitals, and Eligible Professionals; Medicare Cost Reporting Requirements; and Physician Certification and Recertification of Claims (CMS 1694-F, August 17, 2018 at 83 FR 41144-41784) |
| Consumer Protection Safety Commission | <ul style="list-style-type: none"> • See CPSC's website for complete information about rules published during FY18 that were identified as having a significant economic impact on a substantial number of entities. |
| Department of Commerce/ National Oceanic and Atmospheric Administration | <ul style="list-style-type: none"> • Final Rule to Implement Golden Tilefish Specifications for 2018-2020 (RIN 0648-XF571) • Fisheries of the Northeastern United States; Amendment 6 to the Tilefish Fishery Management Plan (RIN 0648-BF86) • Atlantic Highly Migratory Species; 2018 Atlantic Shark Commercial Fishing Season (RIN 0648-XF486) • Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Widow Rockfish Reallocation in the Individual Fishing Quota Fishery (RIN 0648-BF12) • Final Rule Creating a Separate Provision for Commercial Sale of HMS by Charter/Headboat Vessels (RIN 0648-BH19) • Atlantic Highly Migratory Species; Individual Bluefin Quota Program; Accountability for Bluefin Tuna Catch (RIN 0648-BH17) • Snapper-Grouper Fishery of the South Atlantic Region; Temporary Measures to Reduce Overfishing of Golden Tilefish (RIN 0648-BH15) • Fisheries of the Northeastern United States; Black Sea Bass Fishery; 2018 February Recreational Season Modification (RIN 0648-BH35) • Fisheries of the Northeastern United States; Northeast Skate Complex; Framework Adjustment 4 (RIN 0648-BH03) • Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2018 and 2019 Harvest Specifications for Groundfish (RIN 0648-XF636) • Gulf of Alaska Final 2018 2019 Harvest Specifications for Groundfish (RIN 0648-XF633) • Fisheries of the Northeastern United States; Northern Gulf of Maine Measures in Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan (RIN 0648-BH51) |

| AGENCY | NAME OF RULE(S) |
|---|---|
| <p>Department of Commerce/ National Oceanic and Atmospheric Administration</p> | <ul style="list-style-type: none"> • Changes to the Area 2A Pacific Halibut Catch Sharing Plan and Implementing Annual Management Measures for 2018 (RIN 0648-BH45) • Final Rule; Regulatory Amendment to authorize an Oregon recreational fishery for midwater groundfish species (RIN 0648-BG40) • Final Rule on the New England Fishery Management Council’s Omnibus Essential Fish Habitat Amendment (RIN 0648-BF82) • Fisheries of the Northeastern United States; Scup Fishery; Framework Adjustment 12 (RIN 0648-BH26) • Final Rule to Implement Framework Adjustment 29 to the Atlantic Sea Scallop Fishery Management Plan (RIN 0648-BH56) • Fisheries off the West Coast States; West Coast Salmon Fisheries; Management Measures to Limit Fishery Impacts on Sacramento River Winter-run Chinook Salmon (RIN 0648-BH40) • Northeast Multispecies Fishery; Fishing Year 2018 Recreational Management Measures (RIN 0648-BH55) • Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures for the 2018 Tribal and Non-Tribal Fisheries for Pacific Whiting (RIN 0648-BH31) • Final Rule to Implement 2018 and Project 2019-2020 Small-Mesh Multispecies Specifications (RIN 0648-BH76) • Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Mutton Snapper and Gag Management Measures (RIN 0648-BG99) • Fisheries of the Exclusive Economic Zone Off Alaska; Reclassifying Squid Species in the BSAI and GOA (RIN 0648-BH05) • Atlantic Highly Migratory Species; Final Rule to Revise Atlantic Shark Fishery Closure Regulations (RIN 0648-BG97) • Fisheries of the Northeastern United States; Special Management Zones for 13 New Jersey Artificial Reefs (RIN 0648-BH33) • Fishing Limits in Purse Seine and Longline Fisheries; Restrictions on the Use of Fish Aggregating Devices in Purse Seine Fisheries and Transshipment Prohibitions (RIN 0648-BH77) • Fisheries of the EEZ off Alaska; Authorize Recreational Quota Entity to Participate in the Halibut IFQ Program (RIN 0648-BG57) |
| <p>Department of Commerce/ United States Patent and Trademark Office</p> | <ul style="list-style-type: none"> • Setting and Adjusting Patent Fees During Fiscal Year 2017 (RIN 0651-AD02) |

| AGENCY | NAME OF RULE(S) |
|---|--|
| Department of Defense | <ul style="list-style-type: none"> • Amendments related to sources of electronic Parts (DFARS Case 2016-D013) • Competition for Religious-Related Services Contracts (DFARS Case 2016-D015) • Temporary Extension of Test Program for Comprehensive Small Business Subcontracting Plans (DFARS Case 2015-D013) • Amendment to Mentor-Protégé Program (DFARS Case 2016-D011) • Procurement of Commercial Items (DFARS Case 2016-D0006) |
| Department of Labor/Employee Benefit Security Administration | <ul style="list-style-type: none"> • Definition of ‘Employer’ Under Section 3(5) of ERISA—Association Health Plans |
| Federal Communications Commission | <ul style="list-style-type: none"> • Assessment and collection of Regulatory Fees for Fiscal Year 2017 • Removing Barriers to Infrastructure Investment • Amendment of Parts 74, 76 and 78 of the Commissioner’s Rules • Amendment of Parts 1 and 22 of the Commissions Rules with Regard to the Cellular Service • Next Generation Broadcast Television Standard • Cable Television Technical and Operational Standards • Directional AM Antenna Arrays • Blue Alert • Rules and Policies Regarding Calling Number Identification Service • Channel Sharing by Full Power and Class A Stations • Technological Solutions to Combat Contraband Wireless Device Use • Noncommercial Educational Station Fundraising for Third-Party Non-Profit Organization • Elimination of Main Studio Rule • Maritime Radio Equipment and Related Matters • Structure and Practices of the Video Relay Service Program • Promoting Diversification of Ownership in the Broadcasting Services • Transition from TTY to Real-time Text Technology • Emission Mask Requirements • Review of the Emergency Alert System • Closed Captioning of Programming on Television • 2014 Quadrennial Regulatory Review • Revisions to Public Inspection File Requirements |
| Federal Energy Regulatory Commission | <ul style="list-style-type: none"> • Each of the rules issued by the Federal Energy Regulatory Commission in FY2018 respectively either 1) certifies that the rule will not have a significant economic impact on a substantial number of small entities, or 2) or was otherwise exempt from the Regulatory Flexibility Act of 1980 requirements. |

| AGENCY | NAME OF RULE(S) |
|---|---|
| Federal Reserve Board | <ul style="list-style-type: none"> • Community Reinvestment Act Regulations (RIN 7100-AF32) • Consumer Lending (RIN 7100-AF24) • Truth in Lending (RIN 7100-AF25) • Large Financial Institution Rating System (RIN 7100-AE82) • Federal Reserve Bank Capital Stock (RIN 7100-AF27) • Application of the RFI/C(D) Rating System to Savings and Loan Holding Companies • Margin and Capital Requirements for Covered Swap Entities (RIN 1557-AE29) • Liquidity Coverage Ratio Rule: Treatment of Certain Municipal Obligations as High-Quality Liquid Assets (RIN 1557-AE36) • Small Bank Holding Company and Savings and Loan Holding Company Policy Statement and Related Regulations; Changes to Reporting Requirements (RIN 7100-AF13) • Single-Counterparty Credit Limits for Bank Holding Companies and Foreign Banking Organizations (RIN 7100-AE48) • Collection of Checks and other Items by Federal Reserve Banks and Funds Transfers through Fedwire (RIN 7100-AE98) • Rules Regarding Delegation of Authority, Delegation of Authority to the Secretary of the Board (FOIA Denials) (RIN 7100-AE99) • Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and Agencies of Foreign Banks (RIN 7100-AF09) |
| General Services Administration | <ul style="list-style-type: none"> • Reference Website: gsa.gov/secg |
| Securities and Exchange Commission | <ul style="list-style-type: none"> • Exemptions from Investment Adviser Registration for Advisers to Small Business Investment Companies • Optional Internet Availability of Investment Company Shareholder Reports • Amendments to Smaller Reporting Company Definition • Investment Company Liquidity Disclosure • Inline XBRL Filing of Tagged Data • Disclosure Update and Simplification |
| U.S. Coast Guard | <ul style="list-style-type: none"> • Recreational Boat Flotation Standards – Update of Outboard Engine Weight Test Requirements (RIN 1625-AC37) [USCG-2016-1012] (82 FR 49737) • Safety Zone; Pacific Ocean, Kilauea Lava Flow Ocean Entry on Southeast Side of Island of Hawaii, HI (RIN 1625-AA00) [USCG-2017-0234] (83 FR 21876, May 11, 2018) |
| U.S. Department of Agriculture/ Food Safety Inspection Service | <ul style="list-style-type: none"> • Elimination of Trichinae control Regulations and Consolidation of Thermally Processed, Commercially Sterile Regulations |
| Veterans Administration | <ul style="list-style-type: none"> • 38 CFR Part 74: Veteran Small Business Regulations (Exempt from Regulatory Flexibility Act under 5 U.S.C. 605(b)). |

FY2018 Agency Ratings

| Cabinet Agency | Overall | Comments [^] | | SBREFA Compliance | | |
|---|---------|------------------------|---------------------|---------------------------------|--------------------------|-----------------------|
| | | response timeliness | response quality | non- retaliation policies | compliance assistance | SBREFA notificatio |
| AGRICULTURE | | | | | | |
| <i>Food Safety & Inspection Service</i> | B | D | A | A | A | A |
| COMMERCE | | | | | | |
| <i>National Oceanic & Atmospheric Administration (NOAA)</i> | A | N/C | N/C | A | A | A |
| <i>Bureau of Industry and Security (BIS)</i> | A | N/C | N/C | A | A | A |
| DEFENSE | A | B | A | A | A | A |
| EDUCATION | A | N/C | N/C | A | A | A |
| ENERGY | A | N/C | N/C | A | A | A |
| HEALTH AND HUMAN SERVICES | | | | | | |
| <i>Food & Drug Administration</i> | A | A | A | A | A | A |
| <i>Centers for Medicare & Medicaid Services</i> | A | A | A | A | A | C |
| HOMELAND SECURITY | | | | | | |
| <i>Coast Guard</i> | A | A | A | A | A | A |
| <i>Customs & Border Protection</i> | A | A | A | A | A | A |
| <i>Immigration & Customs Enforcement</i> | B | A | A | A | C | F |
| <i>Citizenship and Immigration Services</i> | B | N/C | N/C | A | A | C |
| HOUSING & URBAN DEVELOPMENT | A | N/C | N/C | A | A | A |
| INTERIOR | C | N/C | N/C | A | F | C |
| JUSTICE | A | A | A | A | A | C |
| LABOR | | | | | | |
| <i>Occupational Safety & Health Administration</i> | A | A | A | A | A | A |
| <i>Wage & Hour Division</i> | A | A | A | A | A | A |
| <i>Mine Safety & Health Administration</i> | A | A | A | A | A | A |
| <i>Employee Benefits Security Administration (EBSA)</i> | A | N/C | N/C | A | A | A |
| SMALL BUSINESS ADMINISTRATION | | | | | | |
| <i>Office of General Couns</i> | A | A | A | A | A | A |
| STATE | A | A | A | A | A | A |

| Cabinet Agency | Overall | Comments [^] | | SBREFA Compliance | | |
|--|---------|------------------------|---------------------|---------------------------------|--------------------------|-----------------------|
| | | response timeliness | response quality | non- retaliation policies | compliance assistance | SBREFA notificatio |
| TRANSPORTATION | | | | | | |
| <i>Federal Aviation Administration</i> | A | A | A | A | A | A |
| <i>Pipeline and Hazardous Material Safety Administration</i> | A | B | A | A | A | A |
| <i>Federal Motor Carrier Safety Administration</i> | A | B | A | A | A | A |
| TREASURY | | | | | | |
| <i>Internal Revenue Service</i> | A | B | A* | A | A | A |
| VETERANS AFFAIRS** | D | N/C | N/C | F | A | F |

| Non-Cabinet Agency | Overall | Comments [^] | | SBREFA Compliance | | |
|--|---------|------------------------|---------------------|---------------------------------|--------------------------|-----------------------|
| | | response timeliness | response quality | non- retaliation policies | compliance assistance | SBREFA notificatio |
| CONSUMER FINANCIAL PROTECTION BUREAU | C | A | A | F | A | F |
| CONSUMER PRODUCT SAFETY COMMISSION | B | N/C | N/C | A | A | C |
| ENVIRONMENTAL PROTECTION AGENCY | A | A | A | A | A | A |
| EQUAL EMPLOYMENT OPPORTUNITY COMMISSION | A | N/C | N/C | A | A | A |
| FEDERAL COMMUNICATIONS COMMISSION | B | D | A | A | A | A |
| FEDERAL DEPOSIT INSURANCE CORPORATION | A | N/C | N/C | A | A | N/A |
| FEDERAL ENERGY REGULATORY COMMISSION | A | N/C | N/C | A | A | A |
| FEDERAL RESERVE BOARD | A | N/C | N/C | A | A | N/A |
| FEDERAL TRADE COMMISSION | A | A | A | A | A | A |
| GENERAL SERVICES ADMINISTRATION | A | N/C | N/C | A | A | N/A |
| NATIONAL CREDIT UNION ADMINISTRATION | A | B | A | A | A | N/A |
| NATIONAL LABOR RELATIONS BOARD | A | A | A | A | N/A | N/A |

| Non-Cabinet Agency | Overall | Comments [^] | | SBREFA Compliance | | |
|--------------------------------------|---------|--------------------------------|-----------------------------|--|----------------------------------|-------------------------------|
| | | <i>response timeliness</i> | <i>response quality</i> | <i>non- retaliation policies</i> | <i>compliance assistance</i> | <i>SBREFA notificatio</i> |
| NATIONAL SCIENCE FOUNDATION | | N/C | N/C | A | A | A |
| PENSION BENEFIT GUARANTY CORPORATION | A | A | A | A | A | A |
| SECURITIES AND EXCHANGE COMMISSION | A | A | B | A | A | A |

Note: Please refer to Appendix B for explanation of symbols.

Chapter 5

Creating Small Business Friendly Solutions



Creating Small Business Friendly Solutions

FY2018 was a pivotal one for regulatory compliance in the United States. The Office of the National Ombudsman (ONO) has continued to successfully remedy issues between small businesses and the regulating bodies of the Federal government to reduce unnecessary burdens on all parties.

ONO will carry these successes into the future and will expand outreach, compliance assistance, and internal high-quality staffing efforts. A trusted advisor to numerous Federal agencies, ONO cultivates an entrepreneurial environment in which small businesses and regulating entities alike can thrive. Looking ahead, ONO will seek to further this initiative by deploying Regional Regulatory Fairness Board members to reach small business within their respective networks.

INCREASED SUPPORT FOR SMALL BUSINESSES

ONO's successful approach to outreach and regulatory assistance in FY2018 will be carried into the future. Targeting small businesses who are in the greatest need of assistance, the Agency will leverage technology to expand outreach efforts to what would otherwise be considered out-of-reach small businesses. ONO's 118 outreach events in FY2018 aided in the increased visibility of the Agency's mission to economically distressed areas and mid-tier cities with a large number of small businesses facing regulatory challenges. Going forward, ONO will continue to provide these communities with support for regulatory compliance and expand this reach to include more communities that rely on small business models to sustain economic balance.

ONO's strong relationships with trade association leaders and resource partners will assist in its efforts to continue to represent and champion the success of small businesses experiencing rapid growth across the Nation. Leveraging technology and a boots-on-the-ground approach, ONO will spread its mission to more small business owners. ONO's goal in the upcoming years is to reach a larger network of small businesses and make their voices heard.

ONO will continue to liaise with the Coalition of Federal Ombudsman and the U.S. Ombudsman Association to increase opportunities for networking and sharing best practices with other subject matter experts. Experiencing alternative viewpoints and methodologies assists ONO in providing comprehensive support to small businesses.

In that same vein, ONO is exploring the possibility of enhancing its effectiveness and strengthening its authority by offering Alternative Dispute Resolution (ADR) and

increasing staffing with trained ADR Specialists. By adding this service to its offerings, ONO would be able to use proven ADR techniques to encourage open dialogue between high-level officials at Federal government agencies and small business concerns to bring about meaningful resolutions.

EXPANDING REGIONAL REGULATORY BOARDS THROUGH MEMBERSHIP

The Regional Regulatory Fairness Board serves as a powerful driver for ONO's outreach efforts. They stand as trusted and well-respected members of their small business communities and can positively impact ONO's efforts to bring forth the regulatory concerns of the entrepreneurs who are being impacted and push for Federal regulators to take action on behalf of these communities.

To increase the reach of its Regional Regulatory Fairness Board, ONO will continue to search a wide number of sources for high-caliber, highly motivated candidates who will engage in the issues of the small business community. Through this initiative, ONO will expand its reach to include a greater number of small businesses who are in need of regulatory relief. ONO will reexamine and fine-tune the selection and vetting process, identify ways to further streamline the process to fill any vacancies, and expedite the onboarding of board members.

CONTINUED COMPLIANCE ASSISTANCE AND SYSTEMIC ISSUE RESOLUTION

ONO will continue to voice the regulatory enforcement concerns of small business owners. By increasing the visibility of systemic regulatory issues that adversely impact small business, ONO will allow for more timely responses and an increased likelihood that a resolution can be reached before any costly litigation derails any entrepreneurial efforts.

Additionally, ONO will continue to evaluate whether agencies are complying with the Small Business Regulatory Enforcement Fairness Act's (SBREFA's) Congressional reporting requirements, which can be found in each year's annual report under "Agency Ratings." ONO will also further emphasize the need for Federal agencies to provide compliance assistance to small businesses via the provision of designated agency points of contact and compliance education materials in an informative, accessible, and user-friendly format. ONO will assess the extent to which agencies are complying with these reporting requirements in forthcoming editions of its Annual Report to Congress.

| Appendices



Appendix A

Office of the National Ombudsman Statute

Statute 15 U.S. Code § 657—Oversight of Regulatory Enforcement

(a) Definitions

For purposes of this section, the term—

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

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

(b) SBA Enforcement Ombudsman

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

(2) The Ombudsman shall—

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

(B) establish means to receive comments from small business concerns regarding actions by agency employees conduct-

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

(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

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

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

(c) Regional Small Business Regulatory Fairness Boards

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

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

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

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

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

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

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

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

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

(d) Powers of Boards

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

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

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

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

Appendix B

Agency Ratings Footnotes and Comments

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

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

^: Comment timeliness and quality ratings are based on agency responses provided to ONO as of 2/1/19 (if any), which is 120 days following the close of FY2018 (120 days is the maximum time allowed for a response to receive a timeliness grade other than "F").

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

*: Response quality rating is based on responses to FY2014, FY2015, FY2016 and FY2017 cases received in FY2018.

** : VA has taken significant steps to improve awareness and strengthen protections for small businesses potentially facing regulatory enforcement actions. VA's Office of Small and Disadvantaged Business Utilization (OSDBU) initially added a notice to its website to state VA's commitment to non-retaliation. Subsequently, on January 16, 2020, the VA Deputy Secretary signed a formal statement committing the Department to non-retaliation, which now appears on the [OSDBU website](#) in place of the previous notice. With respect to compliance assistance, the Department has not issued any final rules covered by the SBA Ombudsman's compliance assistance requirement; however, as a matter of customer service VA has provided similar assistance to applicants for its Veteran-owned small business verification program. Finally, the Department has not identified any enforcement correspondence that falls within the requirement to notify recipients of their opportunity to contact the Ombudsman for assistance; if VA identifies correspondence of this nature, the Department will provide the requested notification.

Appendix C

Office of the National Ombudsman Staff Directory

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

Stefanie Baker Wehagen | National Ombudsman | stefanie.wehagen@sba.gov

Mina A. Wales | Deputy National Ombudsman | mina.wales@sba.gov

Cynthia Pope | Case Manager | cynthia.pope@sba.gov

Elahe Zahirieh | Case Manager | elahe.zahirieh@sba.gov

John Kelly | External Relations Manager | john.kelly@sba.gov

Appendix D

Executive Order Reducing Regulation and Controlling Regulatory Costs



By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Budget and Accounting Act of 1921, as amended (31 U.S.C. 1101 et seq.), section 1105 of title 31, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Purpose. It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of the direct expenditure of taxpayer dollars through the budgeting process, it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, it is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.

Sec. 2. Regulatory Cap for Fiscal Year 2017. (a) Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

(b) For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget (Director).

(c) In furtherance of the requirement of subsection (a) of this section, any new incremental costs as-

sociated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Any agency eliminating existing costs associated with prior regulations under this subsection shall do so in accordance with the Administrative Procedure Act and other applicable law.

(d) The Director shall provide the heads of agencies with guidance on the implementation of this section. Such guidance shall address, among other things, processes for standardizing the measurement and estimation of regulatory costs; standards for determining what qualifies as new and offsetting regulations; standards for determining the costs of existing regulations that are considered for elimination; processes for accounting for costs in different fiscal years; methods to oversee the issuance of rules with costs offset by savings at different times or different agencies; and emergencies and other circumstances that might justify individual waivers of the requirements of this section. The Director shall consider phasing in and updating these requirements.

Sec. 3. Annual Regulatory Cost Submissions to the Office of Management and Budget. (a) Beginning with the Regulatory Plans (required under Executive Order 12866 of September 30, 1993, as amended, or any successor order) for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of this order, and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation.

(b) Each regulation approved by the Director during the Presidential budget process shall be included in the Unified Regulatory Agenda required under Executive Order 12866, as amended, or any successor order.

(c) Unless otherwise required by law, no regulation shall be issued by an agency if it was not

included on the most recent version or update of the published Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance in writing by the Director.

(d) During the Presidential budget process, the Director shall identify to agencies a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director. The total incremental cost allowance may allow an increase or require a reduction in total regulatory cost.

(e) The Director shall provide the heads of agencies with guidance on the implementation of the requirements in this section.

Sec. 4. Definition. For purposes of this order the term "regulation" or "rule" means an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, but does not include:

(a) regulations issued with respect to a military, national security, or foreign affairs function of the United States;

(b) regulations related to agency organization, management, or personnel; or

(c) any other category of regulations exempted by the Director.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
January 30, 2017.

Appendix E

Executive Order 13777 Enforcing the Regulatory Reform Agenda



By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to lower regulatory burdens on the American people by implementing and enforcing regulatory reform, it is hereby ordered as follows:

Section 1. Policy. It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.

Sec. 2. Regulatory Reform Officers. (a) Within 60 days of the date of this order, the head of each agency, except the heads of agencies receiving waivers under section 5 of this order, shall designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. These initiatives and policies include:

- (i) Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;
- (ii) Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;
- (iii) section 6 of Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and
- (iv) the termination, consistent with applicable law, of programs and activities that derive from or implement Executive Orders, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

(b) Each agency RRO shall periodically report to the agency head and regularly consult with agency leadership.

Sec. 3. Regulatory Reform Task Forces. (a) Each agency shall establish a Regulatory Reform Task Force composed of:

- (i) the agency RRO;
 - (ii) the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866;
 - (iii) a representative from the agency's central policy office or equivalent central office; and
 - (iv) for agencies listed in section 901(b)(1) of title 31, United States Code, at least three additional senior agency officials as determined by the agency head.
- (b) Unless otherwise designated by the agency head, the agency RRO shall chair the agency's Regulatory Reform Task Force.

(c) Each entity staffed by officials of multiple agencies, such as the Chief Acquisition Officers Council, shall form a joint Regulatory Reform Task Force composed of at least one official described in subsection (a) of this section from each constituent agency's Regulatory Reform Task Force. Joint Regulatory Reform Task Forces shall implement this order in coordination with the Regulatory Reform Task Forces of their members' respective agencies.

(d) Each Regulatory Reform Task Force shall evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. At a minimum, each Regulatory Reform Task Force shall attempt to identify regulations that:

- (i) eliminate jobs, or inhibit job creation;
- (ii) are outdated, unnecessary, or ineffective;
- (iii) impose costs that exceed benefits;
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.
- (e) In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.
- (f) When implementing the regulatory offsets required by Executive Order 13771, each agency head should prioritize, to the extent permitted by law, those regulations that the agency's Regulatory Reform Task Force has identified as being outdated, unnecessary, or ineffective pursuant to subsection (d)(ii) of this section.
- (g) Within 90 days of the date of this order, and on a schedule determined by the agency head thereafter, each Regulatory Reform Task Force shall provide a report to the agency head detailing the agency's progress toward the following goals:

(i) improving implementation of regulatory reform initiatives and policies pursuant to section 2 of this order; and

(ii) identifying regulations for repeal, replacement, or modification.

Sec. 4. Accountability. Consistent with the policy set forth in section 1 of this order, each agency should measure its progress in performing the tasks outlined in section 3 of this order.

(a) Agencies listed in section 901(b)(1) of title 31, United States Code, shall incorporate in their annual performance plans (required under the Government Performance and Results Act, as amended (see 31 U.S.C. 1115(b))), performance indicators that measure progress toward the two goals listed in section 3(g) of this order. Within 60 days of the date of this order, the Director of the Office of Management and Budget (Director) shall issue guidance regarding the implementation of this subsection. Such guidance may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.

(b) The head of each agency shall consider the progress toward the two goals listed in section 3(g) of this order in assessing the performance of the Regulatory Reform Task Force and, to the extent permitted by law, those individuals responsible for developing and issuing agency regulations.

Sec. 5. Waiver. Upon the request of an agency head, the Director may waive compliance with this order if the Director determines that the agency generally issues very few or no regulations (as defined in section 4 of Executive Order 13771). The Director may revoke a waiver at any time. The Director shall publish, at least once every 3 months, a list of agencies with current waivers.

Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE, February 24, 2017. Filed
2-28-17; 11:15 am]
[FR Doc. 2017-04107
Billing code 3295-F7-P

Appendix F

Guidance on Regulatory Reform Accountability under Executive Order 13777, titled “Enforcing the Regulatory Reform Agenda”

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 28, 2017

M-17-23

MEMORANDUM FOR: REGULATORY REFORM
OFFICERS AND REGULATORY POLICY OFFICERS
AT EXECUTIVE DEPARTMENTS AND AGENCIES

CC: PERFORMANCE IMPROVEMENT OFFICERS AT
EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Dominic J. Mancini, Acting Administrator
Office of Information and Regulatory Affairs

SUBJECT: Guidance on Regulatory Reform
Accountability under Executive Order 13777, titled
“Enforcing the Regulatory Reform Agenda”

Background

This memorandum provides guidance regarding sections 4 and 5 of Executive Order (EO) 13777, titled “Enforcing the Regulatory Reform Agenda.” Section 4 requires the Office of Management and Budget (OMB) to issue guidance about the performance indicators that agencies listed in 31 U.S.C. § 901(b)(1) (see Application section below) must incorporate into their annual performance plans. The performance indicators measure progress toward the following goals:
improving implementation of regulatory reform

initiatives and policies pursuant to section 2 of EO 13777;¹ and identifying regulations for repeal, replacement, or modification.

Section 5 permits waivers from compliance with EO 13777 if there is a determination that the agency “generally issues very few or no regulations.”

Application

The agencies subject to EO 13777 are only those agencies subject to the regulatory review requirements of EO 12866.² While independent regulatory agencies are not subject to EO 13777, they are still encouraged to comply.

The Waivers section in this Guidance applies to all agencies subject to EO 13777.

In contrast, the Requirements section in this Guidance only applies to a subset of agencies subject to EO 13777, in particular:

The Department of Agriculture
The Department of Commerce
The Department of Defense
The Department of Education

1 Section 2 of EO 13777 identifies the following regulatory reform initiatives and policies:
EO 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;
EO 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review; Section 6 of EO 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and The termination, consistent with applicable law, of programs and activities that derive from or implement EOs, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

2 Agencies subject to regulatory review under EO 12866 are those authorities of the United States that are an “agency” under 44 U.S.C. § 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. § 3502(5).

The Department of Energy
 The Department of Health and Human Services
 The Department of Homeland Security
 The Department of Housing and Urban Development
 The Department of the Interior
 The Department of Justice
 The Department of Labor
 The Department of State
 The Department of Transportation
 The Department of the Treasury
 The Department of Veterans Affairs
 The Environmental Protection Agency
 The National Aeronautics and Space Administration

Nevertheless, agencies subject to EO 13777 that are not included in the above list are strongly encouraged to comply with the *Requirements* section of this Guidance and must still comply with all sections of EO 13777 with the exception of section 4(a).

Requirements

Beginning with the FY 2019 Annual Performance Plan (APP)³ agencies must, at a minimum, include in their plans the following performance indicators⁴ for the fiscal year:

1. Number of evaluations to identify potential EO 13771 deregulatory actions that included opportunity for public input and/or peer review;
2. Number of EO 13771 deregulatory actions recommended by the Regulatory Reform Task Force to the agency head, consistent with applicable law;
3. Number of EO 13771 deregulatory actions issued that address recommendations by the Regulatory Reform Task Force;
4. Number of EO 13771 regulatory actions and, separately, EO 13771 deregulatory actions

issued; and

5. Total incremental cost of all EO 13771 regulatory actions and EO 13771 deregulatory actions (including costs or cost savings carried over from previous fiscal years).

In their FY 2019 APP, agencies must establish performance goal(s) associated with each indicator. They must also set a target for the level of performance to be achieved within the time period. These actions should be consistent with the guidance in Part 6 of OMB Circular A-11. Agencies must also include in their FY 2019 APP the above performance indicators and set targets for the corresponding performance goals for FY 2018. Beginning with their FY 2018 Annual Performance Reports, agencies must report the appropriate performance data for each performance indicator and goal, and identify each action evaluated for indicator 1, each Regulatory Reform Task Force recommendation for indicator 2, and each EO 13771 regulatory and EO 13771 deregulatory action for indicators 3 and 4 respectively.

In addition, agencies should establish and report other meaningful performance indicators and goals for the purpose of evaluating and improving the net benefits of their respective regulatory programs (i.e., all of the existing regulations in place that address a specific regulatory objective). This likely will require measuring the costs and benefits of regulatory programs and setting goals for improving those programs' net benefits. The effort to improve net benefits may be conducted as part of developing agency strategic and performance plans and priority goals, and may use existing quarterly and annual performance review processes to assess progress against these objectives. Please consult with your OIRA desk officer during your agency's development of new performance indicators for evaluating the net benefits of regulatory programs.

³ See 31 U.S.C. § 1115(b).

⁴ The terms "EO 13371 deregulatory action," "EO 13771 regulatory action," and "total incremental cost" have the same meaning as in the OMB guidance implementing EO 13771.

Agencies should also report on their performance in terminating, consistent with applicable law, any programs or activities that derive from or implement EOs, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded or that were terminated during the fiscal year. This performance can be reported as either a performance indicator or other means (e.g., a narrative discussion) in the agency's performance plan and report.

Waivers

Compliance with EO 13777 may be waived if there is a determination that the agency generally issues very few or no regulations.⁵ A waiver may be revoked at any time.

An agency requesting a waiver should provide OMB at least the following information:

- 1) An overview of its existing regulations, including information about the nature and goal of the regulations, and the magnitude of those regulations' benefits and costs;
- 2) The number of significant regulatory actions (see EO 12866) on its existing and, if available, planned Unified Agenda of Regulatory and Deregulatory Actions, and estimates of the total incremental benefits and costs of those actions;
- 3) An overview of the nature, quantity and impact of regulations the agency plans to issue that the agency believes are not significant (see EO 12866); and

- 4) Information about the benefits and costs of its existing and planned significant guidance documents.⁶

OMB may request that the agency provides additional information to help determine the appropriateness of a waiver.

5 EO 13771 defines "regulation" as an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, but does not include: (a) regulations issued with respect to a military, national security, or foreign affairs function of the United States (For more information about the national security function exemption, see question 7 in the OMB guidance titled "Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs.'"); (b) regulations related to agency organization, management, or personnel; or (c) any other category of regulations exempted by the Director.

6 The OMB guidance referenced in the above footnote defines "EO 13771 regulatory action[s]" to include "a significant guidance document (e.g., significant interpretive guidance) reviewed by [OMB's Office of Information and Regulatory Affairs] under the procedures of EO 12866 that have been finalized and that impose total costs greater than zero."

Appendix G

Economic Data References

- 1 <https://www.whitehouse.gov/briefings-statements/president-trumps-historic-deregulation-benefitting-americans/>
- 2 <https://www.whitehouse.gov/articles/job-market-continues-crush-expectations-2020/>
- 3 <https://www.whitehouse.gov/articles/job-market-continues-crush-expectations-2020/>



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