

2017 ANNUAL REPORT

to Congress Lifting the Weight of Burdensome Regulations and Revitalizing the Spirit of American Entrepreneurship



Office of the
NATIONAL OMBUDSMAN

**Lifting the Weight of Burdensome Regulations and
Revitalizing the Spirit of American Entrepreneurship**

2017 ANNUAL REPORT
to Congress

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

Linda E. McMahon

Administrator

U.S. SMALL BUSINESS ADMINISTRATION

Mina A. Wales

Deputy National Ombudsman

U.S. SMALL BUSINESS ADMINISTRATION

OFFICE OF THE NATIONAL OMBUDSMAN

409 3rd Street, S.W., Mail Code 2120, Washington, D.C. 20416

TTY/TTD: 800-877-8339, Toll Free: 888-734-3247

www.sba.gov/ombudsman

Message from the SBA ADMINISTRATOR



Linda E. McMahon
SBA Administrator

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

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

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

"America is on the
verge of a golden age
for small business."

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

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

Regards,

A handwritten signature in blue ink that reads "Linda E. McMahon".

Linda E. McMahon
SBA Administrator

Executive Summary

Delivering Regulatory Relief to Small Businesses

The U.S. Small Business Administration (SBA) Office of the National Ombudsman (ONO) has—since its creation in 1996—served as an ambassador of small businesses to Federal regulators. At the core of its mission is ensuring that Federal regulatory enforcement actions taken against small businesses are fair and not excessive. Now, as SBA and other Federal agencies work to reduce the volume of regulations stifling economic growth, ONO continues its work to ensure that small businesses are kept apprised of changes and that they have a voice in government when they believe that regulatory enforcement actions levied against them would adversely impact their businesses and threaten their survival.

Through its cooperation with other Federal agencies and through the work of highly skilled Case Managers and Regional Regulatory Fairness Board members, ONO has created a more favorable regulatory climate for small businesses to thrive.

FY2017 ACCOMPLISHMENTS

Throughout FY2017, ONO achieved success in the performance of each of its core functions: managing the highest caseload in a decade and advocating on behalf of small businesses to get their most pressing regulatory enforcement concerns addressed, forging new relationships with interagency partners to influence them to take into consideration the impact of their decisions on small businesses, and raising awareness of ONO's value to a greater share of America's small businesses.

In FY2017, ONO set a record in facilitating the resolution of regulatory compliance and enforcement issues. ONO intervened on behalf of small business owners who filed 460 formal complaints through us—the highest volume of filings received over the past decade. ONO was efficient and effective in its case processing. ONO reviewed the comments, expeditiously transmitted them to the appropriate Federal agencies, requested a high-level review of the issues, and requested responses within 30 days. Subsequently, ONO communicated the Federal agencies' responses to the small businesses. In many instances, ONO's intervention resulted in tangible outcomes for small businesses in the form of waived penalties, fine reductions, recovered claims payments, and / or reversals of decisions by Federal agencies.

We have not only exceeded our performance targets on outreach for the year, but also set a five-year high. In doing so, we have expanded our reach to, and impact upon, many small businesses that were previously unaware of ONO's existence. We created forums for them to raise the visibility of their concerns to Federal regulators and provided unique platforms for them to share their stories with Federal regulators and Members of Congress regarding how they have been adversely affected by unfair regulatory enforcement measures. Listening to small business concerns in real-time has stimulated Federal regulators to rethink

III

policies and eliminate burdensome regulations, as well as prompted regulators to educate and assist small businesses about regulatory compliance long before issues reach the complaint process.

Over the past year, ONO engaged in a total of 134 outreach events across the Nation. In addition to hosting Regional Regulatory Enforcement Fairness Roundtables, ONO's Regulatory Fairness Board members raised awareness of ONO's service offerings by delivering presentations in Arizona, Hawaii, and Ohio. At these forums, Board members listened to regulatory concerns voiced by small businesses and industry leaders. They brought these issues to the attention of the National Ombudsman, who, in turn, raised these concerns to Federal regulators and prompted them to take action to address some of these concerns, where appropriate.

The SBA built new relationships with trade association leaders, state regulators, and state / local small business advocates. We initiated contact with senior representatives of 11 trade associations representing more than 616,000 small business owners. We also established new relationships, and renewed existing ties, with 28 Federal agency officials, which resulted in invitations from Federal agencies for the National Ombudsman to serve as a keynote speaker and 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 to approximately 2,900 small businesses that otherwise would not have known about ONO.

Through these partnerships, we highlighted regulatory issues to Federal agencies and catalyzed them to take actions to relieve small businesses of unfair, excessive regulatory burdens.

CONTINUING TO WORK FOR AMERICA'S SMALL BUSINESSES

In accordance with the President's directive to streamline, eliminate, and modify burdensome regulations, the SBA Administrator has followed through by making the accomplishment of these objectives a high priority. The business community has already responded with a resurgence of optimism. ONO will advance the Administration's Small Business Agenda and Regulatory Reform efforts by collaborating with Federal agencies and stakeholders to achieve the broad intent set forth in the Executive Orders. Through our partnerships with Federal agencies and state-level small business advocates, we aim to create and sustain a business-friendly climate that will continue the upward momentum in America's small business community and fuel the Nation's economic growth and prosperity.

ACCOMPLISHMENTS AT A GLANCE

134 outreach events in
FIFTEEN STATES

Convened a
2017 Annual Meeting
of the Regional Regulatory
Fairness Boards

**Conducted a National Regulatory Enforcement
Fairness Hearing** for trade association leaders,
small businesses, and their representatives to
voice their concerns through formal testimony
before Federal regulators

460 TOTAL NUMBER OF
COMMENTS FILED

Strengthened communication,
trust, and collaboration with

28
interagency partners

IMPACT

Expanded ONO's reach to, and impact upon, **a greater number of small businesses across SBA's 10 regions** through outreach to trade associations, chambers of commerce, and by leveraging Regional Regulatory Fairness Board members' networks

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Top Comment Submissions

Top States

Comment Submissions

- OH** Ohio: **34**
- CA** California: **33**
- MI** Michigan: **31**
- TX** Texas: **30**
- FL** Florida: **26**
- AL** Alabama: **23**
- NJ** New Jersey: **17**

14 Submissions

- PA** Pennsylvania
- NC** North Carolina
- VA** Virginia

13 Submissions

- TN** Tennessee
- DC** Washington, D.C.

12 Submissions

- CT** Connecticut
- GA** Georgia

11 Submissions

- LA** Louisiana
- MD** Maryland
- NY** New York
- WI** Wisconsin

Top Agencies

Case Referrals

- 52** U.S. Small Business Administration
- 47** U.S. Department of Health and Human Services / Food and Drug Administration
- 42** U.S. Department of Health and Human Services / Centers for Medicare and Medicaid Services
- 41** U.S. Department of Health and Human Services / Centers for Disease Control and Prevention
- 34** U.S. Department of Health and Human Services / National Cancer Institute
- 26** U.S. Department of Labor
- 25** Internal Revenue Service
- 21** U.S. Department of Defense
- 13** U.S. Department of Homeland Security / Citizenship and Immigration Services
- 9** U.S. Department of Transportation
- 6** U.S. Department of Agriculture
- 5** U.S. Department of the Interior
- 4** U.S. Environmental Protection Agency

Chapter 1

Easing Regulatory Burdens

The U.S. Small Business Administration (SBA) Office of the National Ombudsman (ONO) serves as an ambassador of small business to Federal regulators. ONO was created by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) with the mission of representing the interests of small businesses before Federal agencies when they are subjected to unfair or excessive enforcement actions taken against them by Federal regulators.

ONO carries out that mission by raising visibility of these issues to Federal agencies. When unfair regulatory actions—such as repetitive audits and investigations, unreasonable fines and penalties, or threats of retaliation—are levied against a small business, ONO advocates on their behalf before Federal agencies and seeks fair, expeditious resolution of those issues. In many instances, the sheer volume of Federal regulations overwhelms small businesses striving for compliance, and the complexity and cost of compliance can carry negative impacts or even drive them out of business.

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

In FY2017, ONO met with small businesses, lenders, and industry group leaders at 134 outreach events across 15 states, including 15 Regional Regulatory Fairness Roundtables across each of SBA's 10 regions and at the National Hearing we convened in Washington, D.C.

At these events, ONO listened to complaints directly from small businesses and community bank CEOs regarding their regulatory compliance concerns and the adverse impact of regulatory enforcement actions on their ability to stay in business and grow. In many instances, our interagency partners participated as well, which placed small businesses and lenders in direct contact with representatives of Federal agencies that have taken regulatory enforcement actions against them. Through testimonies at the National Hearing and dialogue exchanged at roundtables hosted by ONO, small business owners and lenders have voiced their concerns to senior officials representing Federal agencies and received direct feedback on actions that they have taken to address systemic issues and concerns brought to their attention, as well as progress achieved thus far.

In collaboration with ONO, members of the 10 Regional Regulatory Fairness Boards helped small businesses and lenders navigate through complex regulatory compliance challenges, introduced them to ONO, and walked them through the comment filing process involving ONO and Federal regulators. Our Board members have served as the eyes and ears for the National Ombudsman around the country. They have provided ONO with insights

into the issues impacting particular industries or small businesses within a given geographic region, as well as issues that span across multiple regions or industries. At the invitation of ONO, Board members have joined the National Ombudsman at Regional Regulatory Enforcement Fairness Roundtables across six states. Additionally, Board members representing three regions have independently delivered presentations to small businesses to raise awareness of ONO's service offerings and how we could be of assistance to small businesses.

HOW ONO ASSISTS SMALL BUSINESSES

ONO promotes and facilitates procedural fairness in regulatory disputes between small businesses and Federal agencies.

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

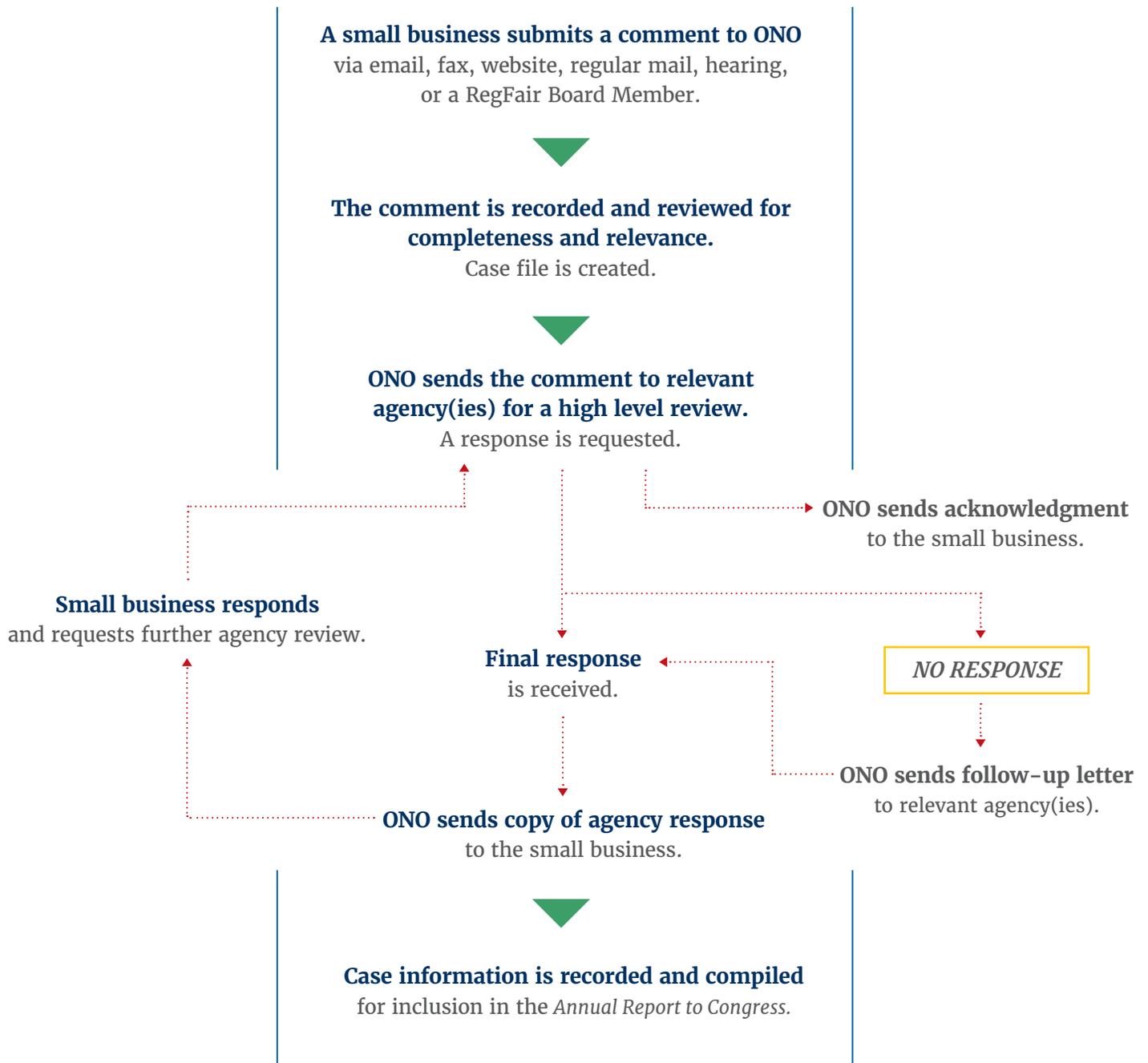
Fax: (202) 481-5719

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

How Our Comments/Complaint Filing Process Works:

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

Filing Process



How the Office of the National Ombudsman Provides Regulatory Relief

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

- 1** Reviews the Federal Agency Comment Form (SBA Form 1993), which authorizes the Ombudsman to proceed, and any supporting documentation for completeness, including signatures.
- 2** Determines how ONO can assist, then advises the small business of expected next steps and parameters of the SBREFA review.
- 3** Contacts the Federal agency involved to initiate the SBREFA review process.
- 4** Follows up with the Federal agency and the small business 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

Delivering Regulatory Relief to Small Businesses

As champions for small businesses, ONO facilitated communication between small businesses and the Federal agencies that have taken regulatory enforcement actions against them. ONO received 460 cases in FY2017—the highest caseload in a decade. ONO intervened to help mitigate the impacts of undue regulatory burdens placed upon small businesses.

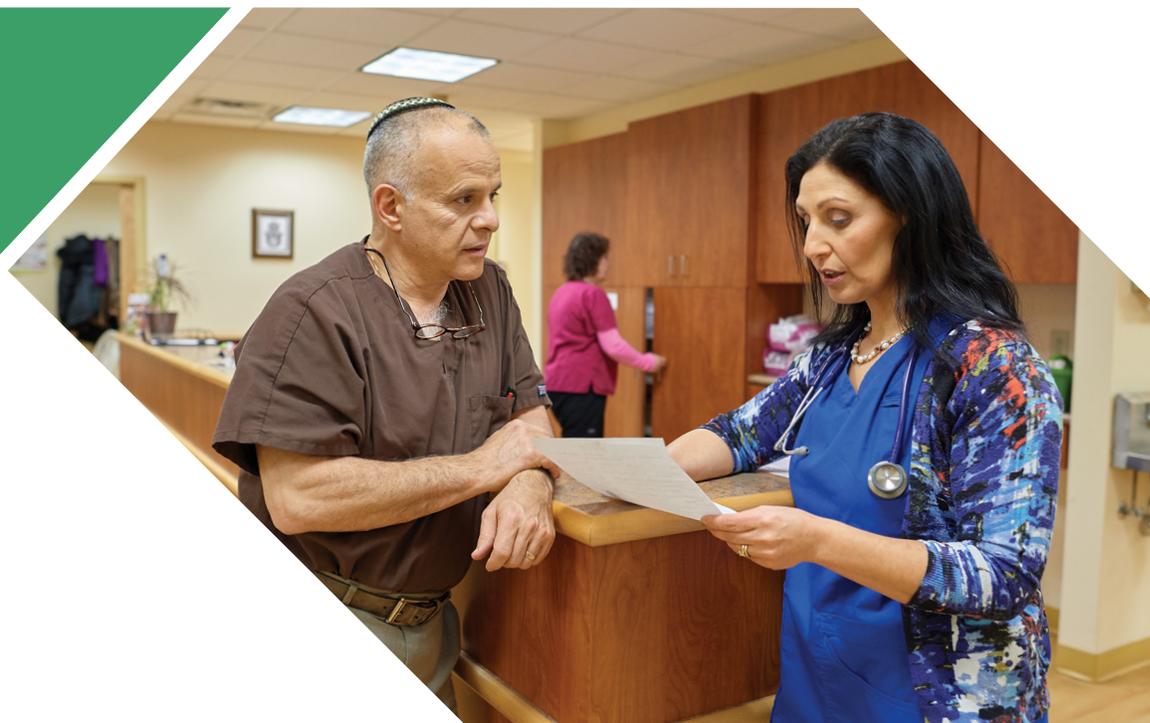
In addition to the high volume of cases handled by ONO over the past year, ONO significantly expanded its reach by working with steadfast resolve to cultivate relationships with small businesses and trade association leaders at the national and local levels. In FY17, ONO initiated contact with senior representatives of 11 trade associations representing 616,000 small businesses across the country. The SBA National Ombudsman also met with senior officials representing 28 Federal agencies. This strong focus on community engagement resulted in eight invitations from Federal agencies for the National Ombudsman to serve as a keynote speaker and panelist at Industry Day events, or for the Office of the National Ombudsman to have a presence at these events as an exhibitor. By getting in front of more businesses and industry leaders than ever before, ONO raised awareness of its mission to approximately 2,900 small business owners—Federal contractors, innovators, and inventors—who otherwise would not have known about its existence.

In FY17, ONO conducted a longitudinal analysis of regulatory trends based upon complaints filed over the past decade. Guided by the results of this analysis, ONO advocated for fairness at a broader, system-wide level on regulatory enforcement actions that have adversely impacted large numbers of small businesses.

ONO realized these accomplishments during a Presidential transition year. While Federal agencies initiated plans to streamline their voluminous regulations, ONO worked harder than ever to partner with Federal agencies to deliver relief to small businesses, collectively helping to restore small business confidence.

“I have encouraged many small business owners to speak up when facing regulatory fairness issues and have seen the Office of National Ombudsman be their advocate for change when small businesses are being adversely affected by regulation.”

–**Alison K. Brown**, PhD,
Regulatory Fairness Board Member,
Region VIII



“As I was working hard growing my business—like many small businesses across the country—I would come across issues with Federal regulations and didn’t have anywhere to turn. I felt stuck. When I learned about ONO, I wanted to share with all businesses that there is somewhere to turn—a place that can be the voice for small businesses.”

–**David M. Rambhajan**,
Regulatory Fairness Board
Member, Region V



“They really want tax reform, regulatory reduction, and access to capital. Those are the three main things you will hear from small businesses.”

– **Linda E. McMahon**,
SBA Administrator

Chapter 2

REGULATORY FAIRNESS BOARDS: GIVING SMALL BUSINESSES A VOICE

The Office of the National Ombudsman (ONO) leveraged use of its Regional Regulatory Fairness Board members to deliver solutions to small businesses across SBA's 10 regions. Board members raised regulatory concerns to ONO impacting small businesses within particular industries and geographic regions, amplified the voice of small businesses, and educated them on how they could take advantage of ONO's services. Throughout FY2017, ONO strengthened its collaboration with Regional Regulatory Fairness Board members to advance the Administrator's Small Business Agenda and identify additional small business outreach opportunities.

“It is truly an honor to serve on the SBA Office of the National Ombudsman Region I Regulatory Fairness Board. By working with the ONO team, fellow Board members, state congressional delegates, and small businesses across my region, we have collectively addressed and overcome numerous Federal regulatory concerns. The positive impact of these collaborations has not only helped to relieve regulatory burdens, but also served to drive increased economic and social vitality.”

—**Deborah A. Osgood**, PhD,
Regulatory Fairness Board
Member, Region I

Members of the Regional Regulatory Fairness Boards have played a critical role in helping ONO gather real-time insights into small business concerns unique to their respective regions, as well as cross-cutting concerns impacting small businesses that span across multiple regions. Both independently and jointly with ONO, Board members conducted outreach to open lines of communication with small businesses, Federal regulators, and trade association leaders at events across the country. Board members represented ONO in front of large audiences, serving as panelists, and keynote speakers in industry forums, SBA-sponsored events, and symposia sponsored by Federal regulators.

Board members assisted ONO by listening to small business owners who have voiced regulatory concerns. They identified and monitored trends associated with systemic issues that spanned across regional boundaries and raised the visibility of such issues by bringing them to the attention of the National Ombudsman. ONO has subsequently escalated these issues to Federal regulators and worked with them to deliver regulatory relief to small businesses.

ONO deliberately delayed the filling of Board vacancies through the FY2017 Presidential transition year to preserve the incoming Administrator's prerogative to make appointments based upon recommendations from the Chair and Ranking Member of the U.S. Senate Committee on Small Business and Entrepreneurship and House Small Business Committee and the incoming National Ombudsman. Prior to the National Ombudsman's appointment in September 2017, ONO built a robust pipeline of high-caliber candidates for consideration.

FY2017 BOARD CHAIRS



Region I

Gary Ezovski

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

Gary Ezovski is the President and Owner of Lincoln Environmental Properties, LLC. He brings over 40 years of experience in senior leadership roles across multiple areas of the civil engineering discipline. Mr. Ezovski serves on the Board of Directors of a bank and as a Trustee of a financial services company in the New England area. Since 2007, he has served as Chair of the Regulations Subcommittee for the Rhode Island Small Business Economic Summit. Mr. Ezovski received his Bachelor of Science degree in Civil Engineering from the University of Rhode Island.



Region II

Chris Harvell

Co-Founder, Dental Kidz, LLC, Newark, New Jersey

Chris Harvell is Co-Founder of the largest pediatric dental practice in New Jersey. Prior to this endeavor, he was an investment banker with Credit Suisse. He brings experience working for small business initiatives and economic development efforts throughout the state of New Jersey. Mr. Harvell received his Bachelor of Science degree in Electrical Engineering from George Washington University and Master of Business Administration degree in Finance and Real Estate from Columbia University.



Region IV

Frank Knapp

President, The Knapp Agency, Columbia, South Carolina

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



Region V

Dave Huller

Founder & Principal, ICAP Enterprises, LLC, Rocky River, Ohio

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



Region VII

Cynthia (Cindy) Brown Rohrer

President, Brown Germann Enterprises, Inc., DBA Shred-It, Hazelwood, Missouri

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

**Ms. Rohrer passed away on November 8, 2017 at the age of 67.



Region VIII

Peter Corroon

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

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



Region IX

Reginald (Reg) Baker

Managing Member, Reg Baker & Company, Honolulu, Hawaii

Reg Baker is Managing Member of Reg Baker & Company in Honolulu, HI. He serves as the Chair of the Small- and Mid-sized Business Committee for the Hawaii Chamber of Commerce. In addition, he serves in a leadership position for the Hawaii Society of CPAs. He was named SBA’s Accountant Advocate of the Year for the state of Hawaii. Mr. Baker received his Bachelor of Business Administration degree in Accounting from the University of Central Arkansas, studied International Business at the University of Hawaii, and taught at the University of Nevada, Las Vegas.



Region X

Michael Ballantyne

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

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

BOARD MEMBERS WHO SERVED IN FY2017

Zach Adamson, Region V
Owner, *Urban Designs Indy*,
Indianapolis, IN

Reginald (Reg) Baker, Region IX
Managing Member, *Reg Baker & Company*, Honolulu, HI

Michael Ballantyne, Region X
Managing Partner, *Thornton Oliver Keller Commercial Real Estate*,
Eagle (Boise), ID

Thomas R. Briones, Region VI
Founder & Owner, *Briones Business Law Consulting, P.C.*, Albuquerque, NM

Alison K. Brown, PhD, Region VIII
President & CEO, *NAVSYS Corporation*,
Colorado Springs, CO

Cynthia (Cindy) Brown Rohrer,
Region VII
President, *Brown Germann Enterprises, Inc.*, DBA *Shred-it*, Hazelwood, MO

Cliftena Carter, Region IV
Owner & President, *CSCI*,
Fayetteville, TN

Peter Corroon, Region VIII
Managing Member, *Red Gate Properties, LLC / Corroon Co.*,
Salt Lake City, UT

Albert G. Edwards, Region IV
Founder & Managing Director,
Corporate Environmental Risk Management (CERM), Atlanta, GA

Gary Ezovski, Region I
President & Owner, *Lincoln Environmental Properties, LLC*,
Slatersville, RI

Kenneth M. Fransiak, Region II
Co-Founder, President & CEO, *Calamar Enterprises, Inc.*, Wheatfield, NY

Chris Harvell, Region II
Co-Founder, *Dental Kidz, LLC*,
Newark, NJ

James (Jim) Howard Houser, Jr.,
Region X
Founder & Owner, *Hawthorne Auto Clinic, Inc.*, Portland, OR

Dave Huller, Region V
Founder & Principal, *ICAP Enterprises, LLC*, Rocky River, OH

Rollie Leo James, Region IV
President, *Food Enterprises, Inc.*,
Cherokee, NC

Kristine Kassel, Region IX
President, *Benefits by Design, Inc.*,
Tempe, AZ

Frank Knapp, Region IV
President, *The Knapp Agency*,
Columbia, SC

Marilyn D. Landis, Region III
President & CEO, *Basic Business Concepts, Inc.*, Pittsburgh, PA

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

Juliette C. Mayers, Region I
President & CEO, *Inspiration Zone, LLC*,
Quincy, MA

Alex McQuillen, Region V
Owner & Operator, *McQuillen Farm, Inc.*, Whitewater, WI

Moisés Montañez, Region IV
Founder & General Manager, *ALTA Home Remodeling CO*, Miami, FL

Deborah A. Osgood, PhD, Region I
CEO, *Knowledge Institute*, Exeter, NH

Lily Otieno, Region IX
Co-Owner, *Infinity Business Solutions*,
Buena Park, CA

David M. Rambhajan, Region V
President, *Industria, Inc.*, Chicago, IL

Wilfred P. Ryan, Region X
President, *Ryan Air, Inc.*,
Anchorage, Alaska

Jerome Toliver, Region IX
CEO, *RMJ Technologies*, San Marcos, CA

Cynthia (Cindy) Towers, Region III
CEO, *JURISolutions*, Philadelphia, PA

Muriel Watkins, Region III
President, *MW Financial, Inc.*,
Potomac, MD

Anthony Welcher, Region X
Owner, *21st Century Communications*,
Bellevue (Seattle), WA

“Hawaii is, by far, a small business state, with over 97% of all businesses in the state defined as small businesses. The SBA—including the Office of the National Ombudsman—is critical to keeping small businesses healthy and thriving in Hawaii. Without a healthy small business community, Hawaii’s economy would be seriously damaged.”

—**Reg Baker**,
Regulatory Fairness Board Chair,
Region IX

REGULATORY FAIRNESS BOARDS

10
REGIONS

10
BOARDS

30 BOARD
MEMBERS



Credentials

Award-winning business professionals, advisors, and trustees

- ▶ Engineers, policy analysts, accountants, lawyers

Leadership Positions

- ▶ State economic development
- ▶ Business and trade associations
- ▶ Boards of directors
- ▶ 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



“I have come to realize that our board members are a diverse group of leaders from across our country who truly love and represent the best of our Nation.”

–**Albert Edwards**,
Regulatory Fairness Board Member,
Region IV

Chapter 3

EXPANDING SMALL BUSINESS OUTREACH COAST TO COAST

Over the course of FY2017, ONO established new lines of communication between Federal regulators and small business owners in a variety of industries and across every region of the U.S. We opened critical communication channels through our ever-expanding outreach efforts.

ONO continued to exceed annual goals for external outreach. In FY2017, the office held 134 outreach events — 23 percent more than it held the previous year and more than double its FY2017 target. More small business owners had their voices heard. Thanks to ONO's outreach initiatives and dedicated Case Managers who consistently demonstrated responsiveness to the needs of small businesses, ONO intervened to address issues voiced by small businesses who filed a total of 460 comments with us in FY2017, as compared with 316 cases in the previous year.

We would like to express our grateful appreciation to the SBA Office of Field Operations for helping us bring a series of Regional Regulatory Enforcement Fairness Roundtables to life. In particular, we would like to recognize the following individuals and their staffs for their instrumental support, without whom we could not have accomplished all that we did in FY17:

- **Bo Steiner**, Deputy Associate Administrator, Office of Field Operations
- **Mark Hayward**, Regional Administrator (Acting), Regions I and IV
- **Dottie Overall**, Regional Administrator (Acting), Regions VI and VIII and District Director, Oklahoma
- **Michael Vallante**, Regional Administrator, Region IX and Regional Administrator (Acting), Region V
- **Robert Blaney**, District Director, Arizona
- **Julie Clowes**, District Director (Acting), Washington, D.C.
- **Ricardo Garcia**, District Director, Columbus
- **Beth Goldberg**, District Director, New York
- **Gil Goldberg**, District Director, Cleveland
- **Martin Golden**, District Director, Oregon
- **Dr. Kelly Hunt**, District Director, Pittsburgh
- **Greta Johansson**, District Director, New Hampshire
- **Constance Logan**, District Director, Michigan

- **Eric Ness**, District Director, Wisconsin
- **Frances Padilla**, District Director, Colorado

We would like to extend our appreciation to the SBA Office of Entrepreneurial Development for creating opportunities for us to raise awareness of ONO's mission and core functions to small businesses through SBA's resource partners—SBDCs, SCORE, and Women's Business Centers.

We would also like to thank the SBA Office of International Trade for introducing us to international partners with whom we shared Ombudsman best practices and to trade association leaders who subsequently engaged ONO on regulatory concerns facing the industries that they represented.

Next, we would like to thank our Federal agency partners for creating new opportunities for us to expand our reach to, and impact upon, a large number of small businesses that we otherwise would not have been able to reach on our own. Agencies that have gone above and beyond are recognized on page 30.

Lastly, we would like to thank the following organizations for hosting us:

- Colorado Department of Regulatory Agencies
- Office of Consumer Counsel
- Colorado 8(a) Association
- Deschutes County Board of County Commissioners
- Eau Claire Area Chamber of Commerce
- Glendale Chamber of Commerce
- Grand Rapids Area Chamber of Commerce
- Oregon Secretary of State Office of Small Business Assistance
- Pittsburgh North Regional Chamber
- Tulsa Technology Center
- Unmanned Aerial Systems Cluster Initiative of Oklahoma and South Kansas
- Women Impacting Public Policy

Ultimately, ONO's expanded outreach efforts have raised awareness of the value that we deliver to small businesses. With ONO intervention, small businesses—in many instances—received regulatory compliance assistance, reduced fines, and penalty abatement, and have even seen Federal agencies overturn adverse decisions against them.

Systemic Issues

AL

ALABAMA

Department of Labor – Occupational Safety and Health Administration

Issue: A precast products manufacturer expressed concern regarding the impact of the Occupational Safety and Health Administration’s (OSHA) new regulation 29CFR 1926.1400CC, Cranes and Derricks in Construction.

Outcome: Upon completion of a high-level review, OSHA informed ONO of its intent to consider rulemaking options to address the issue and announced a temporary enforcement policy pending the resolution of the rulemaking process.

Contract Issues – Payment

TN

TENNESSEE

U.S. General Services Administration

Issue: The owner of an electronic and mechanical calibration company unsuccessfully attempted to communicate with U.S. General Services Administration (GSA) regarding the company’s Request for Equitable Adjustment (REA). GSA also did not fully pay the company’s final invoice.

Outcome: GSA contacted the business and requested resubmission of its REA for review and to execute a contract modification. GSA also paid the company’s final invoice upon resubmission.

VA

VIRGINIA

U.S. General Services Administration

Issue: The company’s contract incurred cost overruns due to interference by GSA personnel involved with the project. The settlement offered by GSA was “substantially” below the claim submitted by the company.

Outcome: GSA processed a contract modification and a partial payment on the settlement. Subsequently, GSA processed another contract modification for the remainder of the settlement, which was delayed due to funding issues. GSA processed the final payment upon receipt of the company’s final invoice and release of claims.

Penalty & Fine Reduction / Abatement

NJ

NEW JERSEY

Department of Labor, Occupational Safety and Health Administration

Issue: A shoe retailer requested that ONO intercede on its behalf after an OSHA inspection and subsequent assessment of a penalty of over \$7,000 against the company. The company contended that the penalty amount was unreasonably high considering the number of employees that worked on its premises. The company felt that OSHA should make better efforts to inform and advise businesses of its requirements. To show up unannounced, not

correspond with the retailer in six months, and issue a penalty of over \$7,000 created a bad relationship between small business and the government. Based on negotiations with the company, OSHA reduced the penalty to \$5,000.

Outcome: Upon further discussion with the company, OSHA reduced the penalty to \$1,000.

OH

OHIO

Department of Labor, Occupational Safety and Health Administration

Issue: OSHA inspected a dairy company and issued citations, which the company asserted were not valid.

Outcome: Based on a discussion with the company and information provided by the company, OSHA reduced the overall penalty to \$6,000 from the original amount of \$23,547.

Claim Denied / Claim Processing

OH

MI

PA

GA

IN

CO

MULTIPLE STATES

Centers for Medicare and Medicaid Services (CMS)

Issue: 18 medical providers based in OH, MI, PA, GA, IN, and CO expressed concerns regarding denial, non-payment, and delay in the processing of Medicare claims by Medicare Advantage Organizations due to the following reasons:

- Procedural codes in question were not covered by Local Coverage Determination
- Lack of prior authorization
- Administrative errors
- Medicare Advantage Organization

overlooked pre-determinations that have already been completed

- An opt-out status
- Technical systems issues

Outcome: Upon completion of high-level reviews of the records and receipt of the requested information by the Medicare Advantage Organizations, the Medicare claims were reprocessed, enabling the 18 providers to recover over \$592,000 in aggregate.

FY2017 Success Stories (continued)

Taxes



MULTIPLE STATES

In FY2017 IRS responded to 12 small businesses that filed comments in previous years regarding tax issues.

Issue: 12 small businesses based in OH, MT, NM, NV, IN, and CA expressed the following concerns regarding the IRS's actions:

- Audits
- Assessment of penalties for failure to make proper Federal tax deposits
- Issuance of notice of overdue taxes
- Disallowance of business trip expenses
- Retaining company's Federal tax return
- Audit of tax returns
- Termination of a company's installment agreement due to its failure to make monthly payments
- Assessment of additional tax and interest
- Failure to update a company's non-profit status

Outcome: Upon completion of high-level reviews of the records and receipt of the requested information from the small businesses, IRS resolved the issues in favor of the small businesses by:

- Abating the penalties + interest and refunding the full amount + interest
- Closing the audits with no changes to the original tax return
- Returning a refund of overpayment
- Settling a case in Tax Court Petition in favor of the small business
- Reducing the processing time for changing the company's non-profit status

In aggregate, the IRS abated penalties in the amount of over \$76,000 for 9 small businesses.

Upon ONO's resolution, a small business olive oil retailer sent an e-mail to ONO.

Here is an excerpt:

I am writing to express my appreciation for the SBA Office of the National Ombudsman. I came close to shutting down my business and may have done that, except that I was able to get help from the SBA Ombudsman office, who, in turn, provided help by referring my complaint to the FDA Ombudsman office.

I was impressed by how the FDA Ombudsman listened to me, took me seriously, and was able to delay testing of my import shipment of high quality extra

virgin olive oil. Last year, the FDA pulled my shipment to have it tested. It took months and the help of the Ombudsman's office to get it released. This time, I was able to have my shipment released in a timely manner because of the FDA Ombudsman's involvement.

I am so thankful that the SBA Office of the National Ombudsman exists. It is so necessary if we want to see small businesses have a chance at surviving.

Additional Cases

FEDERAL AGENCY	STATE	INDUSTRY	ISSUE	OUTCOME
Centers for Medicare and Medicaid Services (CMS)	Ohio	Healthcare	CMS demonstration project limited to Durable Medical Equipment Prosthetics/Orthotics and Supplies suppliers in jurisdictions C and D	CMS acknowledged benefits of project and explored possibility of expansion into jurisdictions A and B.
Food and Drug Administration	California	Healthcare	FDA delay in reviewing data submission	Meeting held with FDA Review Division
Food and Drug Administration	Connecticut	Healthcare	Shipment of perishable products detained	Shipment released
Food and Drug Administration	Minnesota	Retail	Shipment detained	Shipment released
U.S. Small Business Administration	Georgia	Hotel	Social Security payments garnished	Loan recalled from U.S. Department of Treasury and repair sought from lender
Internal Revenue Service	Hawaii	Alcohol	Delay in providing tax clearance	IRS met with City and County Commissions and agreed to actions to resolve issues
Federal Communications Commission	North Carolina	Radio Broadcasting	Interference by another radio station	FCC ordered other station to cease operations
U.S. Small Business Administration	Ohio	Healthcare	Loan balance disputed after originating owner ceased operations	Loan balance paid in full after credit for payments made to new lender

“As Board members, we must educate small businesses—show them how to express reasonable concerns with regulations and effectuate constructive change.”

–**Marilyn D. Landis**,
Regulatory Fairness Board
Member, Region III

Regional Snapshot

Region 1

23 COMMENTS
1 OUTREACH EVENT

STATES

Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

BOARD MEMBERS

Gary Ezovski,
Slatersville, RI
Kevin Maloney,
Windsor Locks, CT
Juliette Mayers,
Quincy, MA
Deborah Osgood, PhD,
Exeter, NH

Region 2

32 COMMENTS
1 OUTREACH EVENT

STATES

New Jersey
New York

U.S. TERRITORIES

Puerto Rico
U.S. Virgin Islands

BOARD MEMBERS

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

Region 3

55 COMMENTS
103 OUTREACH EVENTS

STATES

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

BOARD MEMBERS

Marilyn Landis,
Pittsburgh, PA
Cynthia Towers,
Philadelphia, PA
Muriel Watkins,
Potomac, MD

Region 4

101 COMMENTS
3 OUTREACH EVENTS

STATES

Alabama
Florida
Georgia
Kentucky
Mississippi
North Carolina
South Carolina
Tennessee

BOARD MEMBERS

Cliftena Carter,
Fayetteville, TN
Al Edwards,
Atlanta, GA
Rollie Leo James,
Cherokee, NC
Moisés Montañez,
Miami, FL

Region 5

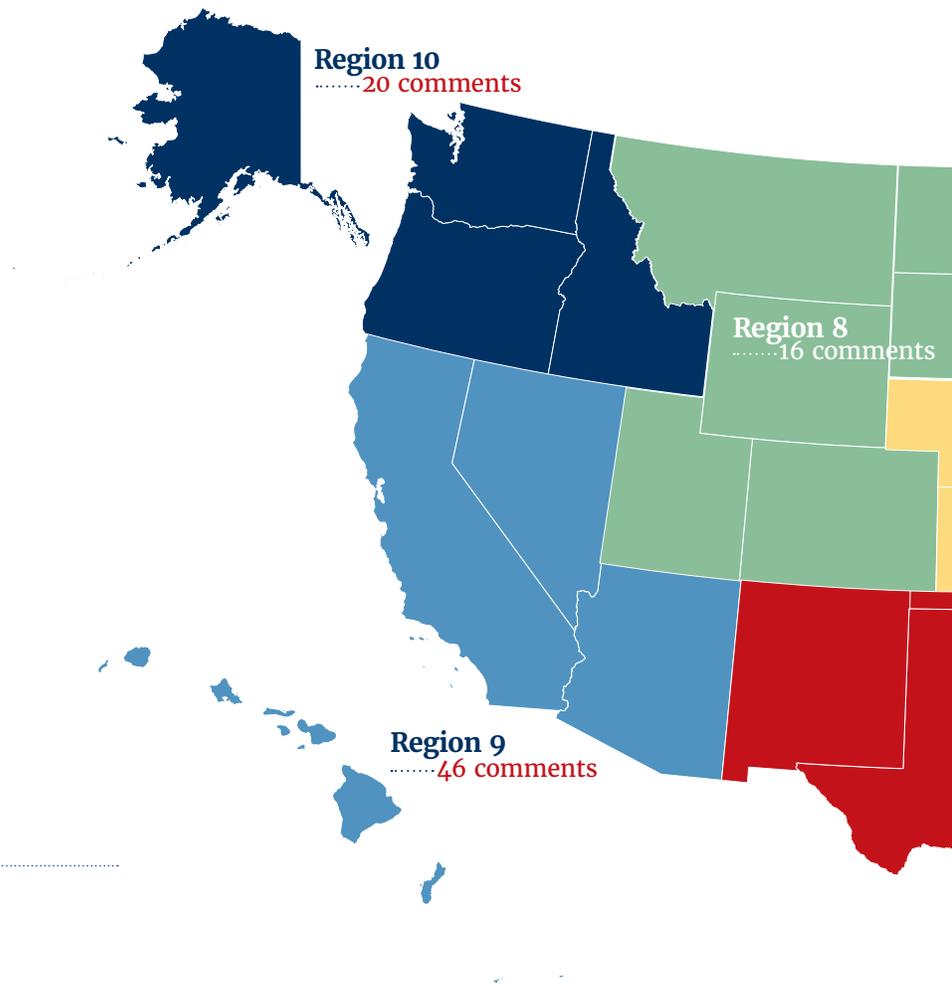
96 COMMENTS
5 OUTREACH EVENTS

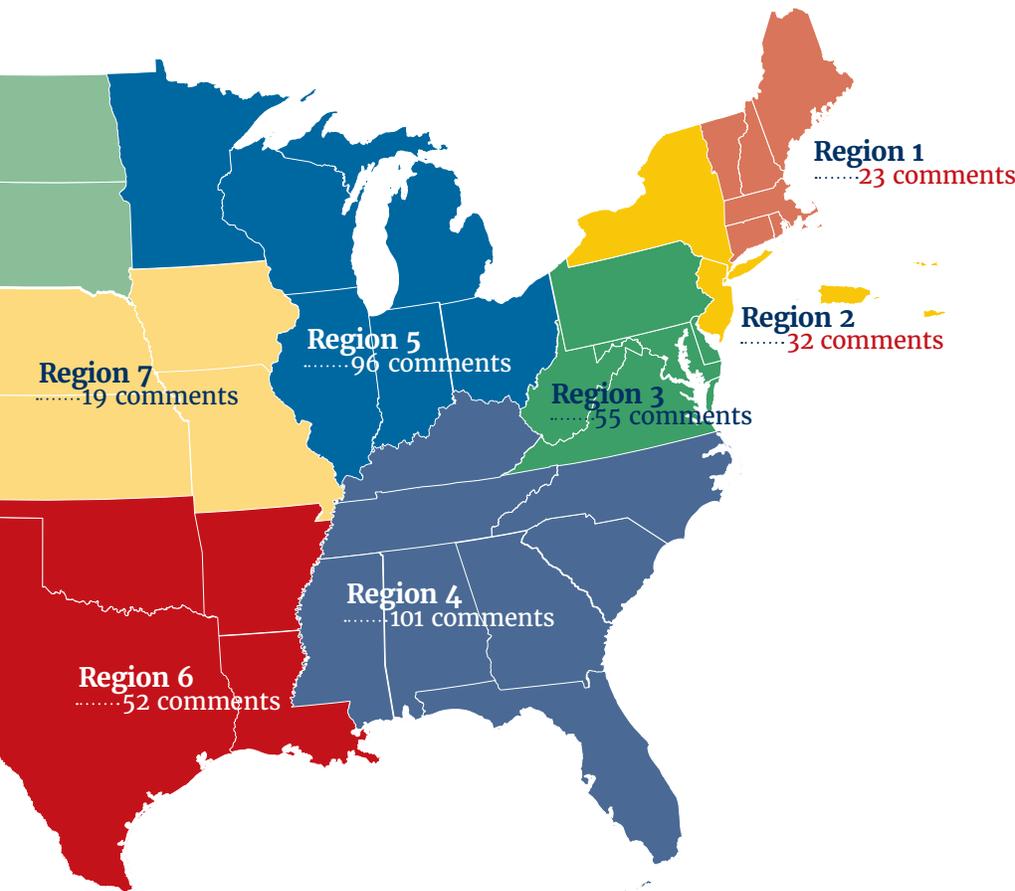
STATES

Illinois
Indiana
Michigan
Minnesota
Ohio
Wisconsin

BOARD MEMBERS

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





Region 7

19 COMMENTS
1 OUTREACH EVENT

STATES

Iowa
Kansas
Missouri
Nebraska

BOARD MEMBERS

Cynthia Brown Rohrer,
Hazelwood, MO

Region 8

16 COMMENTS
2 OUTREACH EVENTS

STATES

Colorado
Montana
North Dakota
South Dakota
Utah
Wyoming

BOARD MEMBERS

Alison Brown, PhD,
Colorado Springs, CO
Peter Corroon,
Salt Lake City, UT

Region 9

46 COMMENTS
12 OUTREACH EVENTS

STATES

Arizona
California
Hawaii
Nevada

BOARD MEMBERS

Reginald Baker,
Honolulu, HI
Kristine Kassel,
Tempe, AZ

U.S. TERRITORIES

Guam
American Samoa

Jerome Toliver,
San Marcos, CA
Lily Otieno,
Buena Park, CA

Region 6

52 COMMENTS
2 OUTREACH EVENTS

STATES

Arkansas
Louisiana
New Mexico
Oklahoma
Texas

BOARD MEMBERS

Tom Briones,
Albuquerque, NM

Region 10

20 COMMENTS
4 OUTREACH EVENTS

STATES

Alaska
Idaho
Oregon
Washington

BOARD MEMBERS

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

Regional Snapshot



“The Office of the National Ombudsman gives a voice—state by state—to local businesses that need a hand up when doing business with the Federal government.”

–**The Honorable Peter Corroon**,
Regulatory Fairness Board Chair,
Region VIII

Ombudsman Activities

Comments



Filed by:

Small Businesses: **394**

Nonprofits: **17**

Associations: **17**

Small Government
Organizations: **2**

Other: **30**

Comments received via:

Web:	Testimony:	E-mail:	Fax:	Mail:	Meeting:	Letter:
376	27	38	9	10	0	0

Note: Thirty comments received by the Office of the National Ombudsman were not appropriate for referral to a Federal agency for review and response.

169

NON-ENFORCEMENT
RELATED CASES

ENFORCEMENT
RELATED CASES:

261

134 outreach events in
FIFTEEN STATES



“The Office of the National Ombudsman is a key platform to assist small businesses in the mitigation of regulatory issues. A most recent example is the National Hearing presided by ONO in 2017. Upon hearing the testimonies, ONO took action to assist small businesses in mitigating the adverse impacts of regulatory enforcement actions on small businesses.”

–**Kenneth M. Franasiak**,
Regulatory Fairness Board Member,
Region II

Chapter 4

RECOGNIZING EXEMPLARY INTERAGENCY PARTNERS

The public has a right to know how well its Federal government responds to small business concerns and fulfills its obligations under the Small Business Regulatory Enforcement Act (SBREFA). Also, Federal agencies should know where they might bolster their efforts to alleviate unfair regulatory burdens on small businesses. The Office of the National Ombudsman (ONO) plays a critical role on both fronts.

ONO evaluates Federal agencies on their SBREFA compliance and issues a scorecard at the end of each fiscal year. The SBREFA scorecard is an easy-to-read reference that demonstrates to Congress, small business owners, and the public where each agency has performed well, where there have been improvements as compared with the previous year, and how they could further improve in relieving regulatory burdens 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?

ONO assesses these criteria in a fair and transparent evaluation process that gathers information from multiple sources. We send out questionnaires each year to Federal agencies asking about their SBREFA-related practices. The quality of their responses factor into their ratings.

This objective evaluation process results in a snapshot of each agency's SBREFA performance. By issuing these Agency Ratings, ONO spurs Federal agencies to foster a business-friendly climate by delivering compliance education and providing avenues for small businesses to make their voices heard.

This report lists the FY2017 Agency Ratings on page 31. The rest of this chapter will explain the ratings criteria and categories in greater detail.

AGENCY QUESTIONNAIRE HIGHLIGHTS

ONO sent the questionnaire below to every Federal agency with which it interacted in FY2017. We considered agencies' responses to the questionnaire, their responsiveness to small business concerns, along with other information, when determining the ratings for their FY2017 scorecard. As a result of an inquiry from the U.S. Senate Committee on Small Business and Entrepreneurship and the U.S. House Small Business Committee, ONO is instituting changes to the Federal agency questionnaire for evaluation of compliance beginning in FY2018. *Please note that agencies' responses to the three new questions marked with an asterisk (*) will not impact their 2017 Federal Agency Ratings. Beginning in 2018, their responses to these questions will be taken into account in determining their 2018 Federal Agency Ratings.*

Non-retaliation Policies

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.

Non-retaliation Policies

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)).

Compliance Assistance

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

YES NO

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

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

YES NO

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

Describe the assistance available, how it is delivered (e.g., on the agency's website or otherwise), and indicate whether individually-tailored compliance assistance is provided to small businesses.

SBREFA Notification

Internal: 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)).

Public: 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.

New Changes for FY2017

Internal: Did the agency publish any rule(s) in FY2017 and hence, was required to publish, post, and distribute small entity compliance guides in FY2017?*

YES NO

Internal: 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 FY2017, 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.

Internal: Will the agency submit a 2017 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, 2018, as required by Section 212 of SBREFA?*

YES NO

GRADING CATEGORIES AND RATING CRITERIA

1. Timeliness of Responses

ONO measures response times from the date it forwards a small business comment to an agency to the date ONO receives the agency's response. "Days" are defined as business days.

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

2. Quality of Responses

ONO assigns a separate rating based on the specificity and detail the agency provides in its responses. The rating signifies whether:

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

When forwarding a comment, ONO may include questions that allow it to gauge the agency's responsiveness. The answers allow ONO to assess how thoroughly the agency considered the effects of its actions and whether appropriate follow-up occurred, among other aspects of responsiveness.

Examples of ONO questions:

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

3. Agency Non-Retaliation Policy

"Non-retaliation" policies are intended to prevent acts that punish a small business for complaining or commenting about an agency action. Under SBREFA, small businesses are free to comment on or complain about a Federal agency's action without fear of reprisal. ONO gives an agency an "A" rating if it

demonstrates that:

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

Examples of non-retaliation policies

Pension Benefit Guaranty Corporation (PBGC)

The Office of the National Ombudsman of the U.S. Small Business Administration has asked all federal agencies to make clear that, if a small business entity requests Ombudsman assistance on a matter or otherwise questions or complains about a federal agency action, the agency will not retaliate in response. PBGC is committed to maintaining an environment in which small businesses and others are free to question or complain about PBGC actions or policies without fear of retaliation. PBGC will thoroughly investigate any allegations of retaliation and take appropriate action to correct the situation and ensure it is not repeated.

PBGC also wishes to remind small entities that the SBA's Ombudsman is available to assist small entities with federal agency enforcement actions and compliance matters, and that small businesses may request expedited treatment of an enforcement action against them when they believe that delay may threaten the economic viability of the business.

PBGC has a Problem Resolution Officer who is available to provide compliance assistance and receive and respond to retaliation allegations by small business entities, as well as any other concerns about PBGC matters raised by pension practitioners and other representatives of businesses. In addition, small business entities may request assistance from, or comment about PBGC's enforcement actions and compliance processes to, the National Ombudsman's office via the Internet (www.sba.gov/ombudsman); email (ombudsman@sba.gov); telephone (202-205-2417 or 888-734-3247); fax (202-481-5719); or regular mail (SBA Office of the National Ombudsman, 409 Third St., SW, Washington, DC 20416).

Employers or others who have questions about this policy should call PBGC's Practitioner Problem Resolution Officer at 202-326-4136 or 1-800-736-2444, ext. 4136, or send an email to practitioner.pro@pbgc.gov. (TTY/ASCII users may call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to the appropriate number.)

Department of Energy

The Department of Energy is fully committed to fair regulatory enforcement practices, supports the right of the regulated community to raise concerns about regulatory enforcement actions without fear or retaliation, and will investigate any allegations of retaliation and take appropriate corrective action to avert further incidents. The Department of Energy seeks to foster a climate that encourages small business concerns participation in seeking contract opportunities, and to that end, small businesses are free to raise concerns, without fear of retaliation or reprisal, regarding policies and practices related to procurement concerns or doing business with the Department.

The Department will investigate any allegation of retaliation or complaint that is referred to the Office of Small and Disadvantaged Business Utilization.

For additional information concerning the Small Business Regulatory Enforcement Fairness Act (SBREFA), a list of agency contacts may be found on the Small Business Administration's Office of the National Ombudsman's (SBA/ONO) website at www.sba.gov/ombudsman. Small businesses may choose to contact the SBA/ONO directly by calling 1-888-REG-FAIR (1-888-734-3247), or visiting the Ombudsman's website.

4. Regulatory Compliance Assistance

Federal agencies might provide guidance, educational materials, and other information that helps small businesses satisfy their regulations. ONO gives an agency an "A" rating in this category if it has made the following resources available:

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

Deficient elements may reduce this category's rating.

Examples of agency compliance assistance initiatives

Equal Employment Opportunity Commission (EEOC)

Small Business Resource Center (<https://www.eeoc.gov/employers/smallbusiness/index.cfm>)
As a small business owner, you've got a lot on your plate. You need to find information quickly and easily so we have created a one-stop shop of resources tailored just for small businesses! Here you will find answers to common questions about your responsibilities under the

federal employment discrimination laws. You will also find tips on preventing discrimination and how to deal with issues when they do arise in your business, plus a whole lot more!

Federal Trade Commission

Business Center (<https://www.ftc.gov/tips-advice/business-center>)

The popular Business Center website provides a comprehensive portal for small businesses with practical compliance guidance in the form of advisory opinions, feature pages on specific subjects, policy statements, and transcripts of speeches, testimony, workshops and public proceedings. The website includes business guidance pages organized by topic and industry to allow easy access to the most relevant guidance, opinions, agency decisions, rules and laws on particular subjects.

5. SBREFA Notice

Small business owners must be informed of their right to reach ONO for assistance. ONO assigns each Federal agency a rating based on whether the agency has a documented policy to notify small businesses of their SBREFA rights, including contact information for ONO. Also affecting this rating is whether the agency displays or communicates that policy generally or if it only does so when issuing a 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 meet SBREFA requirements. This may include specific examples illustrating how the agency promotes regulatory enforcement and compliance fairness for small entities, including individualized compliance assistance, the dollar value associated with fines abated, and/or other forms of regulatory relief provided to the small business based on its size and/or other considerations.

Exemplary Agencies

ONO would like to recognize the following agencies as exemplary in partnering with ONO on outreach to expand our reach to, and multiply our impact on, small businesses:

U.S. Customs and Border Protection

U.S. Patent and Trademark Office

U.S. Internal Revenue Service

U.S. Department of Labor

U.S. Centers for Medicare and Medicaid Services

U.S. Department of Transportation

FY2017 Agency Ratings

CABINET AGENCY	OVERALL	COMMENTS ^A			SBREFA COMPLIANCE ANSWERS COMPLETE (Y/N)	
		RESPONSE TIMELINESS	RESPONSE QUALITY	NON-RETALIATION POLICIES	COMPLIANCE ASSISTANCE	SBREFA NOTIFICATION
Agriculture						
Food Safety & Inspection Service	A	B	A	A	A	A
Animal & Plant Health Inspection Service	A	A	A	A	A	A
Food and Nutrition Service	A	A	A	A	A	A
Commerce						
National Oceanic & Atmospheric Administration (NOAA)	A	N/C	N/C	A	A	A
Bureau of Industry and Security (BIS)	A	N/C	N/C	A	A	A
Defense	A	N/C	N/C	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						
Food & Drug Administration	A	B	A	A	A	A
Centers for Medicare & Medicaid Services	A	A	A	A	A	C
Homeland Security						
Coast Guard	A	N/C	N/C	A	A	A
Customs & Border Protection	A	A	A	A	A	A
Immigration & Customs Enforcement	A	A	A	A	A	C
Citizenship & Immigration Services	X	N/C	N/C		X	
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						
Occupational Safety & Health Administration	A	A	A	A	A	A
Wage & Hour Division	A	A	A	A	A	A
Mine Safety & Health Administration	A	A	A	A	A	A
Small Business Administration						
Office of Capital Access	A	N/C	N/C	A	A	A

CABINET AGENCY	OVERALL	COMMENTS ^A			SBREFA COMPLIANCE ANSWERS COMPLETE (Y/N)	
		RESPONSE TIMELINESS	RESPONSE QUALITY	NON-RETALIATION POLICIES	COMPLIANCE ASSISTANCE	SBREFA NOTIFICATION
State	A	N/C	N/C	A	A	A
Transportation						
Federal Aviation Administration	A	B	A	A	A	A
Pipeline and Hazardous Material Safety Administration	A	A	A	A	A	A
Federal Highway Administration	A	B	A	A	A	A
National Highway Traffic Safety Administration	A	A	A	A	A	A
Treasury						
Internal Revenue Service	A	B*	A	A	A	A
Veterans Affairs	D	N/C	N/C	F	A	F
Consumer Product Safety Commission	A	N/C	N/C	A	A	A
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	N/C	N/C	A	A	C
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	A
Federal Trade Commission	A	A	A	A	A	A
General Services Administration	A	B	A	A	A	N/A
National Credit Union Administration	A	N/C	N/C	A	A	N/A
National Labor Relations Board	A	A	A	A	N/A	N/A
National Science Foundation	A	N/C	N/C	A	A	A
Pension Benefit Guaranty Corporation	A	N/C	N/C	A	A	A
Security and Exchange Commission	A	N/C	N/C	A	A	A
NASA	A	N/C	N/C	A	A	A
Consumer Financial Protection Bureau	X	B	A		X	



“On regulation, it seems that the people we regulate should have the right to know what the rules are before being charged with breaking them. This means more formal rule making and less regulation by enforcement.”

–**Mick Mulvaney**,
Director, Office of Management and
Budget and Acting Director, Consumer
Financial Protection Bureau

Chapter 5

DELIVERING REGULATORY RELIEF TO SMALL BUSINESSES

President Donald J. Trump's January 2017 Executive Order directing Federal agencies to rollback regulations especially resonated with the SBA Office of the National Ombudsman. The President directed each agency to create a task force to execute the bold vision laid out in the Executive Order. In its efforts to eliminate and modify unnecessary or duplicative regulations, the SBA Administrator appointed a Regulatory Reform Officer for the Agency, former National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness, Nathan Miller, who chaired SBA's Regulatory Reform Task Force. The Task Force was singularly focused on reducing regulatory burdens on small businesses.

Throughout 2017, the SBA Regulatory Reform Task Force fulfilled its charge by reviewing regulations, soliciting input from the public through a Federal Register Notice ("Reducing Unnecessary Regulatory Burden"), and identifying deregulatory actions and other regulations to eliminate. The work of the Task Force delivered a regulatory cost savings of \$3.6 million that will carry into FY2018.

DEREGULATORY ACTIONS TAKEN BASED ON PUBLIC COMMENT

Public comments solicited by the SBA were essential in determining which regulations to target for elimination or modification. The SBA Administrator received direct feedback from small businesses on her nationwide IGNITE Tour. The Agency also received comments solicited through the publication of a Federal Register Notice. Across the Nation, small businesses identified regulations that they felt were unnecessary, outdated, or complicated, as well as regulations enacted by other Federal agencies that adversely impacted small businesses because they imposed high compliance costs or hindered global competitiveness. In aggregate, the SBA received 269 public comments. Of the total, half of the comments identified concerns regarding SBA programs; the remaining half raised concerns regarding regulations promulgated by other Federal agencies. This feedback not only helped the SBA pare down its regulations, but also informed the regulatory reduction efforts of other Federal agencies.

To date, the SBA has identified three deregulatory actions and has already published Miscellaneous Amendments to Business Loan Programs and the Surety Bond Guarantee Program. These amendments will result in an estimated cost savings of \$3.6 million in FY2018. The deregulatory action will reduce the burden on sureties by increasing the reporting threshold from \$100,000 to \$500,000 for certain changes in the contract amount. It will also simplify the guarantee application process for small bonds in the Surety Bond Guarantee Program.

THE WAY FORWARD

Moving forward, the Regulatory Reform Taskforce will build upon its 2017 successes by continuing to evaluate public comments and deregulatory opportunities in each program. The RRO will examine SOPs, forms, and other guidance, refine its economic analysis, and gather input from the SBA National Ombudsman and Chief Counsel for Advocacy.

The SBA Regulatory Reform Task Force has already reduced regulatory costs for the Agency writ large, established an ambitious goal of adding no new regulatory costs over the next year, and solicited comments to assist other Federal agencies in realizing the President's vision of delivering regulatory relief to small businesses.



“No longer can we allow these rules and regulations to tie down our economy, chain up our prosperity, and sap our great American spirit. That is why we will lift these restrictions and unleash the full potential of the United States of America.”

–President Donald J. Trump

Conclusion

THE ROAD AHEAD: KEEPING THE SPIRIT OF AMERICAN ENTREPRENEURSHIP ALIVE

Our Nation has witnessed a resurgence of optimism by America's entrepreneurs over the past year. From Executive Orders that direct Federal agencies to scale back burdensome regulations to a tax reform package that allows small businesses to invest more in themselves, the Administration has demonstrated steadfast support for small business success.

Energized by the President's focus on delivering regulatory relief, the Office of the National Ombudsman (ONO) is carrying its own momentum of progress into FY2018 to achieve even more impactful outcomes for America's small businesses. ONO's expanded outreach, combined with the trust it has cultivated with Federal agencies, is bearing fruit for entrepreneurs in the form of a more business friendly climate. Looking ahead, we seek to fine-tune our outreach targets and relationship building to produce even better results—from mitigating the impacts of systemic regulatory compliance issues to helping more small business Federal contractors get paid what they are owed.

TARGETED OUTREACH TO MAXIMIZE IMPACT

ONO will build upon its FY2017 successes to become a trusted ally to a greater share of America's 29 million small businesses. While ONO'S 134 outreach events last year raised its visibility among entrepreneurs, a challenge remains in connecting with small businesses in remote locations. These difficult-to-reach businesses often happen to be those most in need of our aid. To that end, ONO will more heavily leverage technology to reach entrepreneurs who otherwise lie out of reach of ONO's physical presence. In particular, we will redouble our efforts to reach economically disadvantaged communities, including special outreach targeted at rural entrepreneurs. Small business owners will be able to attend more of our public hearings and roundtables virtually and learn about ONO's value proposition through webinars.

In terms of geographic targets, ONO will continue prioritizing its outreach targeting economically distressed regions undergoing a rebirth, as well as in mid-tier cities where high concentrations

of small businesses are situated. Innovation hubs where technology start-ups, incubators, and venture capitalists converge represent another target for ONO outreach. While technology innovators may experience rapid growth, they may encounter regulatory roadblocks that could impede their success.

ONO will not tackle these targeted outreach goals in a vacuum. We will leverage our relationships with trade associations, SBA district offices, and small business advocates at the Federal, state, and local levels to spread our mission to more small business owners. Regulatory Fairness Board members will also build new connections with trade associations and government agencies across the Nation and across multiple industries. By growing its network of partners, ONO will reach an exponentially larger population of entrepreneurs who could make their voices heard.

FILL REGULATORY FAIRNESS BOARD VACANCIES

Regional Regulatory Fairness Board members serve as powerful force multipliers in ONO's outreach efforts. As respected and trustworthy members of the business communities they represent, Board members bring forth the regulatory concerns of their fellow entrepreneurs to ONO and catalyze Federal regulators to action.

ONO will continue to build a pipeline of top-flight candidates for Regional Regulatory Fairness Board positions. We salute our Board members as drivers for positive outcomes in ONO's outreach initiatives and in issue resolution. With a strong pipeline of candidates available, the SBA Administrator will have opportunities to fill more Board vacancies in FY2018 by selecting from a pool of talented and diverse business leaders. Our Board members have been empowered to extend ONO's reach even further across their regions' small business communities and relay valuable feedback to Federal regulators through ONO.

STRENGTHEN COLLABORATION WITH THE SBA OFFICE OF ADVOCACY TO ADDRESS THE REGULATORY CONCERNS OF SMALL BUSINESSES END-TO-END

When ONO intervenes in small business owners' compliance issues, it is after the rules and regulations have gone into effect. The SBA Office of Advocacy, by contrast, addresses regulatory issues while those rules are still in the making. In the coming years, ONO will continue to work with the Office of Advocacy to shape a favorable environment for small businesses to grow and prosper.

CONTINUE TO BUILD TRUSTED RELATIONSHIPS WITH INTERAGENCY PARTNERS

The Office of the National Ombudsman will continue to raise the visibility of regulatory enforcement concerns voiced by small businesses by bringing these concerns to the early attention of Federal regulators. By providing Federal agencies with advance warning

of particular and systemic issues that adversely impact small businesses, ONO will play a pivotal role in helping resolve disputes between small businesses and Federal regulatory agencies at the preliminary stages of conflict. This change will reduce the likelihood of costly litigation and settlements.

Furthermore, ONO will encourage Federal agencies to provide accessible and user-friendly compliance education materials to small business owners. The SBA will also evaluate whether agencies are complying with the Small Business Regulatory Enforcement Fairness Act's (SBREFA's) Congressional reporting requirements, which ONO will assess in forthcoming editions of its *Annual Report to Congress* starting in FY2018.

As more Federal agencies rally behind the mission of helping American small businesses thrive, ONO will maintain its place at the forefront of that mission, modeling the successful collaboration between hardworking small business owners and the U.S. government that serves them.



“Small businesses are the future of our economy. If the regulatory burden is misplaced on their shoulders or needlessly complex, it limits not only their future, but also our Nation’s future.”

–**Marilyn D. Landis**,
Regulatory Fairness Board
Member, Region III

Office of the **NATIONAL OMBUDSMAN**

APPENDICES

Appendix A

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

(a) Definitions

For purposes of this section, the term—

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

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

(b) SBA Enforcement Ombudsman

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

(2) The Ombudsman shall—

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

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

section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

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

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

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

(c) Regional Small Business Regulatory Fairness Boards

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

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

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

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

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

Appendix A (continued)

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

(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 2/1/18 (if any), which is 120 days following the close of FY2016 (120 days is the maximum time allowed for a response to receive a timeliness grade other than "F").

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

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

- Response quality rating is based on responses to FY2011, FY2012, FY2015, and FY2016 cases received in FY2017.

Appendix C

Office of the National Ombudsman Directory

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

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

Trina Mintern | Administrative Specialist, trina.mintern@sba.gov

Appendix D

Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs

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 associated 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. Start Printed Page 12287

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.

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 *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
- 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.

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.

³ See 31 U.S.C. § 1115(b).

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

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.

⁶The 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."



Office of the
NATIONAL OMBUDSMAN

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