

Saving Small Business from Excessive Enforcement:

An Economic Impact Analysis Of the Office of the National Ombudsman

For the United States Small Business Administration

FINAL REPORT

Prepared by:

**Jonathan Skolnik
Paul Nguyen**



Jack Faucett Associates
4550 Montgomery Avenue
Suite 300 North
Bethesda, MD 20814
301-961-8800

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EXECUTIVE SUMMARY

The U.S. Small Business Administration's Office of the National Ombudsman (ONO) was established under the Small Business Enforcement Fairness Act (SBREFA) of 1996. ONO's mission is to assist small businesses facing unfair or excessive Federal enforcement actions and foster a more small-business friendly regulatory environment. To achieve these goals, ONO:

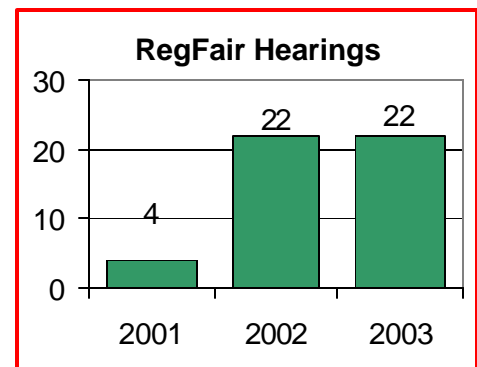
“ONO's mission is to assist small businesses facing unfair or excessive Federal enforcement actions.”

1. Publishes annual ratings of Federal agencies' responsiveness to small business related issues;
2. Organizes 10 volunteer Regulatory Fairness (RegFair) Boards to raise awareness of small business rights throughout the country;
3. Chairs RegFair hearings, roundtables, and interagency meetings that solicit comments and create dialogue between small businesses, trade associations, and Federal agencies; and
4. Collects small businesses comments and acts as a liaison between Federal agencies and small businesses.

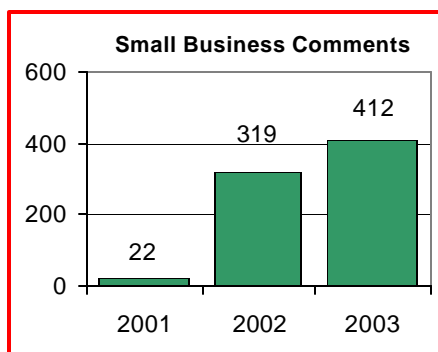
Jack Faucett Associates, Inc. conducted an economic impact analysis of ONO activities for fiscal year 2003. The following paragraphs highlight ONO's achievements.

A Voice for Small Businesses

ONO provides an avenue for small businesses to voice their concerns. ONO RegFair hearings and roundtables, create an environment where business owners testify about their experiences, learn about the experiences of others, and speak directly with Federal agency representatives to resolve their issues or raise awareness of a cumbersome practice or policy. The number of RegFair Hearings have notably increased in recent years. In 2003, over 1.4 million small businesses were represented at ONO RegFair events.



Empowering Small Businesses



Small businesses can comment on federal enforcement actions in several ways including live testimony or by submitting a form through ONO's website (www.sba.gov/ombudsman). The number of comments filed has increased 19-fold since 2001. ONO is equipped with the unique legislative authority to request an independent review of small business comments by a high level official in the subject agency, which can lead to reversed or reduced fines. ONO comments saved small business \$236,839 in fines FY

2003. For example, the Department of Labor (DOL) overturned an enforcement action, saving a small daycare business \$10,000 in fines and back wages. Examples of ONO's success stories are provided in the table below.

Agency	ONO SMALL BUSINESS SAVINGS: Fines and Penalties Reduced or Waived	Value
EPA	Stove manufacturer was fined due to confusion caused by EPA certification letter. EPA revised the form letter and reduced the fee.	\$12,000
IRS	Fines issued due to an accounting error were refunded.	\$1,200
IRS	Organization receives nonprofit certification after testifying at RegFair Hearing; saving the business time and attorney fees.	\$10,000
USDA	Three ethnic grocery stores are reinstated in Food Stamp program, stay open for business, and avoid fine.	\$120,000
IRS	A late filing penalty is waived due to good track record.	\$282
EPA	Environmental mediation fines are reduced for an Auto shop.	\$35,000
DOL	A fine for late filing of forms is refunded due to lost mail.	\$120
DOL	A Salary vs. Hourly Wage issue is resolved in favor of daycare business, which saves back wage payments.	\$10,000
IRS	A fine issued due to system wide computer error is corrected and the business receives refund.	\$1,337
EEOC	Business enters into reconciliation discussions with agency in place of fines.	\$25,000
USC	A shipper, issued fines due to miscommunication, receives a refund.	\$2,000
HHS	A medical provider receives refund of overpaid fees.	\$2,400
IRS	Tax fine issued to a nonprofit service group is reversed.	\$2,500
IRS	A business, fined because the wrong date was written on a tax form, receives a refund.	\$15,000
TOTAL SAVINGS		\$236,839

Business Sector Wide Impacts

ONO's RegFair events and small business comments create government-wide changes that impact businesses throughout the country. For example, a comment filed by a small brewery restaurant led to the DOL reclassifying its brewers as salaried. This success story created a precedent, saving one restaurant chain approximately \$340,000 in attorney fees, time, and back wages. In another case, a comment processed by ONO helped a new tour boat company, blocked by water navigation regulations, to open for business in an economically depressed community.

ONO helped create jobs and contributed tourism dollars to the local economy. In these two cases alone, ONO saved small businesses approximately \$590 thousand above and beyond waived fines and penalties.

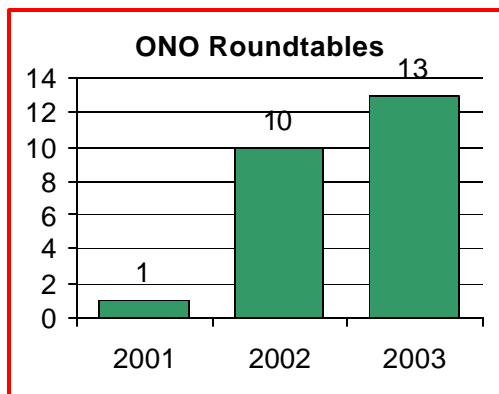
“ONO helped create jobs and contributed to the local economy”

ONO also helps identify systemic errors that have an impact on many small businesses. For example, an ONO comment uncovered a computer error that mistakenly issued late tax filing notices and penalties. ONO brought the issue to IRS’s attention, the error was corrected, and the business was refunded \$1,337. This potentially saved countless other businesses and the IRS from investing time and money to contest the fines and review each case.

Changing the Regulatory Environment

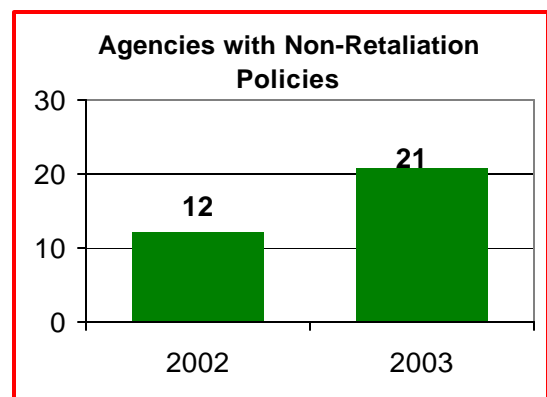
Not only does ONO help small business one case at a time, the ONO strives to foster a more small business friendly environment by reinforcing a “help you” versus a “gotcha” approach of Federal agencies. ONO encourages agencies to work with small businesses by

“ONO reinforces a ‘help you’ versus a ‘gotcha’ approach to enforcement.”



offering compliance assistance and educational programs. These programs help small business understand federal laws and gives them the opportunity to comply before penalties are levied. ONO RegFair Roundtables are an example of this effort. At Roundtables, Federal agency representatives inform the public on their statutory duties to conduct audits and inspections. They also answer questions from small businesses and distribute materials on compliance assistance resources.

ONO’s reinforces its message by publishing an annual report for Congress that rates Federal agency responsiveness to small business issues. Each agency is graded on the quality and timeliness of their small business comment responses, participation in RegFair events, and whether compliance assistance is given. ONO achievements include compelling Federal agencies to adopt written non-retaliation policies. These policies protect and encourage small businesses to voice their concerns. By 2003, 21 Federal agencies had adopted a written nonretailiation policy.



ONO's Value to Small Businesses

While ONO is not a substitute for legal counsel, the services the office provides are completely free and have the potential to save millions of small businesses time and money. ONO helps make small business concerns a priority for Federal agencies. An analysis of data from Federal agencies outlining the value of fines reduced for small businesses in 2003 shows ONO saved small businesses at least \$19.7 million. Interviews with business owners and trade associations indicate that small businesses place an annual value of ONO's services between \$93 to \$250 per business or \$65 to \$130 million in total.


"ONO helps make small business concerns a priority for Federal agencies."

Continuing to Make an Impact

The results of the analysis show that in FY 2003, ONO's services had a total economic impact ranging between \$85.6 to \$229.6 million dollars. The table below summarizes these findings. These remarkable benefits stem from a program that costs less than \$2 million a year. This impact includes the direct savings to small business resulting from ONO comments and the benefits experienced by small businesses affected by ONO success stories and a more small business friendly federal regulatory environment.

ONO ECONOMIC IMPACT (FY 2003)

ACTIVITY	IMPACT	RANGE	
		LOW	HIGH
Small Business Comments	Direct Savings	\$236,839	\$236,839
	Business Sector	\$590,000	\$590,000
Rating Federal Agencies	Enforcement Environment	\$19,710,240	\$98,600,000
RegFair Events	Value to Small Businesses	\$65,100,000	\$130,200,000
Total Impact		\$85,637,079	\$229,626,839
Cost- Benefit Ratio		46	124

As shown in the table above, the cost-benefit ratio of ONO services ranges between 46 and 124. This means that each dollar invested in ONO yields a return between \$46 and \$124 in benefits to small business. By continuing to act as a voice for small businesses and foster change in the small business-federal agency interface, ONO will continue to save time and money for small businesses and the American taxpayer. 

1. INTRODUCTION

The purpose of this study is to estimate the economic impact of the United States Small Business Administration's (SBA) Office of the National Ombudsman (ONO). This involves the measurement of the annual outcomes resulting from each of ONO's core activities. The ONO core activities include:

1. Rating Federal Agencies regarding their enforcement activities toward small business,
2. Processing Small Business Comments,
3. Chairing Public Hearings, and
4. Coordinating Regional Volunteer Regulatory Fairness Boards.

Each core activity was examined and analyzed to provide substantiated outcomes measured using one or more of the following:

1. Money saved for small business owners.
2. Time saved for small business owners.
3. Improved federal agency responsiveness to small business owners.
4. Changes in the federal regulatory enforcement environment and their impact on small business and the U.S economy.
5. Jobs saved and/or created.
6. Small business growth, expansion.

The analysis was conducted in accordance with the Government Performance and Results Act (GPRA) and the Office of Management and Budget's Program Assessment Rating Tool (PART).

1.1. Overview of ONO

ONO and 10 Regulatory Fairness Boards (RegFair Boards) were created under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The act was designed to give businesses, small government entities, and small nonprofit organizations a single point of contact within the federal government to have their comments and concerns about unfair or excessive regulatory enforcement actions heard and addressed. To fulfill this mission, ONO:

1. Provides small businesses with a means to comment on unfair or excessive federal enforcement actions taken, such as unfair or retaliatory treatment, fines, penalties, citations, and excessive audits or inspections;
2. Works with Federal agencies with regulatory enforcement authority and acts as the liaison to have the small business comments or concerns addressed,
3. Organizes and trains volunteers from the small business community to serve as members of 10 five-person RegFair Boards in order to receive comments, participate as leaders in public hearings and conduct outreach and awareness efforts throughout the country; and

4. Prepares an annual report to Congress that rates Federal agencies on the treatment of small business including timeliness and adequacy of their responses and describes the activities, findings and recommendations of the RegFair Boards.

Each of these activities is geared toward making the federal regulatory enforcement environment more small business friendly.

Statistics developed by the SBA Office of Advocacy show that small businesses spend approximately 50 percent more per employee per year than large businesses to comply with federal regulations. This disparity can be attributed, among other things, to the fact large businesses have attorneys, accountants, and other staff to spread the costs of doing business. Small business owners often fulfill multiple roles and must consider the financial burden of contesting federal regulatory enforcement actions. The high costs of legal fees and protracted litigation, combined with the impression that government is not there to help, sometimes forces small business acquiescence when they become victims of unfair treatment and excessive regulatory enforcement.

ONO's primary mission is to give a voice to these small entities and to assist them when they experience unfair or excessive federal regulatory enforcement actions. While ONO is not a substitute for legal counsel, the office offers small businesses an effective service to obtain a response from federal agencies to their questions and concerns.

1.2. Government Performance and Results Act (GPRA)

Congress enacted the Government Performance and Results Act of 1993 (GPRA) to develop a system of improving program performance and to provide greater accountability within federal government agencies. The legislation requires agencies to clearly set goals and to report results. By using Performance Management systems, federal program managers are expected to maximize performance, minimize costs, and achieve the desired results. GPRA seeks to:

1. Improve the confidence of the American people in the capability of the U.S. government by systematically holding Federal agencies accountable for achieving program results;
2. Initiate program performance reform;
3. Improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality and customer satisfaction;
4. Help Federal managers improve service delivery by requiring them to plan for meeting program objectives and by providing them with information about program results and service quality;
5. Improve Congressional decision making by providing more objective information on achieving statutory objectives and the relative effectiveness and efficiency of Federal programs and spending; and

6. Improve internal management of the Federal government.

The goals of GPRA are to be achieved through the creation of strategic plans and annual performance plans and reports by all Federal agencies. The strategic plans are to cover a period of not less than five years forward from the fiscal year in which they are submitted. Performance plans are to be consistent with the agency's strategic plan and cover all program activities appearing in the agency's budget. Agency goals and objectives are to be expressed as outcome-oriented goals. An outcome in this instance is an assessment of the results of a program activity compared to its intended purpose, where a program activity is a specific activity or project listed in the program and financing schedules of the annual U.S. Government budget. Outcomes are to be measured under GPRA as opposed to outputs, which are merely the tabulation, calculation or recording of an activity or effort. An agency's strategic plan also includes presenting key external factors, which could significantly affect its ability to achieve these goals. The views and suggestions of those entities potentially affected by or interested in an agency's strategic plan should be solicited and considered in the final preparation of the plan.

1.3. OMB Program Assessment Rating Tool (PART)

In July 2002, the Director of the Office of Management and Budget (OMB) announced that a new method called the Program Assessment Rating Tool (PART) would be used to measure program performance for the Federal budget. PART serves two main purposes: 1) it improves agency GRPA plans and reports and 2) it establishes an outcome-based link between GPRA goals and budgeting. PART develops objective, consistent ratings of programs for the Federal budget.

PART consists of four sections each with a series of Yes or No questions. Those sections include:

1. Program Purpose and Design
2. Strategic Planning
3. Program Management
4. Program Results

Each answer is accompanied by a short explanation and description of the supporting evidence. Each question is given equal weight unless changed by the evaluator to focus on the key components of a program. The first three sections are scored on an all-or-nothing basis. The fourth section includes a four-point scale to assess degrees of success. Each set of questions may include specific questions tailored to that particular program to guarantee a comprehensive evaluation.

Section 1: Program Purpose and Design

This section consists of questions covering a range of actions to assess a program's effectiveness and accountability mechanisms. OMB stresses outcome-based performance measurements in this

section, and the questions evaluate whether or not the program has clearly defined goals, mission statement, and accountability structure.

Section 2: Strategic Planning

This section answers the question, “Is the program budget aligned with the program goals in such a way that the impact of funding, policy, and legislative changes on performance is readily known?”

Section 3: Program Management

OMB places significant emphasis on a program’s use of managerial cost accounting systems for managing of the programs tasks. Example questions include the following:

1. “Does the program have incentives and procedures to measure and achieve efficiencies and cost effectiveness in program execution?”
2. “Does the agency estimate and budget for the full annual costs of operating the program (including all administrative costs and allocated overhead) so that program performance changes are identified with changes in funding levels?”

Section 4: Program Results

As the following question indicates, PART is also designed to measure improvement within a program.

“Does the program demonstrate improved efficiencies and cost effectiveness in achieving program goals each year?”

Supporting evidence to substantiate a “Yes” might include meeting performance targets to reduce cost, meeting production or project deadlines, or an increase in productivity and output.

1.4. *ONO GPRA Goals*

Under SBA’s GPRA plan, ONO has a number of goals, outcome measures and output measures. ONO’s mission falls under the SBA’s first strategic goal and the second objective under that goal as follows:

- Strategic Goal 1: Improve the economic environment for small businesses.
- Long Term Objective 1.2: Ensure equity and fairness in the Federal regulatory enforcement process.

Under this objective, the SBA’s Annual Outcome Measures and FY 2003 goals include:

- Decrease the number of unfair or excessive federal regulatory enforcement actions taken against small businesses (5 percent).
- Increase the number of enforcement actions in which the civil penalty is reduced or waived for small business (5 percent).

Program Annual Output Measures and FY 2003 goals include:

- Decrease excessive enforcement actions (5 percent).
- Increase compliance assistance to small business (5 percent).
- Increase federal agency responsiveness (55 percent).
- Increase small business contacts (300,000 contacts).
- Number of small businesses impacted by comments made via ONO to federal agencies (200,000 businesses).
- Increase the number of reduced or waived penalties for small business (5 percent).

1.5. Study Objectives

The main objective of this study is to measure the progress of ONO in meeting many of the GPRA outcomes specified above. Analysis on the last two goals listed above was not included in this report because they were outside the scope of the study and baseline data has yet to be developed. The second objective is to measure the more general economic impact of ONO on small businesses and the U.S. economy. In many ways this goal is consistent, but in some ways it is not. GPRA outcomes are often measured in percent change; while economic impacts require quantification in dollars, jobs and similar measures. Many of the economic impacts of ONO programs are difficult to identify, to separate from the many other forces affecting small businesses, and to measure.

Study Methodology

The study was conducted in the fall of 2003 using data from FY 2001, 2002 and 2003. The primary focus of the results is for FY 2003 and changes in performance from FY 2002 to FY 2003. However, it should be noted that many activities occur over several years and are difficult to assign to a given year. A comment, for example, may have been filed in FY 2002, but not addressed by an agency or department until FY 2003. Similarly, a comment made in FY 2003 may not have even been addressed at the time the study was conducted. For that reason, the results of all of the comments submitted have been included in the analysis.

Study staff conducted data collection activities to compile the necessary qualitative and quantitative information that this impact analysis is based upon. Background information, data and opinions were derived from a number of sources. These include:

- Published information including ONO's Annual Reports to Congress, ONO's Website,

- Information contained in over 280 jurisdictional comments from FY 2002 and 2003. This included reviewing each comment, accompanying background documentation, and agency responses. Comments that received a favorable result were categorized and any dollar savings were compiled. In many cases this required follow-up phone calls and interviews with impacted businesses, their legal representatives, related business associations and Federal agencies,
- Four sets of interviews were conducted, targeting individual small business owners, industry association representatives, government agency staff, and Regulatory Fairness Board members, to gather any supplemental data,
- Study staff attended ONO meetings held in California, Maryland, and Washington D.C., including an interagency meeting, and two regulatory fairness roundtables,
- All available transcripts of ONO roundtables, hearings, and interagency meetings were reviewed to identify the range of ONO activities and to identify any benefits resulting from these activities.

Organization of the Report

This study measures the economic impact of these activities and quantifies the savings to small business attributed to ONO. Study staff conducted an in-depth review of each ONO core activity and developed and quantified economic impacts. The report is organized into the following separate six chapters:

Chapter 1: Introduction

Chapter 2: Reviewing the Impact of ONO Comment Activities

Chapter 3: Measuring ONO Impact on the Small Business Environment

Chapter 4: Agency Ratings & Federal Regulatory Enforcement Environment

Chapter 5: Hearings, RegFair Boards and the Option Value of ONO

Chapter 6: Results and Recommendations.

The remainder of this study provides detailed information on each of the core ONO activities, the methodology used to estimate the economic impact, and resulting benefit estimates. The following chapter, Chapter 2, presents an overview of the ONO comment process, quantifies the numbers and types of comments, examines trends in the number of contacts and measures the direct savings to small business in terms of reduced fines and penalties.

Chapter 3 examines positive business impacts, defined as positive changes in the operation or development of businesses that occur as a result of ONO activities, specifically the filing of agency comment forms. While Chapter 2 provided a summary of all the quantifiable small business savings as a result of a reversed fines and penalties, this chapter describes changes to business development that firms that commented to ONO and other businesses experienced. By saving businesses time and effort in dealing with unfair regulatory enforcement actions and issues, ONO allows small businesses to focus on their businesses. These impacts are measured in the form of jobs saved or created, and the ability to stay in business or start a business. Staff

contacted individual business owners and associations that received a favorable result to follow-up and identify any positive or negative side effects as a result of submitting a comment to ONO.

Chapter 4 examines agency ratings and the impact of changes in regulatory enforcement on small businesses. The process of rating agencies is designed to impact the way regulations are enforced and to create a more positive regulatory enforcement environment through a decrease in excessive enforcement actions, an increase in compliance assistance to small business, an increase in number of reduced or waived penalties for small business and an increase in the adoption of non-retaliation policies. In this chapter data on agency ratings over time is analyzed and compared against GPRA goals. An order of magnitude impact estimate of ONO's impact on the regulatory enforcement environment is derived from burden reduction data reported by each agency as part of the Paperwork Relief Act of 2002. The act requires agencies to report enforcement actions against small businesses and penalty reductions in such actions so that the regulatory burden reduction efforts of the agencies can be monitored. The chapter also examines the change in the regulatory enforcement environment at federal agencies based on interviews with agency officials.

Chapter 5, Hearings, RegFair Boards and the Option Value of ONO, examines the two ONO core activities pertaining to chairing public hearings and coordinating regional volunteer Regulatory Fairness Boards. Estimates are made of the number of businesses made aware of ONO and that estimate is compared to the related GPRA goal. In addition, the economic impact concept of nonuse or option value is introduced. Option values refer to the utility that is derived from a good without physical interaction with the resource. For the purposes of this study, the resource was defined as the avenue provided by ONO to small businesses to report unfair or excessive federal regulatory enforcement actions. The existence of ONO provides a benefit to all small business owners, even if small entities do not use ONO services. An estimate of the option value to individual business owners is developed through interviews and comparison with business association dues. The willingness to pay estimate is multiplied by the number of businesses aware of ONO services to approximate the total option value benefit.

Chapter 6 provides the study results and recommendations. The chapter begins with a summary and tabulation of the economic impacts estimated throughout the study. This is followed by an analysis of the progress toward the GPRA goals cited above based on analyses presented in earlier chapters. Data on the costs of the ONO program are then introduced and combined with the economic impact data in a benefit-cost comparison. The chapter concludes with recommendations on how ONO can improve measurement of its economic impacts and progress towards GPRA goals in future years.

2. ONO Small Business Comments

ONO's mission is to assist small businesses that experience unfair or excessive Federal regulatory enforcement actions, such as repetitive audits, fines, penalties, or retaliation. To achieve this, ONO receives comments from small businesses concerning any Federal regulatory enforcement issue they may be facing and acts as a neutral liaison between the parties. ONO forwards these comments for a high-level agency review and requests an official response from the agency. In some cases, reviews result in overturned or abated fines and penalties.

This chapter examines the ONO comment processing core activity and quantifies the impact of this activity on small businesses. The chapter is organized into the following sections:

1. Overview of Comment Core Activity
2. Study Methodology
3. Evaluation of the Core Activity
4. Economic Impact of ONO Comments
5. Summary and Conclusions

2.1. Overview of the Comment Core Activity

ONO works under the authority of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) to ensure small businesses; nonprofit organizations and small government entities have an avenue to comment on unfair or excessive federal regulatory enforcement actions. This includes audits, inspections, or other enforcement-related action such as retaliatory actions or negative interaction with federal agency staff.

Comment Forms

Small businesses can report unfair or excessive federal enforcement actions by completing and submitting an agency comment form to ONO. This form, shown in Figure 2.1, asks for basic contact information, the name of the agency the comment is directed towards and a description of the regulatory enforcement action or issue the business is facing. Businesses are also asked to include substantiating evidence of the enforcement action such as citations, phone logs, and letters.

ONO's Federal Agency Comment Form activity is designed with three goals: 1) ease of use, 2) easy access, and 3) quality feedback from federal agencies. To ease concerns of retaliation and to protect the privacy of comment filers, ONO includes three confidentiality levels. Filers may choose disclosure of their business name and specifics to be:

1. Limited strictly to ONO staff and RegFair Board Members,
2. Shared with the relevant federal agency, ONO and, RegFair Board members or
3. Be fully disclosed to the public.

Although different confidentiality levels are offered, ONO recommends that the commenter allow the specifics to at least be shared with the relevant Federal agency. This insures that the agency can conduct a thorough review and tailor a response that addresses the specifics of the case. By knowing the name and location of a business, an agency can review the actions of a particular auditor or investigator.

Figure 2.1: ONO Federal Agency Comment Form

Federal Agency Comment Form	
OMB Control #3245-0313	Small Business Administration – Office of the National Ombudsman
Exp. date 3/31/2007	409 Third Street SW, Washington, DC 20416 P: (202) 205-2417 – F: (202) 481-5719
	Case # _____
Instructions	
1. Complete, sign and date this form. (Signature not required if completed at www.sba.gov/ombudsman).	
2. Provide a brief written statement regarding the specific enforcement or compliance action taken against your organization by the federal agency.	
3. Submit copies of substantiating documentation, such as correspondence, citation, or notice.	
4. If your comments concern the IRS, you must also include a completed IRS Tax Information Authorization Form 8821, available at http://www.irs.gov/forms .	
5. Fax, e-mail or send this form and requested information to:	
<ul style="list-style-type: none"> • Fax: (202) 481-5719 • E-mail: Ombudsman@sba.gov • Address: SBA Office of the National Ombudsman, 409 Third St., SW, Washington, DC 20416 	
<u>Please Print</u>	
Organization/Company Name _____	
Address: _____	
City: _____ State: _____ Zip: _____	
Phone _____ Fax: _____ E-mail: _____	
Contact Name _____ Title: _____	
Please indicate your organization type:	
<input type="checkbox"/> Small Business <input type="checkbox"/> Not-for-Profit, Representing _____ Members <input type="checkbox"/> Small Government (population of less than 50,000)	
List the federal agency with which you are having a problem:	
Federal Agency Name: _____	
Agency Contact person: _____	
Agency Office/Division: _____	
<input checked="" type="checkbox"/> Did the federal agency listed above inform you of your right to contact the SBA Office of the National Ombudsman? ? Yes ? No If not, how did you learn about this office?	
Confidentiality / Disclosure	
The law allows you to keep your identity and other information private, and limit its access only to the Office of the Ombudsman. However, by requesting confidentiality the federal agency may not have sufficient information to investigate your specific problem, possibly delaying or preventing any potential resolution of your situation.	
I request that my information be kept confidential. ? Yes ? No (If yes, results may be limited.)	
Signature: _____ Date: _____	
Your signature authorizes the SBA Ombudsman to proceed on your behalf.	
Pursue all legal options you believe are in your company's best interest. This process is not a substitute for legal action.	
SBA FORM 1993 (2-04) Previous Editions Obsolete	
Please Note: The estimated burden for completing this form is 45 minutes. You will not be required to respond to this information collection if a valid OMB approval number is not displayed. If you have any questions or comments concerning this estimate or other aspects of this information collection, please contact the U. S. Small Business Administration, Chief, Administrative Information Branch, Washington, D.C. 20416 and/or Office of Management and Budget, Clearance Officer, Paperwork Reduction Project (3245-0313), Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.	

Obtaining and Submitting Comments Forms

To ensure that the comment process is simple and readily accessible, ONO has developed several methods of distributing and collecting comment forms. These methods include:

1. Completing ONO's Online Comment Form,
2. Submitting completed forms by fax or mail, and
3. By completing the form and testifying at a Regulatory Fairness Hearing.

The following sections will briefly describe each option and will give an overview of what happens after a comment is filed.

Online Comment Forms

The recently redesigned ONO website (www.sba.gov/ombudsman) includes detailed information on the comment process and contains a web-form that small businesses can submit. The form is similar to the one provided in the above section except for the fact that a dialogue box is included to allow individuals to describe their situation. When the form is completed and the filer submits the form, it is automatically sent to ONO staff members, who then print the comment and conduct a preliminary review. Comment filers may be contacted to provide supplemental information. Comments outside the jurisdiction of ONO are forwarded to an appropriate government office or returned to the filer with available guidance.

Obtaining a Comment Form by Phone

Comment forms and instructions can also be obtained by calling ONO's toll-free telephone number, 1-888-REG-FAIR (1-888-734-3247). Callers are greeted with a recording explaining the comment services provided by ONO and are informed of the different methods of obtaining comment forms. Callers may also leave a message containing their contact information. ONO staff then mails or faxes the business a comment form.

Submitting Comments at Regulatory Fairness Hearings

ONO organizes and conducts Regulatory Fairness Hearings in an effort to increase awareness of ONO services and bring ONO services directly to small businesses. RegFair hearings allow small businesses to testify on the record about their situation. This is followed by a panel discussion of possible avenues for help, which often results in steering the individual to a specific person or agency. While comments are collected from public hearing testimony transcripts, small businesses are required to complete the form and submit it to either RegFair Board members or forward them directly to ONO headquarters in Washington D.C. for processing.

Processing Small Business Comments - ONO's Jurisdiction and Database

After ONO receives comment forms, they are checked for completeness and jurisdictional authority. ONO's jurisdiction is limited to issues pertaining to federal enforcement actions. The office does not have the authority to request state and local agencies to review enforcement actions. The ONO website includes an automated form that determines whether the Ombudsman has jurisdiction in a particular case. If an individual can answer, "yes" to the following three questions then they are encouraged to submit a comment:

1. Are you a small-business owner, small government entity, or a non-profit organization?
2. Is your comment about a Federal government agency?
3. Have you been unfairly fined or penalized by a Federal government agency, or is a Federal agency enforcement action imminent?

ONO maintains a computer database that tracks the progress of each comment. This database includes a wealth of information including the following:

- Detailed contact information of the filer,
- Targeted Agency,
- Confidentiality preference,
- Regulatory Fairness Board Region,
- Date the comment was submitted,
- Date the comment was forwarded to agency,
- Due date for the response,
- Number of days comment has been with the agency, and
- Date of the response received from the agency.

As part of the case file, ONO maintains a detailed log summarizing any events involving each individual comment including any phone calls or letters sent to the respective agency and small business. This file also contains a brief summary of the case.

Forwarding Comments for Agency Response

Jurisdictional comments are forwarded to high-level agency representatives for an independent review to ensure the small business was treated fairly and the enforcement action was justified. Responses from agencies are requested within 30 days. Agencies are given seven questions as a guide for each response. Those questions are:

1. Why and how did you take the enforcement or compliance action(s)?
2. Did you notify the small business about the enforcement or compliance actions(s)? If so, did your agency provide the business an opportunity to come into compliance?
3. Did you review the action(s) of the investigator/auditory/inspector/individual to ensure compliance with your agency's policies and procedures?

4. Were your agency's regional and program offices responsive to the small business? If so, please cite some examples.
5. Was the small business informed of their right to contact the Office of the National Ombudsman at SBA?
6. Did your agency consider any alternatives to enforcement action, such as: waiving penalties or reducing fines?
7. As a result of the issues raised by this small business concern, has your agency implemented any changes to address this situation in the future? If so, please describe the changes implemented.

Under SBREFA, agencies are required to send a detailed response back to ONO, which then forwards a copy to the filer and to the regional RegFair Board.

2.2. Study Methodology

In order to assess the economic impacts of ONO comment activities, study staff conducted an in-depth review of ONO comment files and records of official agency responses. Staff isolated those cases where comments lead to a favorable outcome such as a reversed or abated fine or vacated penalty. During the review, the comments were identified and classified using the following categories:

1. Fear of Retaliation
2. Threats, Scare Tactics, or Intimidation
3. Unfair Enforcement
4. Excessive Fines and Penalties
5. Repetitive Audits or Investigations
6. General Comments on Regulatory Fairness

For the purpose of estimating the direct benefits of ONO comment activities, each of the jurisdictional comments that had received an official agency response was reviewed. Study staff reviewed each comment to determine the nature of the comment and the type of response from the agency. Staff isolated comments that received a favorable response, also known as ONO Success Stories, and placed them into a database for a more detailed examination. In this database, study staff compiled information gathered from the case files regarding any quantifiable savings experienced by the small business as a result of the agency review.

To supplement information gathered from the ONO case files, study staff conducted interviews with success story businesses to learn more about the details of their case to be included in the benefits estimate. Study staff relied upon interviews with these small businesses to provide data to complete the benefit estimate. Interviews also collected any additional information regarding the impact on their business and the exact amounts of any reversed or abated fines or penalties that were not included in the case files.

In some cases, businesses were able to avoid the penalty assessment phase of the enforcement action as a result of ONO intervention. In these cases, the government agency conducting the enforcement action was contacted to determine the estimated amount of the fine. For example, in one case, a small mining business was issued two citations for not submitting quarterly employment reports on time. The business had indeed mailed the reports, but the agency did not receive it. After receiving the citation, the business filed a comment with ONO. By the time the comment was reviewed and the two citations vacated, the penalty assessment phase had not even been completed. Study staff contacted the Department of Labor Mine Safety and Health Administration to determine the actual amount of the fines. In this case it was approximately \$60 for each citation. However, this does not take into account the time and expense of contesting these fines.

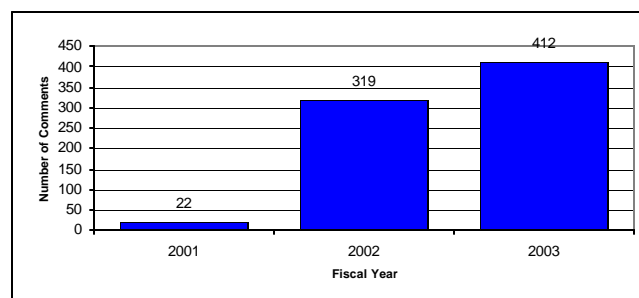
The same processes were conducted for cases where no quantifiable information was readily available. For example, in the case of three food retail stores, who were disqualified from the food stamp program by USDA, but later reinstated because of comments filed to ONO, the estimated savings were determined using the civil penalty these businesses would have incurred to rejoin the program. In this case the maximum penalty would be \$40,000. This number may be considered a conservative figure due to the fact that USDA may have also levied other fines and filed criminal charges against the owners. Additionally, USDA actions may have caused the stores to completely shut their doors.

In cases where a business received a favorable response on general comments on regulations or procedures that prevented them from conducting or starting their businesses, study staff interviewed the owners and established a baseline estimate of the benefits to their business. These benefits could not be classified as a direct savings, but rather an operational benefit due to a change in policy or procedure. This study categorizes these benefits as “Business Impacts” of ONO comment activities. Business impacts are discussed and quantified in Chapter 3.

2.3. Evaluation of the Core Activity

By using the increase in the number of comments submitted as an indicator, ONO efforts to improve small business awareness of their services and to streamline the process have been successful. The figure below shows the number of comments received over the past three years. Between FY 2001 to 2003 ONO witnessed a 19-fold increase in the number of comments submitted.

Figure 2-1 Increase in Comments Submitted



The overall quality of comments submitted by small businesses has increased. Table 2-1 provides a summary of the number of comments received by ONO and details the agency response statistics for fiscal year 2002 and 2003. There was an impressive 28.5 percent increase in the total number of comments submitted between FY 2002 to 2003, and an even more impressive 72.1 percent increase in the number of jurisdictional comments. This illustrates that ONO has been successful in raising small business awareness concerning the services it provides.

Table 2-1 ONO Comment Statistics

Category	FY 2002	FY 2003*	Percent Increase
Total number of comments	319	410	28.5%
Total number of jurisdictional comments	104	179	72.1%
Total number of non-jurisdictional comments	215	233	8.4%
Number of comments receiving a responses from Federal agencies	80	103	28.8%.

*As of October 27, 2003

The ONO comment statistics also show that federal agencies are more responsive to small business comments. The number of small business comments that received a formal response from Federal agencies increased by 28.8 percent between FY 2002 and 2003. This dramatic increase illustrates that the ability of ONO to make small business concerns a larger priority for federal agencies.

2.4. Economic Impacts of ONO Comments

After identifying each ONO success story, study staff compiled information regarding the total amount of dollars saved as a direct result of a favorable agency response. This category called “Direct Savings to Commenter” represents the total amount of dollar savings experienced by the commenter as a result of reversed, refunded, or reduced fines and penalties. Each case was assigned a comment type category, and the agency and quantifiable end result was identified. In most cases, comments fell into several categories. For example, a business facing repetitive audits may have also raised the concern that the audits were retaliatory in origin or a result of unfair regulatory enforcement.

The results of the ONO success story review are presented in the table on the following pages. In FY 2002 and 2003, ONO comment activities and interventions were directly responsible for saving small businesses an estimated \$237 thousand. Study staff reviewed each comment file and contacted each of the businesses to request an interview. The table below also includes a brief summary of each case. It should be noted that a few cases did not involve returning fees or abated penalty. However, there are implications for these small businesses that received favorable responses from Federal agencies. These *business impacts*, the value of the time and money saved by small businesses from contesting the enforcement actions are examined in

Chapter 3, which describes the effect ONO comments have on small business outlook and operations.

Table 2-2 Direct Savings to Commenters

Success Story Number	Industry	Agency	Comment Category					Direct Savings	Case Summary
			Fear of Retaliation	Fee/ Penalties /Fines	Unfair Enforcement	Repetitive Audits/Investigations	Procedures & Regulations		
1	Mfg.	EPA			X		X	\$12,000	A stove manufacturer submits comment claiming EPA caused confusion by including language in cover letters enclosed with certifications referencing a 5-year renewal. EPA certifications are valid for 5 years from original application date. Business believed it was 5 years from the re-certification date and was issued a fine of approximately \$14,000. As a result of the comment, EPA changed the language on the form letter used to transmit the certificates to eliminate the five-year renewal reference. EPA also reduced the original fine to \$2,000, which was the maximum allowable reduction.
2	Service	IRS		X				\$1,200	The IRS refunded \$1,200 after reconsidering a fine because the small business had changed from accrual to cash accounting.
3	Nonprofit	IRS					X	\$10,000	Owner of a start-up nonprofit organization files a comment regarding the lag time involved in processing of nonprofit organization certification applications. Soon after, the IRS grants the business nonprofit status. The owner testified at a RegFair Hearing and stated ONO saved the business approximately \$10,000 in lawyer and accountant fees.
4	Food Retail	USDA			X			\$40,000	Ethnic grocery store effectively closed by USDA because they were disqualified from participating in food stamp program. Comment was filed refuting food stamp trafficking allegations. USDA reviewed the case and overturned the disqualification. The stores were reinstated in the program. To stay in the program without ONO intervention, the business would have had to pay a penalty up to \$40,000.
5	Food Retail	USDA			X			\$40,000	Same as above
6	Food Retail	USDA			X			\$40,000	Same as above
7	Printing Services	IRS		X				\$282	Business was charged a penalty by IRS for late taxes. After referral to IRS for review and finding that the business had a good track record and mitigating circumstances, the penalty was waived.
8	Automotive	EPA		X	X			\$35,000	Small business found to be partly financially responsible for clean-up activities on a superfund site was fined \$40,000. The fine was reduced to \$20,000 and then down to \$5,000 and is now before the court in an ability to pay case. The Owner contacted a RegFair Board member and stated that the ONO comment and testimony helped the business' case.
9	Tourism Services	DOT					X	See Business Impacts Chapter	Small business invested in opening a speedboat recreational service. DOT regulations say boats cannot be operated without proper training and license. Laws state that drivers must be US citizens and that only US citizens may obtain boating licenses. The only qualified people to operate these imported boats were non-citizens. DOT reviewed the comment and found that they could make an exception if the business proved that operators were qualified. Business saved \$250,000 spent on advertising and infrastructure costs that would have been lost due to inability to operate. This savings is included in the "Business Impacts" estimate provided in Chapter 3. This savings is considered a business impact because the case did not involve the return of fees or abatement of penalties. This case created four additional jobs for a

Success Story Number	Industry	Agency	Comment Category						Case Summary
			Fear of Retaliation	Fee/ Penalties /Fines	Unfair Enforcement	Repetitive Audits/Investigations	Procedures & Regulations	Direct Savings	
									total of 12 jobs with an annual estimated salary of \$120,000. Business is located in an economically depressed community. It develops additional tourism dollars and augments the local tax base.
10	Contracting	DOL		X				\$120	Business was issued two citations for late quarterly employment form reports. After proving that the business did mail them in on time the citations were vacated.
11	Services	DOL		X	X			X \$10,000	Business was investigated for overtime and wage requirements violations. Through an investigative interview the staff discovered several violations. DOL Wage and Hour asked the firm to enter into a payment plan for approximately \$10,000 in back wages. Firm contacted ONO and submitted a comment. DOL responded saying after a review they determined that they could not take any action against the firm.
12	Services	IRS		X				X \$1,337	Company was fined \$1,336.84 as a result of a computer error that sent out notices of late employee tax deposits. After a comment is filed with ONO, the IRS dropped all fees and penalties. Also IRS corrected "the systematic error involving the issuance of CP 136 notices." This may have a positive benefit for other businesses.
13	Services	EEOC		X				X \$25,000	Business is investigated for hiring discrimination and ADA violations. EEOC determined that the alleged victim was due \$25,000 in monetary damages. Firm disagreed and the conciliation process was halted. The owners filled an ONO comment. DOL's response states that the "comment brought to our attention that the conciliation process may have been somewhat flawed." As a result we have reopened conciliation discussions..." The response notes the opening of discussions without seeking monetary penalties.
14	Food Retail	DOL		X	X			See Business Impacts Chapter	DOL Wage and Hour investigator determines that the business is in violation because two employees are classified as non-exempt from overtime. Business submits a comment and DOL responds in favor of the employer. This set a precedent for other firms in the industry, which is discussed in Chapter 3.
15	Transport	Customs		X				\$2,000	The Customs Service reversed its decision and refunded all fines to Terminal Shipping in Baltimore, Maryland after the owner filed a comment. Customs originally issued two \$1,000 fines for noncompliance with a requirement to notify the Customs about any unentered merchandise placed in a general order warehouse. Customs states, ""the issue appears to be more a miscommunication...as opposed to noncompliance with the regulations."
16	Medical Services	HHS						X \$2,400	Firm had difficulty becoming certified as a Medicare provider. Comment requested reimbursement for services already rendered, but was denied. Response did advise of a refund of money due to overpayment of certification fees. Requests for follow up interview were declined.
17	Nonprofit	IRS		X				X \$2,500	Business is a volunteer group that maintains reunion grounds for the veterans' reunion event. They were not classified as nonprofit because there was no category when they were incorporated. Business filed taxes late in 2000. Despite having no taxes owed they are fined \$2,500. ONO comment led to abatement.

Success Story Number	Industry	Agency	Comment Category						Case Summary	
			Fear of Retaliation	Fee/ Penalties /Fines	Unfair Enforcement	Repetitive Audits/Investigations	Procedures & Regulations	Direct Savings		
18	Telecom	IRS		X	X			X	\$15,000	\$15,000 IRS fine issued due to a late form. IRS contacted business owner. He faxed the completed form, but did not postdate it. IRS automatically issued a late filing penalty. ONO filed comment acknowledging the communication error and the penalty was overturned.
Total Savings to Comment Filers									\$236,839	

2.5. Summary and Conclusions

Over the past three years, ONO has made tremendous strides in its mission to assist small businesses facing unfair or excessive regulatory enforcement actions. By outlining the evolution of ONO's comment process and conducting an economic impact analysis of comment activities, this chapter uncovered two key achievements in FY 2003 to 2003. These include:

1. Saving small businesses at least \$237,000 in quantifiable costs (reversed or abated fines and penalties) and
2. Streamlining and improving the visibility of the comment process, which offers several methods to submit comments. This contributed to a 19-fold increase in the number of comments received from FY 2001 to FY 2003.

A review of small business comments reveals that ONO has made progress toward its GRPA goals to decrease excessive enforcement actions and increase agency responsiveness to small business concerns. The overall number and quality of comments submitted from small business has increased. This shows ONO's ability to raise the visibility of the office and clearly convey its mission. ONO's performance in relation to its GRPA goal to increase the number of small business contacts will be discussed in detail in Chapter 5.

The money these small businesses saved as a result of submitting a comment form to ONO can now be spent by the owner on activities that drive the American economy such as creating new jobs, expanding operations, and providing goods and services. According to statistics compiled by the SBA Office of Advocacy, small businesses employ over 53 percent of private sector workers and generate over 50 percent of the US gross domestic product. ONO contributes to the American economy by providing small businesses with free and effective advocacy services that enable them to maintain focus on their businesses.

The following chapter describes the link between the direct savings to small businesses as a result of ONO comment activities and the overall impact of these success stories on the operations of the comment filer and other small businesses.

3. ONO Impacts on Small Businesses and Communities

Business impacts are arguably one of the most important and difficult outcomes of ONO activities to quantify. Business impacts are positive changes in the operation or development of businesses that occur as a result of ONO activities, specifically the filing of agency comment forms and rating federal agencies.

While Chapter 2 provided a summary of all the quantifiable small business savings as a result of reversed fines and penalties, this chapter describes changes to business development and entrepreneurial spirit that commenters and other businesses experienced. By saving businesses time and effort in having to deal with appealing unfair or excessive regulatory enforcement actions and issues, ONO allows small businesses to focus on running their business. These impacts are measured in the form of jobs saved or created, and the ability to stay in business or start a business.

This category also provides the missing link between the direct savings to the commenter and the other effects ONO success stories have on the commenting business and other businesses. An ONO success story may set a precedent that causes agency-wide policy changes or be the case that other businesses use when appealing enforcement issues. ONO success stories may also have impacts on the communities the small businesses serve. The following sections will describe the methodology used to quantify these benefits and present a minimum benefit estimate.

3.1. Study Methodology

In order to develop an estimate of the business impacts, study staff conducted follow-up interviews with small businesses that received a favorable response from their comment. Willing interview participants were asked to describe what changes, if any, they witnessed as a result of their interaction with ONO. Staff worked with businesses to try to conceptualize the affect of ONO on their business in terms of jobs, time or dollar-savings. Interviewees were also asked to outline the chain of events leading up to and after the business received a favorable decision to see if any changes occurred such as hiring any new employees or expansion.

Because ONO activities have impacts for all businesses, staff also contacted and interviewed representatives of industry trade groups and small business associations, such as the National Federation of Independent Business Owners (NFIB), to determine whether ONO success stories had any measurable impact on their members. Information from these interviews serves as the basis for estimating the minimum direct business impact.

In most cases, other than the dollar value of a reversed fine or penalty, business owners and representatives interviewed were unable to quantify the resulting effects to their business. While employment statistics and investment savings data can, in some cases, be compiled, the less tangible business impacts, such as a small business person's ability to continue to concentrate on his or her own business or expand, are difficult to measure. Most businesses responded by saying they could not place values on the ability to move on with their lives nor estimate how much

time they saved. Most businesses were also unable to isolate any changes in business such as hiring new employees or expanding their business. However, data was compiled in cases where business owners were able to identify positive results.

3.2. Case Studies

ONO success story cases have had substantial impacts on the small business filing the comments and other businesses in their industry sector. The following sections will highlight three case studies where successful comments filed by small business have led to measurable impacts.

Case Study: Regulatory Enforcement – “One Size Doesn’t Fit All”

When an ONO comment yields a favorable result, it not only benefits that particular business, but it may also have an industry-wide affect. For example, the case of the brewery-restaurant firm, Mickey Finn’s Brewing Company in Libertyville, Illinois, a business was able to overturn a Department of Labor’s Wage and Hour Division determination that his brewers were hourly employees and not exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).¹ This decision provided a precedent for other businesses to overturn similar enforcement actions. In this case, business owner Bill Sugars believed the wage and hour regulations did not reflect the operations structure of his type of establishment. This “one size doesn’t fit all” regulation enforcement approach is a common issue raised by small businesses. In this case, the owner of the brewpub, which is an establishment offering both restaurant food and beer produced onsite, paid its brewers an annual salary because they had several responsibilities and worked irregular hours as demanded because his product varied throughout the year. According to the owner, he attempted to explain this situation, but the inspector was uncooperative. The inspector threatened to impose monetary fines citing that the business had willfully not complied with the regulations.

Because the dialogue between the business and inspector deteriorated, the brewery hired a lawyer and spent over \$7,000 in legal fees. After learning about ONO from his Congressman, the owner testified at a Regulatory Fairness Hearing and submitted a comment form. When questioned about the impacts of this result, the owner said the issue was not about saving his company money, but allowing him to run his businesses the way he wanted to and having the government re-evaluate the way it interacts with businesses. After submitting a comment, the business’ interaction with DOL improved. He received a visit from a regional DOL supervisor, who spent time listening to him and interviewing his employees. This openness was a dramatic contrast to the alleged antagonistic and threatening interaction the owner experienced with the investigator. As a result, the business received notice from DOL stating that after further investigation, “the case is being resolved in favor of the small business owner.” After the issue was resolved, the owner turned his focus on maintaining his business operations and was featured as an example of successful business in the PBS series entitled, “Small Business School.”²

¹ For more information on this case see, SBA ONO Press Release, March 8, 2002, <http://www.sba.gov/in/pr02-01.html>

² PBS, Small Business School Series Website, <http://smallbusinessschool.org/>

Not only did the favorable result save the business the costs of paying for additional legal services and time, this reversal had potential savings for other businesses facing this issue and increased the visibility of ONO. Study staff contacted the Association of Brewers (AOB) to find out if the case had set a precedent and if the membership base of over 600 businesses experienced any benefits. The association representative was familiar with the case because it was a major issue presented at a recent association meeting where Ombudsman Barrera spoke about ONO. The representative sent out an email to the entire membership network to solicit information on the impacts of this case. In response, a representative from a brewery-restaurant chain informed study staff that this particular ONO case allowed his establishment to “reverse the determinations of a Washington State DOL audit, which re-classified our head brewers.” The representative believed that if he did not appeal the issue and DOL was allowed to issue penalties for back pay for each of his brewers at this establishment, then remaining brewers at the chain’s establishment across the country would also be ethically entitled to back pay. This back pay was estimated at \$10,000 per employee. Because the appeal was granted, the business estimated a total savings of approximately \$340,000. More importantly, the representative noted, the changing of his employee’s pay from salaried to hourly would affect the culture of the business by creating different expectations for their services and changing the way they were viewed by other employees in the company. Also having to pay back pay may have caused severe cash flow issues and potentially crippled the business.

Case Study: Increasing Responsiveness - The Government-Business Interface

Another example of the business impacts of ONO is illustrated in the case of a start-up tourism boating business in North Carolina named Smokey Mountain Boats. In this case, the entrepreneur invested over \$175,000 in infrastructure, boats, marketing and employee salaries, but could not begin offering speedboat excursions on a lake because of two reasons; 1) a 1950’s navigability determination that limits such activities and 2) a law that prevented his employees from obtaining captains’ licenses. Before investing, the entrepreneur hired a lawyer to contact all the local and federal agencies to determine the breadth of laws he needed to comply with. After they received the green light from every agency they contacted, a representative of the local transit authority, in passing, told the owner that he might be violating Coast Guard rules. The business made efforts to contact the Coast Guard to find out what impact this would have on their business and discovered that the navigability determination prevented the business from operating. At the same time, they found out that their boat captains were required to have licenses. Only US citizens could obtain such licenses and because the speedboats were a new and imported technology the only people qualified to operate the boats were foreign citizens. The business intended to hire these foreign citizens to train his staff, but would still need approval to conduct training exercises on the lake.

After writing his Congressman, the owner became aware of ONO and filed a comment form. It was forwarded to the Coast Guard and the Department of Transportation. As a result, the Coast Guard reevaluated and changed the navigability determination for the lake and the US Department of Transportation allowed his captains to obtain the necessary licenses pending certification of his captains’ skills by agency staff. Despite a delayed opening date, the business was able to begin operations. Study staff interviewed the owner to determine what impact this

had on his business. The owner stated that the ability for ONO to get answers to address his concerns allowed him to start his business and potentially saved his business approximately \$250,000 and the jobs of his eight current employees. This allowed him to keep his employees and hire four new ones. The owner also mentioned that his business contributes to the economic health of the community by generating tourism dollars. Clients stay in the local hotels and spend money in the shops and restaurants in the area.

Case Study: ONO Positive Community Impacts

Another difficult-to-measure impact resulting from ONO intervention is the benefit to the communities that rely upon the small businesses that ONO helps. In 2002, ONO assisted three small ethnic grocery stores in becoming reinstated in the U.S. Department of Agriculture (USDA) Food Stamp program. This saved the businesses from potential fines and continued revenue losses. The reversal also returned a source of specialized ethnic foods to a population of local immigrants.

The USDA conducted an investigation into three Somali-owned food retail outlets in Seattle, Washington that specialized in providing specialty foods such as meats and produce to Somali immigrants. USDA launched the investigation because the sales records of the stores showed that customers were spending the majority of their monthly food stamp stipend on one transaction and several large transactions would occur in close proximity with one another. USDA believed the storeowners were trafficking food stamps and issued a notice that the stores were being disqualified from the program. To stay in the program, each business would have to pay a penalty of up to \$40,000. The business owners hired a lawyer and discovered ONO services after contacting their Congressman.

The businesses testified at an ONO RegFair Hearing in Seattle, Washington that the USDA investigation did not consider the shopping patterns of the Somali immigrants who frequented their stores. Immigrant families routinely make one grocery trip a month and spend the majority of their stipend on large portions of meats such as lamb and goat. Food was purchased in large quantities to last the entire month. This explained the large transaction amounts. To explain the close proximity of the large transactions, the businesses argued many families carpoled to shop at these stores and the register person did not enter the transactions into the system until after the families left the store. This explained the high volume of transactions occurring in rapid succession. ONO met with USDA in Washington, D.C. and asked for a review of the explanation provided by these stores. After a high-level USDA review, the three stores were reinstated in the program.

Study staff made several attempts to contact the business owners to solicit data on the implication of this impact to their businesses and to the surrounding communities; however, they declined requests for interviews. Using information gathered from the ONO comment files, it was ascertained that the businesses would have had to pay a fine up to \$40,000 to be reinstated in the program. There was no indication they were going to pay such a fee. However without any other information, this figure was used in the benefits estimate of ONO's success provided in Chapter 2. It is difficult to assess the community impacts of this case because the opportunity

costs of families that relied upon the grocery store are unknown. A future survey of the customers may be useful in determining the affect of this case.

Case Study: ONO Identifies Systemic Errors

ONO comments may have widespread effects on businesses when federal agencies respond to their comments with overarching corrections in regulatory enforcement. These impacts of correcting systemic errors can be substantial and equally difficult to measure. This section provides an example of this benefit.

In 2003, ONO saved a small stove manufacturing business approximately \$12,000 in abated fines and brought a systemic error to the attention of the EPA. EPA issues certificates of compliance with environmental regulations to manufacturing companies. This certificate is accompanied by a form letter. EPA contended that the certificate of compliance for Kuma Stoves, a small business located in Hayden, Idaho, was expired and issued a fine. The business contended the certificate was valid because the cover letter contained the following statement, "The enclosed certificate is valid for five years from the effective date." As such, the business owner believed the certificate was valid for five years. EPA included the above language with the intent of informing the business of a policy that allows the certificate to be renewed every five years. The business mistakenly added five years to the expiration date stamped at the bottom of the certificate. As a result of the confusion expressed in the comment, EPA changed the language in the form letter to eliminate the five-year renewal reference and directly reference the expiration date of the certificate. Although, EPA states that this was the first case where a business had expressed confusion with the expiration dates, this system-wide change prevents other businesses from making the same mistake in the future. Additionally, EPA's willingness to change the letter reflects ONO's impact on the cultural changes within Federal agencies, as they are moving from a "gotcha" to "help you" attitude toward small businesses.

3.3. Summary and Conclusions

This chapter describes the difficulties faced in estimating the direct business impacts of ONO and provides a minimum estimate of the direct business impact of ONO. Only a limited number of small businesses were contacted in order to stay in compliance with OMB regulations. The study staff sought to develop the best possible estimates of savings without burdening businesses with extensive questions or requests to provide documentation and detailed financial statements. Even if a large-scale survey were conducted nationwide, it would be difficult for businesses to provide information regarding these impacts, because changes in business operations may not be solely attributable to ONO. However, a more formal and expansive survey of businesses that have submitted comments may uncover more impacts. Table 3-1 below represents a minimum impact estimate of ONO activities on business economic health, which amounts to approximately \$590 thousand.

Table 3-1 Minimum Business Impacts Estimate of ONO

Business Name/ Industry Sector	Jobs Saved	Jobs Created	Money Saved (Thousands)
Brewery-Restaurant	0	0	\$340
Tour Boat Services	8	7	\$250
Total	8	7	\$590

4. IMPACT ON AGENCY ENFORCEMENT

While the direct comments concerning excessive federal regulatory enforcement actions submitted by small businesses to ONO have a large economic impact, they represent only a small portion of the total impact of ONO. One of the most powerful impacts that ONO has on regulatory enforcement is through the various requirements that ONO-related statutes place on the agencies. These include the Federal Agency Rating Criteria and the recent paperwork relief legislation. These requirements and activities have caused a significant change in the regulatory enforcement cultures at the agencies and have in turn provided significant positive economic impacts on small businesses.

This chapter explores the impact that ONO activities are having on the regulatory enforcement environment at federal agencies. The chapter is organized into the following sections:

1. Overview of Agency Rating Core Activity
2. Overview of the Paperwork Relief Act
3. Study Methodology
4. Evaluation of Agency Rating Data
5. Agency Interviews
6. ONO Impact on the Regulatory Enforcement Environment
7. Summary and Conclusions

4.1. *Overview of the Federal Agency Rating Core Activity*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) directs the Ombudsman to:

- Report annually to Congress and affected agencies, evaluating agencies' enforcement activities and rating their responsiveness to small business.

ONO is required to rate federal agencies on how they respond to the comments of small businesses and entities. The rating process allows agencies to work toward achieving the regulatory enforcement fairness objectives or criteria on which they will be evaluated. In basic terms, ONO is looking at agencies for their openness in providing information on regulatory requirements and for their fairness in enforcing them. Timeliness and quality of response are important objectives. Other objectives are the development or strengthening of non-retaliation policies, attendance at hearings and roundtables and availability of regulatory enforcement compliance assistance, which are also evaluation criterion.

An important component of ONO's approach is to work directly with the leadership of Federal agencies to catalyze change and raise awareness of small business concerns throughout an organization. Federal agency leaders need to understand and appreciate the importance of regulatory enforcement fairness and communicate to all their employees throughout their agencies.

The FY 2003 rating criteria for federal agencies were:

1. Timeliness in responding to small entity comments.
2. Quality of response to small entity comments.
3. Agency non-retaliation policy.
4. Establishment of a baseline and measurable regulatory enforcement compliance assistance with increases expressed in percentages over baseline.
5. Participation in Regulatory Enforcement Fairness hearings and meetings when issues related to their mission are presented in testimony.
6. Provision of written and verbal notice to small entities when each citation or notice of regulatory violation is issued.

Table 4-1 provides the rating of agencies according to FY 2002 criteria. Clearly, the process of conducting these rankings and publishing them annually has significantly impacted agency enforcement practices.

Table 4-1 Rating of Agencies According to FY 2002 Criteria

Agency	Time- liness	Quality of Response	Non- Retali- ation Policy	Com- pliance Assist- ance	RegFair Hearing Attend- ance	Over- all
Agriculture ¹	B-	B	A-	A	A	B+
Commerce	B	A	C	B	n/a	B
Commodity Futures Trading Commission	n/a	n/a	B+	A	n/a	nr
Consumer Product Safety Commission	n/a	n/a	A	A	n/a	nr
Defense ²	C	C	D	C	n/a	C
Energy	n/a	n/a	n/a	n/a	n/a	n/a
Federal Energy Regulatory Commission	A	A	B-	B	n/a	B+
Environmental Protection Agency	C	B+	C	A	A	B+
Equal Employment Opportunity Commission	B+	B+	A	A	A	A-
Federal Communications Commission	A	A	C	B+	n/a	B+
Federal Deposit Insurance Corporation	n/a	n/a	A	A	n/a	nr
Federal Trade Commission	A	A	A	A	n/a	A-
Health & Human Services						
Ctrs for Medicare & Medicaid Services	C	B	D	B	B	C+
Food & Drug Administration	D	A	A	A	A	B+
Homeland Security/Immigration and Naturalization Service	n/a	n/a	C	A	C+	B-
Housing & Urban Development	D	B	D	D	n/a	C-
Interior	n/a	n/a	A-	A	A	A-
Justice/Civil Rights Division	n/a	n/a	D ³	B+	n/a	nr
Labor	C ⁴	B	C	A	A+	B
Occupational Safety & Health Admin.	C	B	B-	A	A	B+
National Credit Union Administration	n/a	n/a	A	A	n/a	nr
National Labor Relations Board	n/a	n/a	n/a	A	n/a	nr
Pension Benefit Guaranty Corporation	n/a	n/a	B	A	n/a	nr
Securities and Exchange Commission	B+	B	A	A	n/a	A-
Small Business Administration	A	A	B-	B	A	A-
State	n/a	n/a	B	B	n/a	nr
Transportation	B+	A	C	B+	n/a	B
Treasury						
Internal Revenue Service	C	A	A	A	A+	A-
Customs Service	B+	A	A	A	B+	A-
Veterans Affairs	n/a	n/a	B+	A	A	A-

n/a = not applicable; nr = not rated

¹Because Agriculture consists of 17 relevant bureaus, it is impractical to rate them separately. (In Labor, e.g., only two divisions are significantly involved in SBREFA.)

²The comments for Defense referred primarily to the U.S. Army Corps of Engineers, which engages in significant regulatory activity regarding the Nation's waterways and harbors.

³The Civil Rights Division notes that, as an enforcement and not a regulatory agency, it would be inappropriate to provide non-retaliation notices as that could be construed as "providing legal advice upon which small businesses might rely to their detriment," and could undermine important judicial enforcement actions. The division also notes that the agency's Office of the Inspector General and Office of Professional Responsibility already ensure that Justice personnel comply with all applicable legal and ethical requirements in conducting department business.

⁴Labor says it will work to improve its response time to comments submitted by small business.

Source: 2002 ONO Annual Report

4.2. Overview of the Paperwork Relief Act of 2002

The Small Business Paperwork Relief Act of 2002 (SBPRA) institutes a process to make paperwork reduction a serious, ongoing effort and introduces measures to make it easier for small businesses to comply with paperwork requirements. SBPRA:

- requires the Office of Management and Budget to publish an annual list of compliance assistance resources available to small businesses in the Federal Register and on the Internet,
- requires each federal agency to establish one point of contact to act as a liaison for small businesses and to make efforts to further reduce paperwork requirements for businesses with fewer than 25 employees,
- establishes an interagency taskforce to recommend improvements in information collection and dissemination; and
- requires agencies to report on their enforcement actions against small businesses and penalty reductions in such actions to Congress and the ONO, so Congress can monitor the regulatory burden reduction efforts of the agencies.

The last requirement is directly related to the ONO's core mission and reflects the influence of the ONO's activities on the agency regulatory burden on small businesses. SBPRA requires each agency to submit an initial report by December 31, 2003 with the following content:

1. Number of enforcement actions in which a civil penalty is assessed.
2. Number of enforcement actions in which a civil penalty is assessed against small entities.
3. Number of enforcement actions in which the civil penalty is reduced or waived and the total monetary amount of the reductions.

4.3. Study Methodology

In order to assess the impact of ONO agency rating activities, study staff conducted an in-depth review of ONO agency ratings. Data on the grades assigned to each agency were tabulated for fiscal years 2001, 2002, and 2003. The data for 2003 were unpublished, but reflected the comments made by the agencies in response to preliminary grades.

The purpose in analyzing the grades was to examine changes in agency behavior that can be attributed to ONO activities and influences. In analyzing the grades, it was clear that they were often influenced by the addition of new agencies and sub-agencies. Therefore, in order to provide a better examination of changes over time, data were also tabulated for the group of agencies and sub-agencies that were graded in all periods for a particular rating criterion. This is similar to the concept of analyzing "same store sales," that is used in the retail industry.

It should be noted that analyzing grades over time is just a partial component to examining the trends in agency regulatory climates. Expectations have risen significantly and agencies have needed to improve their programs over time just to maintain their grades. As such, additional data has been tabulated to quantify the changes in agency regulatory climates over time.

To supplement information gathered from the ONO agency ratings, study staff conducted interviews with agency contacts provided by ONO. Agencies that were contacted included:

- Department of Labor
- Department of the Treasury
- Department of Agriculture
- Department of Transportation
- Department of Justice
- Department of Commerce
- Environmental Protection Agency
- Consumer Product Safety Commission

In some cases more than one individual or sub-agency was contacted. Not all of the agencies returned calls or agreed to participate in interviews.

Study staff relied upon interviews with these officials to get a more complete picture of the impact of ONO's activities on the regulatory enforcement environment at the agencies. However, none of the officials who were contacted were willing to make any dollar estimates of the total impact of ONO, nor were they generally able or willing to identify specific success stories concerning individual businesses.

Additional information on ONO impacts came from estimates of burden reductions collected as part of the requirements of the SBPRA, which will be explained in more detailed below. This Act requires federal agencies to report how many penalties were issued and the value of any waivers or abatements. The advantage of this information is that it provides a quantitative measure of regulatory enforcement relief provided to small businesses. However, it is methodologically flawed in that it measures all instances where the civil penalty is reduced or waived regardless of whether these were the direct result of ONO activities. Conversely, the data only measures actions in which the civil penalty is reduced or waived and therefore omits instances where ONO activities resulted in situations where penalties, fines, excessive enforcement actions or retaliatory actions were avoided. Despite these limitations, this data source provides the only quantitative estimates of the dollar impacts. Given the relatively larger level of impacts omitted in comparison to potential over-counting, it can be judged that the data provide a conservative estimate of the impacts on excessive agency enforcement practices.

4.4. Evaluation of Agency Rating Data

As noted above, one method used to evaluate both the impact and performance of ONO is to examine the agency ratings. The purpose in analyzing the grades was to examine changes in agency behavior that can be attributed to ONO activities and influences.

For each of the rating criteria the grade given to all agencies was weighted equally. Note that this results in a large agency such as the Department of Defense being given the same weight as a small agency such as the Pension Benefit Guaranty Corporation.

Agency ratings were available for fiscal years 2000, 2002 and 2003. However, as the rating criteria varied from year-to-year, information for individual rating categories are presented only for the years for which data were collected for that criterion. It should also be noted that new agencies were added to the rating process over time. Data for FY 2001 was not included due to a lack of data and ONO hearings resulting from a reorganization of the office.

Table 4-2 provides the value for each grade given by ONO. These values are used each year by ONO in calculating the average grade for each agency and are employed in this report to calculate average grades across agencies for each criterion.

Table 4-2 Rating Chart for Calculating Average Grade

Rating	Value
A	11
A-	10
B+	9
B	8
B-	7
C+	6
C	5
C-	4
D+	3
D	2
D-	1
F	0

The following sections provide an analysis of the agency rating data for each of the rating criteria used by ONO. Additional data is used to supplement the rating data where available.

Timeliness of Response

This criterion judged the timeliness in responding to small entity comments. It is direct measurement of the GPRA goal of increasing federal agency responsiveness. Table 4-3 provides the rating scale used by ONO to judge how timely an agency was in responding.

Table 4-3 Rating Scale Use for Timeliness of Response

Days	Rating
0-20	A
21-30	A-
31-40	B+
41-55	B
56-60	B-
61-70	C+
71-85	C
86-90	C-
91-100	D+
101-115	D
116-120	D-
121-130	F+
Over 130	F

As shown in Figure 4-1 and Table 4-4, overall there was an upward trend of improvement in timeliness from 2000 to 2002. The number of agencies responding varies from year to year because new agencies may be created and others are absorbed into large agencies. To accurately analyze change, study staff created a control group and comparing data for only agencies rated in *all* three years. In the table below this group is called “Agencies Rated in 2000, 2002 & 2003.” For agencies rated in all three years, the grade increased from C+ to B-. The category “All Rated Agencies” represents the average grade issued to all agencies by ONO in that particular year. This includes any new agencies that may have been created in that year or agencies that ONO began rating. The decline in grades from 2002 to 2003 is explained by the addition of new agencies that received low grades. These low marks subsequently brought the overall average down. Note that data for FY 2001 was not included because in 2001 ONO was undergoing reorganization due to the administration change and relocation to Washington D.C.

Figure 4-1 Timeliness of Response Average for FY 2000, 2002 and 2003

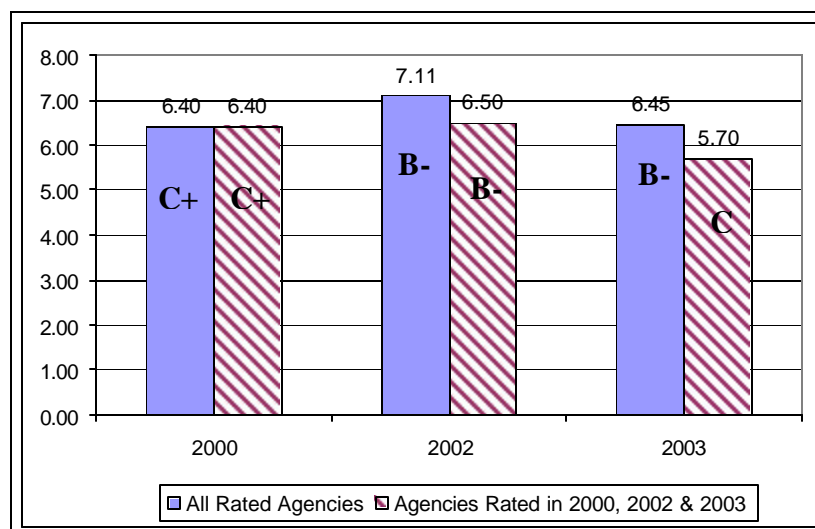


Table 4-4 Timeliness Average Grades for FY 2000, 2002 & 2003

	2000	2002	2003
All Rated Agencies	6.40	7.11	6.45
Average Grade	C+	B-	B-
New Agencies for 2002 & 2003 respectively		7.87	6.71
Average Grade		B	B-
Agencies Rated in 2000, 2002 & 2003 (Control Group)	6.40	6.50	5.70
Average Grade	C+	B-	C+

Source: ONO Annual Reports

According to the data available to ONO, the agencies have not made significant progress in improving the timeliness in responding to comments from small businesses concerning excessive regulatory enforcement actions and therefore if judged solely on the numbers ONO has not achieved this goal. At the interagency meeting on November 19, 2003, several agency representatives commented on the difficulties they have in shortening these response times. Foremost among these is the inability to comment during the period where the comments are subject to legal processes. ONO suggested that, if the agency were to respond to ONO informing them that the comment has been processed but is awaiting legal action, ONO could count such a reply as timely. The most important aspect is to keep the small business informed.

Quality of Response

This criterion judges the quality of federal agency responses to small entity comments. It is an indirect measurement of the GPRA goal of increasing federal agency responsiveness and is also an indicator of the GPRA goal of increasing customer satisfaction. The quality of response grades were assessed using the following four components:

1. The agency addressed the questions posed in ONO's letter to them forwarding the comment.
2. The agency response came from a high-level representative, i.e., someone from the SBREFA office at the agency or someone from the program office directly related to the comment.
3. The agency provided detailed information showing that they looked into the facts of the specific comment and the actions of the individual agency personnel involved in the enforcement activity.
4. The agency responded to the specific comment made by the small entity.

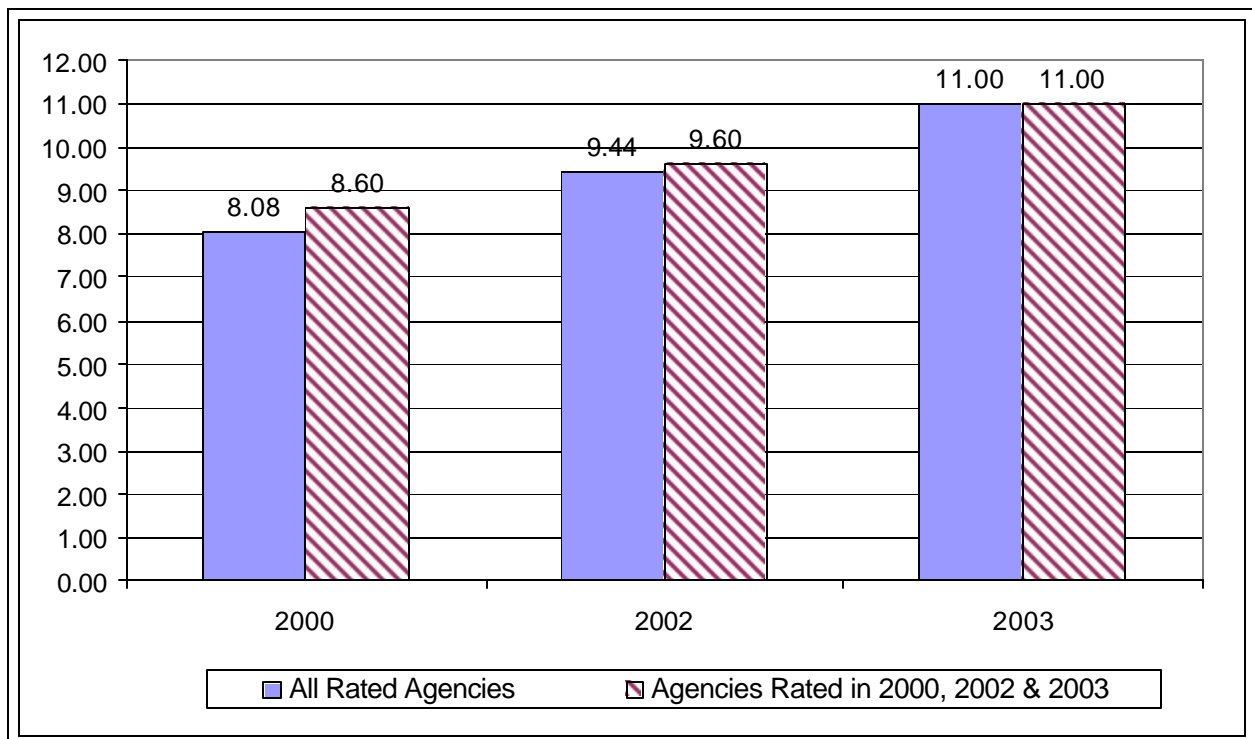
Each agency was rated on by the number of criteria it met. This grading scale is presented in Table 4-5 below.

Table 4-5 Rating Scale for Quality of Response

Agency Meets	Rating
4 of 4 Criteria	A
3 of 4 Criteria	B
2 of 4 Criteria	C
1 of 4 Criteria	D
0 of 4 Criteria	F

As shown in Figure 4-2 and Table 4-6 below, overall there was a consistent upward trend of improvement in quality of response from 2000 to 2003. The graph shows that grades have improved steadily from year-to-year and agencies are now averaging an A. This is a strong indicator that ONO is achieving the GPRA performance goal of encouraging agency responsiveness. It is also a further indication that the lack of the desired level of progress in the timeliness criterion is due to procedural and legal issue-related delays rather than any performance issues on the part of ONO. Again, note that “Agencies Rated in 2000, 2002 & 2003” is the control group and represents the average grade for agencies that were graded in each of the three years. The “All Agencies Rated” category represents the overall average grade including any new agencies rated by ONO. Note that data for FY 2001 was not included because ONO was undergoing reorganization due to the administration change and limited resources.

Figure 4-2 Quality of Response Average for FY 2000, 2002 and 2003



As shown in Table 4-6, the additional new agencies for 2003 did not affect the level of improvement because in 2003 all agencies received a grade of A. The average grade for agencies that were reported in all three years was higher than the average grade of the total number of agencies in each year.

Table 4-6 Quality of Response Average Grades for 2000, 2002 & 2003

	2000	2002	2003
All Agencies Rated	8.08	9.44	11.00
Average Grade	B	B+	A
New Agencies for 2003			11.00
			A
Agencies Rated in 2000, 2002, 2003 (Control Group)	8.60	9.60	11.00
	B+	A-	A

Source: ONO Annual Reports

Agency Provides Written Notice

This criterion judged the performance of the agencies in notifying small entities of their rights to comment on excessive federal enforcement actions. It is related to the GPRA goals of increasing federal agency responsiveness and decreasing excessive regulatory actions. Based on the following four criteria, ONO graded the agency on its performance in providing written and verbal notice to small entities when each citation or notice of regulatory violation is issued:

1. The agency provides written notification of SBREFA rights.
2. The agency informs small business concerns about their right to comment about the enforcement/compliance process to the National Ombudsman's office.
3. The agency verbally informs small entities of their right to comment about the enforcement/compliance process to the National Ombudsman's office.
4. The agency provides in writing the National Ombudsman's Internet address, <http://www.sba.gov/ombudsman>, to small entities

For the years 2000 and 2001, there was no rating criterion titled "providing written notice to small business." However, there was a criterion called "Increased Voluntary Compliance Reviews." Under this criterion, ONO rated agencies on their performance in giving small business notice of violations before issuing any penalties. Study staff used the grades from this 2000 and 2001 criterion and compared them the criterion used in 2003 because both involve giving small businesses notice of violations. Data for 2002 was unavailable. Ratings were developed using the scale described below in Table 4-7.

Table 4-7 Rating Scale for Providing Written Notice

Agency Meets	Rating
4 of 4 Criteria	A
3 of 4 Criteria	B
2 of 4 Criteria	C
1 of 4 Criteria	D
0 of 4 Criteria	F

As shown in Figure 2-13 and Table 4-8 below, from 2000 to 2001 the control group (agencies receiving rating in all three years) show a small improvement in average ratings for the control group for providing written notice which kept the average grade at B+. However, from 2001 to 2003 there was a drop in average ratings and the average grade dropped to a B-. For the most part, this decline was the result of the addition of new agencies. New agencies reporting in 2003 had an average of only C+, which brought the averages for all agencies down. Without the addition of new agencies, the average would have remained a B+. Nevertheless, even though the new agencies have brought the average down, there was still a small decrease in performance from 2001 to 2003 for existing agencies. Note that grades were not issued for this criterion for FY 2002.

Figure 4-3 Providing Written Notice Average for 2000 – 2003

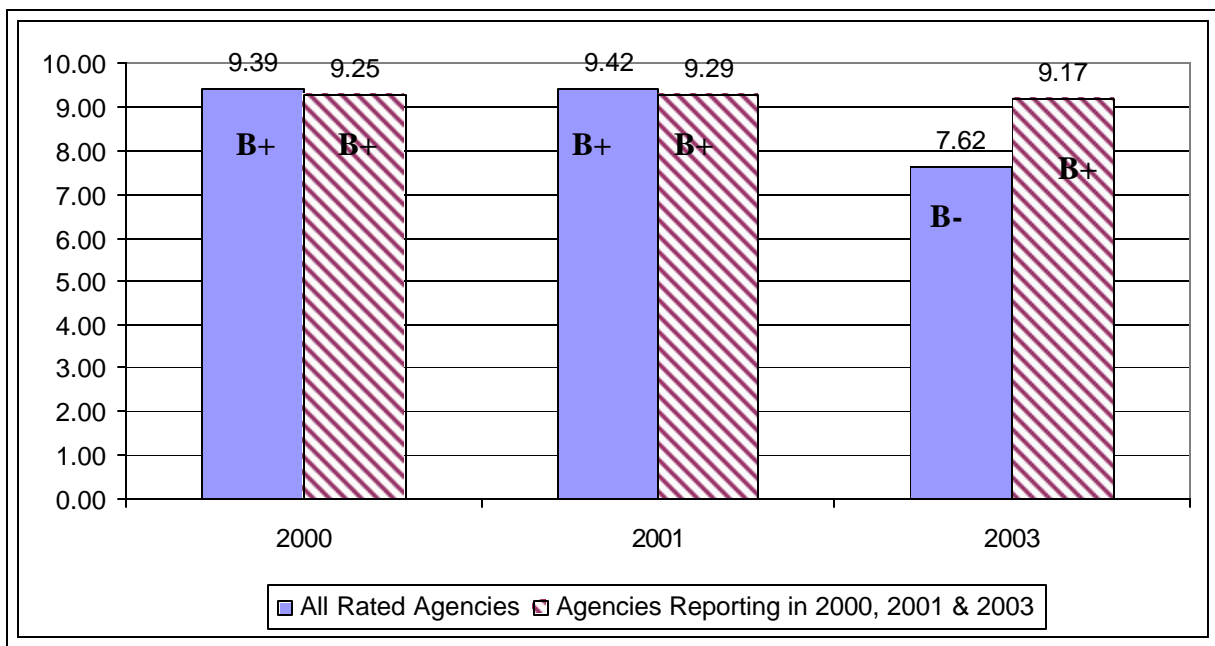


Table 4-8 Providing Written Notice Average Grades for 2000, 2001 & 2003

	2000	2001	2003
All Rated Agencies Average Value	9.39	9.42	7.30
Average Grade	B+	B+	B-
New Agencies for 2003			6.17
			C+
Agencies Reporting in 2000, 2001 & 2003 (Control Group)			
	9.25	9.29	9.17
	B+	B+	B+

According to the available data, ONO has succeeded in encouraging the agencies to inform small businesses of their right to comment on excessive regulatory enforcement. Agencies that have participated in the program over the years routinely comply with over three of the four activities

suggested by ONO. Agencies that are new to these procedures show a lower compliance rate, but it can be expected that their grades will improve over time.

Agency Participation in Hearings

This criterion graded the agency on its participation in Regulatory Enforcement Fairness hearings and meetings when issues related to their mission are presented in testimony. It is related to the GPRA goal of increasing federal agency responsiveness. Table 4-9 provides the rating system used. Only data for 2002 and 2003 were used because there was no participation criterion in 2000 and 2001.

Table 4-9 Rating Scale for Agency Participation in Hearings

Agency Attends	Rating
90% of the time	A
80% of the time	B
70% of the time	C
60% of the time	D
Fails to participate	F

As shown in Figure 4-4 and Table 4-10, there was a decrease in participation at regulatory Enforcement Fairness hearings from 2002 to 2003. However, the decrease in participation was less for agencies that were reported in both 2002 and 2003. The new agencies rated 2003 had an average grade of C- which brought the overall average down. Note that data for FY 2001 was not included because ONO was undergoing reorganization and few RegFair hearings were conducted in that year.

Figure 4-4 Agency Participation in Hearings Average for 2002 and 2003

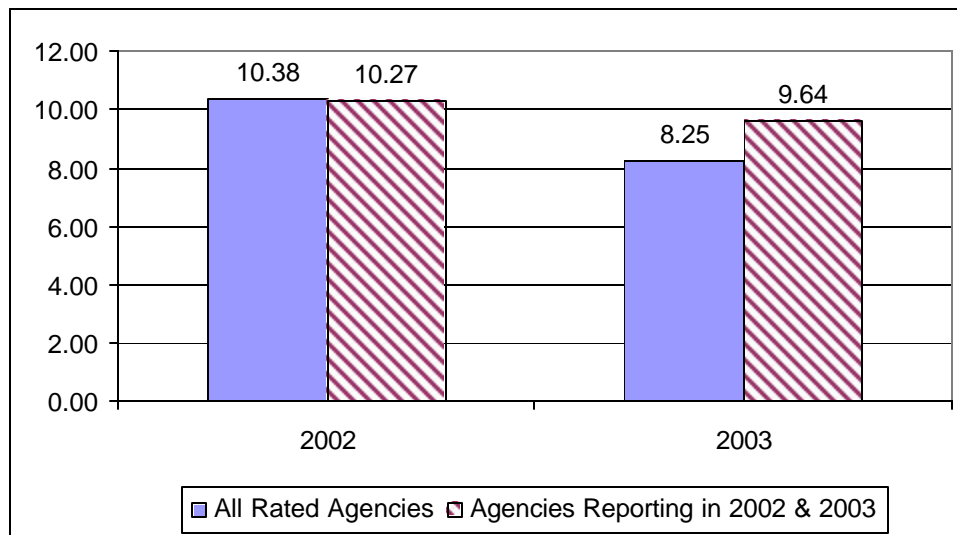


Table 4-10 Agency Participation in Hearings Average Grades for 2002 & 2003

	2002	2003
All Rated Agencies Average Value	10.38	7.76
Average Grade	A-	B
New Agencies for 2003		4.33
		C-
Agencies Reporting in 2002 & 2003 (Control Group)	10.27	9.64
	A-	B+

Source: ONO Annual Reports

Baseline and Measurable Compliance Assistance

This recommendation graded an agency on its establishment of a baseline and provision of measurable regulatory enforcement compliance assistance with increases expressed in the percent over the baseline. It is related to the GPRA goal of increasing compliance assistance. The rating involved the following four criteria:

1. The agency provides small entities with a compliance assistance telephone number.
2. The agency provides a compliance assistance website.
3. The agency makes a compliance assistance employee available to small entities.
4. The agency provides compliance assistance education.

The agency was rated on this recommendation by the number of criteria it met as shown in Table 4-11.

Table 4-11 Rating Scale for Baseline and Measurable Compliance Assistance

Agency Meets	Rating
4 of 4 Criteria	A
3 of 4 Criteria	B
2 of 4 Criteria	C
1 of 4 Criteria	D
0 of 4 Criteria	F

Figure 4-5 and Table 4-12 provide the results for this criterion. There was an overall decrease in performance from 2002 to 2003 of A- to B in the control group. Without the newer agencies in 2003, which brought the overall average down, there was a smaller decrease.

Figure 4-5 Baseline and Measurable Compliance Assistance Average for 2002 and 2003

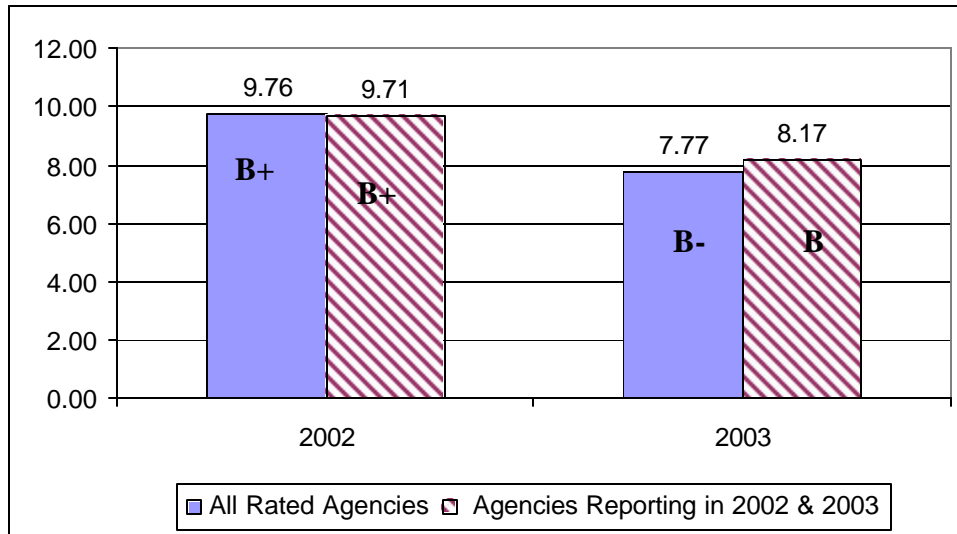


Table 4-12 Compliance Assistance Average Grades for 2002 & 2003

	2002	2003
All Rated Agencies Total Average Value	9.76	7.77
	B+	B
New Agencies for 2003		6.80
		C+
Agencies Reporting in 2002 & 2003 (Control Group)	9.71	8.17
	B+	B

A major theme that was uncovered in the agency interviews, discussed in the following section, was the overall belief that the existence of ONO and its rating programs had caused the agencies to dramatically increase the level of compliance assistance to small businesses. Despite the decrease in ratings from a B+ in 2002 to a B in 2003, the number of agencies and sub-agencies graded increased by 60 percent from only 30 in FY 2002 to 48 in 2003. The newer agencies and sub-agencies had consistently lower grades than the agencies that had been previously rated, illustrating the positive impact of their ONO rating system. Several agency representatives noted that the ONO ratings allow them to focus in on the weak aspects of their programs and to improve them.

Non-Retaliation Policy Adopted

This criterion involves rating if the agency adopted a non-retaliation policy and the overall quality of the policy. The components involved in this rating are as follows:

1. The agency has adopted a written non-retaliation policy.
2. The agency ensures its employees are aware of its non-retaliation policy.
3. The agency ensures small entities are aware of its non-retaliation policy.

4. Agency employees and small entities are aware of the consequences of not adhering to the agency non-retaliation policy.

The agency was rated on this recommendation by the number of criteria it met as shown in Table 4-13.

Table 4-13 Rating Scale for Non-Retaliation Policy

Agency Meets	Rating
4 of 4 Criteria	A
3 of 4 Criteria	B
2 of 4 Criteria	C
1 of 4 Criteria	D
0 of 4 Criteria	F

The results are shown in Figure 4-6 and Table 4-14. The number of agencies rated varies from year to year as new agencies participate. From FY 2002 to 2003, the average grade for this recommendation dropped from B- to C+ for all federal agencies, including new ones. However, a more accurate comparison can be made when examining the control group or those agencies that rated in *both* years. In the control group, titled “All Agencies Reporting in 2002 & 2003”, the average grade remained the same at B-. The overall average drop to a C+ in 2003 can be explained by the low scores received by new agencies. The average grade received by new agencies rated was a C-. When this low score was added to all agencies, the overall average rating dropped.

Figure 4-6 Non-Retaliation Policy Ratings for 2002 and 2003

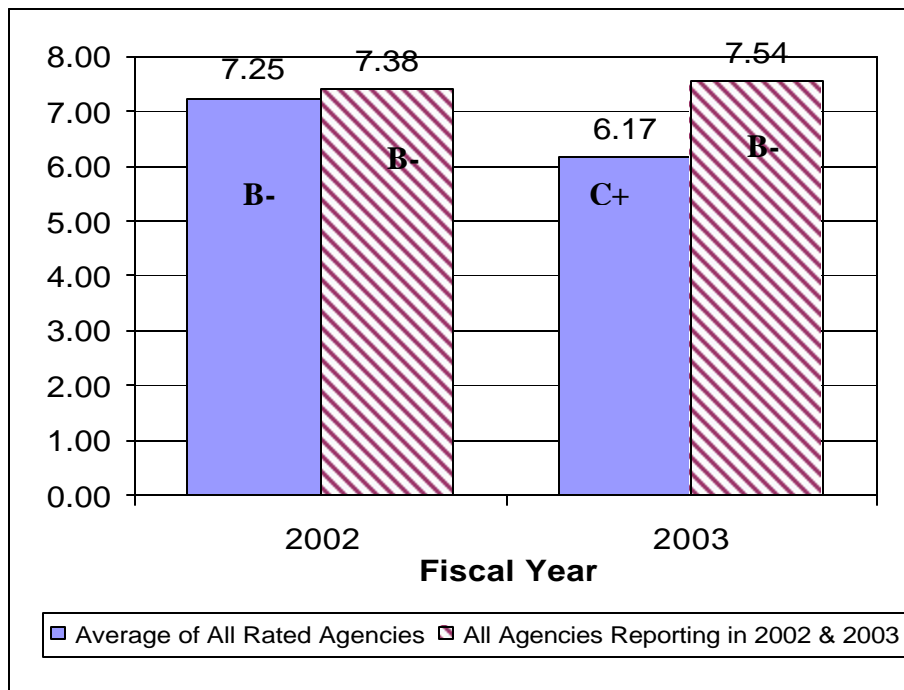


Table 4-14 Non-Retaliation Policy Average Grades for 2002 & 2003

	2002	2003
Average Grade For All Agencies	B-	C+
New Agencies 2003		4.20
		C-
Agencies Reporting in 2002 & 2003 (Control Group)	7.38	7.54
	B-	B-

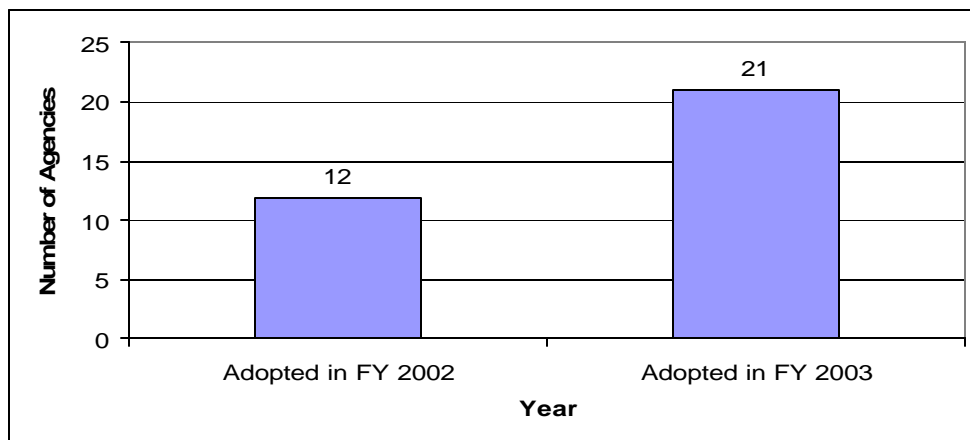
Perhaps more significant in examining the positive impact of ONO, are the data presented in Table 4-15 and graphed in Figure 4-7 on the total number of agencies adopting non-retaliation policies. In FY 2002, twelve new agencies adopted policies, while in FY 2003, nine additional agencies adopted policies. The inclusion of 21 new agency non-retaliation policies is a sign that ONO is impacting the way federal agencies interact with small businesses.

Table 4-15 Agencies with Written Non-Retaliation Policies

Adopted in FY 2002	Adopted in FY 2003
Consumer Product Safety Commission	Commodities Futures Trading Commission
Federal Communications Commission	Customs
Federal Deposit Insurance Corporation	Federal Trade Commission
Food & Drug Administration	NASA
Internal Revenue Service	OSHA
Interior Department	SBA
Labor Department	State Department
National Credit Union	USDA/APHIS
Pension Benefit Guaranty	Veterans Affairs Department
Securities & Exchange Commission	
Transportation Department	
USDA	

Source: ONO Execution Scorecard for FY 2003

Figure 4-7 Number of Agencies that Adopted a Non-Retaliation Policy



4.5. Federal Agency Interviews

ONO's annual ratings of federal agencies provided solid evidence that ONO's programs have impacted the way regulations are enforced and the regulatory environment in federal agencies. To supplement information gathered from the ONO agency ratings, study staff conducted interviews with agency contacts provided by ONO. Agencies that were contacted included:

- Department of the Treasury
- Department of Agriculture
- Consumer Product Safety Commission
- Department of Labor
- Department of Commerce
- Department of Transportation
- Environmental Protection Agency

These agencies were chosen because of their focus on regulatory enforcement. In some cases more than one individual or sub-agency was contacted. Not all of the agencies returned calls or agreed to participate in interviews.

Study staff relied upon interviews with these officials to get a more complete picture of how ONO's activities have impacted the regulatory enforcement environment at the agencies. However, none of the officials that were contacted were willing to hazard any dollar estimates of the total impact of ONO, nor were they generally able or willing to identify specific success stories concerning individual businesses. The following paragraphs summarize each of the interviews.

Interviews revealed that some of the recommendations of ONO were already in place at many agencies. However, ONO benefited agencies by identifying areas of improvement, training employees in assisting small businesses, increasing compliance assistance, adopting non-retaliation policies, and informing small businesses of their rights.

Department of Treasury - IRS

The ONO comment-processing and chairing of public meetings allows small business an avenue to express the enforcement issues impacting their businesses. By voicing these concerns federal agency staff can identify systemic errors in their enforcement practices and correct them. Study staff interviewed a representative from the Internal Revenue Service (IRS), who is involved in the identification and the correction of systemic errors. Systemic errors may involve computer glitches that automatically issue citations to individuals. The representative stated that ONO public hearings provide agencies with the opportunity to uncover widespread unfair and excessive enforcement actions affecting small businesses in order to prevent the same problem from happening to others. This preemptive approach is a 180-degree change from the "gotcha" approach.

The representative believed that, although the agency has a similar program called the IRS Taxpayer Advocate, ONO gives small businesses an opportunity to raise their concerns to an

independent entity. Some businesses may be unaware of or feel that the agency advocacy services might not be able to help. The IRS believes that any efforts to identify problems and prevent unfair enforcements from occurring in the first place save the agency and the taxpayers' time and money.

An example of ONO identifying a systemic error is the case of a small environmental research firm in Pennsylvania that received an incorrect late filing notice and penalty from the IRS. The business owner filed a comment, which ONO brought to the attention of the IRS. The agency found there was a computer error, corrected it and business was refunded \$1,337. This potentially saved thousands of other businesses and the agency from having to invest the time and money to review each case.

Department of Agriculture - Food Safety and Inspection Service

The USDA Division of Food Safety and Inspection Service (FSIS) enforce USDA safety regulations that affect approximately 300 small business that produce meat and poultry products for interstate shipment. FSIS safety officers conduct inspections of facilities to ensure safety guidelines are followed and issue citations when businesses are not in compliance. A representative of the USDA Food Safety and Inspection Service (FSIS) division was interviewed to gather information concerning the impact of ONO on the agency's regulatory enforcement policies and procedures. The following sections present a summary of the perceived impact of ONO on the agency's enforcement practices and consideration of small business concerns.

ONO Ratings Help Initiate Agency Improvement and Encourage Involvement

In the annual report to Congress, ONO includes performance ratings of federal agency responsiveness to small business comments and concerns. This rating system helps agencies identify areas of improvement with respect to addressing the concerns of small businesses. An FSIS representative interviewed by study staff believed that ONO ratings helped the agency "identify where we [USDA] were not doing as much as we could." For example, the representative noted that the agency discovered that participation in RegFair hearings and events was unsatisfactory and made efforts to ensure staff were aware of meetings and field staff were assigned to attend them. According to the representative, ONO has also helped increase their participation in RegFair hearings by publishing a calendar of meeting dates, sending email reminders a month before the event, and personally calling agency staff when a small business planned to comment specifically on the actions of the division.

ONO Stresses Education Not Excessive Enforcement

The representative also believed that the ONO and SBREFA have changed the enforcement environment, causing them to change their overall approach. The division now trains field agents on SBREFA. Field officers are now required to give small businesses brochures and informational packets about compliance assistance programs available and their right to contact the ONO. Investigators are also given training on how to present new requirements and answer small business questions at ONO public hearings.

Consumer Product Safety Commission

The Consumer Product Safety Commission's (CPSC) mission is to reduce injuries from consumer products, not fine businesses. The CPSC follows many of ONO's recommendations, such as updating their web site with information on ONO and adopting a non-retaliation policy.

The representative believed that CPSC was effective in complying with ONO's recommendations and in receiving a low number of complaints. He also noticed a change in the agency's focus on large corporations rather than small businesses. The CPSC representative believed ONO was an effective advocate for small businesses. ONO provided guidance to the CPSC staff on avoiding any appearance of intimidation.

Department of Labor

The Department of Labor (DOL) representative in general found the ONO's impact on the agency to be favorable. His only negative comment was on the difficulty of measuring each agency. He also believed that, although ONO may not affect the way regulations are written, it has a role in reducing the burden of regulations on small businesses. The representative also applauded the effectiveness of the policy of non-retaliation. Due to ONO, there has been an increase in assistance for small businesses because the DOL has a specific person in each sub-agency who works with small businesses, a change from four years ago.

He stated that instead of fining a business, ONO created a process each agency has to go through to ensure that small businesses are treated fairly and informed about ONO. Concerned that small businesses would complain to the ONO, investigators became more careful to avoid having to answer to their supervisors.

Department of Commerce

The Department of Commerce representative commended ONO's positive impact on his agency. ONO's mediation allowed the department to talk with the constituents in a non-adversarial environment. Also, the ONO's policy on codifying regulations that were previously informal, such as the non-retaliation policy, has benefited small businesses. A specific example of the benefits from ONO policies is that fishery businesses were able to rectify their differences with the agency. He was very happy with ONO and thinks that it is doing a good job.

National Oceanic /Atmospheric Administration

The National Oceanic/Atmospheric Administration (NOAA) interacts with fishery businesses, and almost all of the businesses are small businesses. The ONO's policies have not affected the National Oceanic/Atmospheric Administration (NOAA) because most of the policies and programs that assist small business facing federal regulatory actions were in place prior to the establishment of the ONO. However in response to ONO policies, NOAA began training all prosecutors and agents on the SBREFA. NOAA also changed their website in response to requests by the ONO. The ONO was satisfied with their compliance and their performance and encouraged them to provide information on their programs and policies to other agencies.

The agency's three programs, established prior to ONO's existence, that are shared with other agencies are the Fix-It Ticket, Summary Settlements and Written Warnings Programs. The Fix-It Ticket Program helps small business fisherman by giving businesses 60-90 days to fix a technical problem instead of levying fines. The Summary Settlement Program allows small businesses to discuss with NOAA their fines and pay a settlement instead of going to court. The Written Warnings Program warns small businesses of violations in writing.

NOAA is different from many other agencies as they may be involved in simultaneous civil and criminal investigations, as such; there are many instances where ONO cannot get involved. For example, when requested to consider providing "Miranda-type cards" NOAA could not comply because their investigations were criminal in nature. They also did not need to use mediation services because in 95 percent of the cases they use their Summary Settlements Program to settle for less than the original amount levied. Judges, responsible for deciding cases against small businesses, are also involved in the process.

Department of Transportation - Federal Motor Carrier Safety Administration

The ONO has sent comments to the FMCSA. The representative interviewed stated that the work of responding to ONO was not time consuming because there were only 2 or 3 comments in the last year. However, the representative stated that reporting requirements of the Paperwork Reduction Act work was time consuming because the agency needed to determine the number of employees and sizes of each of the carriers to determine whether they were small businesses. The representative could not say whether ONO activities changed how their staff enforced regulations or had any positive impact on the small businesses.

Environmental Protection Agency

The EPA representative believed that ONO does a poor job of coordinating agencies and understanding the agencies and their differences. The representative also thought that ONO needs a clearer understanding of the difference between enforcement and compliance. ONO's standards for measurements should not be solely developed by that agency because of this lack of understanding. She also pointed out that they offer only inconsistent and inadequate guidance. ONO could play a role in convening other agencies and getting these agencies to talk about their methods and programs for improving relations with small businesses. She found that their meetings had a hostile environment; where ONO only advocated for small businesses and did not help agencies do a better job in working with small businesses. She did not have any specific stories, and she noted that regional offices would probably be able to offer more information on how the ONO has affected regulation enforcement and interaction with small businesses. She also was not involved in regulatory policy-making.

4.6. ONO Regulatory Environment Impacts

The previous sections of this chapter highlighted the effects of ONO activities on the regulatory enforcement environment. Interviews with federal agency representatives revealed that many agencies are shifting their approach from strictly investigating and issuing penalties to providing

compliance assistance to small businesses, training investigators and auditors on SBREFA-related issues, and evaluating their respective enforcement programs. This progress was attributed, in part, to ONO activities. Agency representatives stated that ONO's small business comment and agency rating activities make them more conscious of small businesses and the impact enforcement actions have.

While agency representatives interviewed by study staff agreed that ONO core activities have made direct impacts on their regulatory enforcement approach, they were unable to quantify the economic impact or offer any alternative approaches. To develop an assessment of the potential size of ONO's impact, staff compiled data from regulatory enforcement reports produced by federal agencies. These recently developed reports provide quantitative data on the number and value of small business penalties issued and reduced or waived. The following sections provide background information into the legislative origins of these reports and use the data to develop an estimate of ONO's impact on the regulatory enforcement environment.

Small Business Paperwork Relief Act

The SBA Office of Advocacy reports that small businesses spend more time and money complying with federal regulatory requirements than large firms. In an effort to reduce this, Congress enacted the Small Business Paperwork Relief Act (SBPRA) in June 2002. Previous laws enacted to assist small businesses include the Federal Reports Act of 1942, Paperwork Reduction Act of 1980 and 1995, Small Business Regulatory Enforcement Fairness Act of 1996, and the Government Paperwork Elimination Act of 1998. SBPRA also focuses on disseminating information on compliance assistance programs and requiring federal agencies to examine their impact on small business.

SBPRA further requires federal agencies to report annually on the impact of their regulatory enforcement activities in FY 2003 and 2004. SBPRA includes a statutory mandate for each federal agency to develop Regulatory Enforcement Reports, which details the number and monetary value of enforcement actions taken against small businesses. These reports were to be completed and submitted by each federal agency at the beginning of the 2004 calendar year to ONO and Congress. These reports include quantitative data on the extent the federal agency waived or reduced civil penalties. This data, referred to as, "burden reduction data," is used in this impact study as an estimate of ONO's impact on federal regulatory enforcement actions.

Reporting Requirements for Federal Agencies

SBPRA seeks to reduce the burden on small businesses by requiring agencies to reduce paperwork requirements and to make compliance information more readily available. Specifically SBPRA requires the agencies to:

- Publish a list of the compliance assistance resources available to small business;
- Establish a single point of contact within agencies to interact with small business; and
- Establish an interagency Task Force to study and recommend means of reducing the burden on small businesses in FY 2003 and 2004.

- Report on their regulatory enforcement actions against individuals and small businesses.

Initial regulatory enforcement reports for FY 2003 are currently being developed by federal agencies. These reports provide aggregated data on the following items:

1. The number of enforcement actions in which a civil penalty was assessed against all businesses,
2. The number of enforcement actions a civil penalty was assessed against small businesses,
3. The number of enforcement actions in which the civil penalty is reduced or waived in both categories, and
4. The total monetary amount of the reductions or waivers in both categories.

Burden Reduction Data

Study staff obtained Initial Regulatory Enforcement Reports submitted to ONO and compiled burden reduction data into the table below. Each department provided data on all sub-agencies within the department. This data is presented in Table 4-16. In FY 2003, the 15 agencies that reported issued approximately 15.3 million civil penalties to small businesses. Of those 15.3 million penalties, 1.8 million were either waived or reduced. This amounted to a savings of approximately \$1.9 billion.

Table 4-16: Regulatory Enforcement Burden Reduction Data

Cabinet Department	Civil Penalties Assessed to Small Entities	Civil Penalties Reduced or Waived for Small Entity	Monetary Value of Reduction or Waivers for Small Entities
Agriculture	506	Not Specified	\$538,001
Commerce			
Bureau of Industry & Science	13	0	\$0
National Oceanic & Atmospheric Administration	295	255	\$1,493,097
Department of Labor			
Employee Benefits Security Administration	5,283	5,223	\$3,383,539
Division of Coal Mine Worker's Compensation	0	0	\$0
Wage and Hour Division	1,018	268	\$649,756
Mine Safety & Health Administration	47,150	0	\$0
Federal Deposit Insurance Corporation	13	1	\$1,400
Federal Communications Commission	12	0	\$0
Department of Energy	0	0	\$0
Homeland Security			
Customs & Border Protection	2	2	\$16,719
Transportation Security Administration	0	0	\$0
Coast Guard	6	6	\$22,325
Housing & Urban Development	4	1	\$7,000
Treasury/IRS	15,203,663	1,780,792	\$1,879,415,650
Federal Reserve System	3	0	\$0
Federal Maritime Commission	43	16	\$3,040,000
US Agency for International Aid	0	0	\$0
Department of State	0	0	\$0
Nuclear Regulatory Commission	5	3	\$9,000
Department of Transportation (DOT)			
Federal Aviation Administration	496	384	\$2,362,400
Federal Motor Carrier Safety	2,410	703	\$2,893,401
Federal Railroad Administration	414	327	\$1,340,280
National Highway Traffic Safety	1	1	\$325,000
Office of Aviation Enforcement	13	13	\$40,000
Research & Special Programs	667	178	\$637,609
TOTAL	15,258,016	1,786,567	\$1,888,576,487

Note that data presented in the table only includes enforcement actions completed in FY 2003. Several agencies reported that several other civil penalties issued in FY 2003 are still in the assessment phases. These enforcement actions will be included in the FY 2004 reports.

4.7. *Measuring ONO's Federal Regulatory Environment Impact*

Burden reduction data was compiled in order to provide an estimate of the economic impact of ONO on the federal regulatory enforcement environment. ONO's core activities are geared toward fostering a more small business friendly federal regulatory enforcement environment. When ONO brings unfair and excessive enforcement issues to the attention of federal agencies and rates their performance and responsiveness in its annual report to Congress, federal agencies become more focused on providing compliance assistance and make a stronger effort to avoid unfair and excessive enforcement actions in the future. The agencies also benefit by saving money and time on conducting investigations and legal actions. As such, it is a win-win for small businesses and the American taxpayer.

Agency representatives interviewed agreed that ONO activities have helped place more focus on small businesses and the impacts of regulatory enforcement, but were not able to quantify the impact. While there is no exact methodology to calculate the economic impact of ONO on agency operations and the regulatory environment, study staff used burden reduction data compiled from federal agency regulatory enforcement reports to produce an order of magnitude estimate. Burden reduction data is the only source of quantitative information that illustrates the savings to small business.

The impact estimate developed in this section should be considered a conservative estimate because burden reduction data reported by federal agencies does not necessarily capture all the savings to small business. The data only includes statistics on the number of penalties issued and the dollar amount of any reductions or waivers. It does not include any savings experienced by small business as a result of changes in regulatory enforcement policy, such as issuing more warnings before fines or not enforcing certain policies as strictly. The impact of ONO is the improved emphasis on communication and education instead of penalties. This may not be entirely captured by burden reduction data.

While the burden reduction data does not encompass all the possible impacts of ONO, it may also be argued that the some of the waived penalties may have occurred in the absence of ONO. Therefore to ensure that the impact is not overestimated, ONO core activities are assumed to have an impact between 10 and 50 percent in the number of reduced penalties and savings to small business.

The conservative impact estimate was also calibrated to take into account existing efforts made by Federal agencies to reduce the burden on small businesses. In particular, staff examined an IRS assistance program called the Taxpayer Advocate. This program helps taxpayers resolve issues that could not be addressed through normal channels. The goals of the Taxpayer Advocate are to protect individual and business rights and to reduce taxpayer burden. Each state has a least one local Taxpayer Advocate, who operates independently of the local offices and

reports directly to the National Taxpayer Advocate. The IRS Taxpayer Advocate service submits an annual report to Congress that outlines the 20 most serious problems facing taxpayers and provides recommendations to resolve these issues. As a result of this extensive program, study staff only attributed 1 and 5 percent of the IRS burden reduction data in the lower and upper bounds of ONO's estimate to ONO. However, it should be noted that ONO through its hearings, roundtables, and Regulatory Fairness Boards has generally assisted informing the public about the National Taxpayer Advocate.

Table 4-17 outlines the resulting economic impact of ONO activities on the federal regulatory environment. It is estimated the ONO activities such as rating federal agencies and acting as a liaison between small businesses and the federal government yielded an estimated savings for small business in the amount of \$19.7 million in the low estimate and \$98.6 million in the high.

Table 4-17: ONO Estimated Regulatory Environment Impact

Agency	Number of Reduced/Waived Penalties		Value of Reduced/Waived Penalties (Millions of Dollars)	
	Low	High	Low	High
14 Federal Agencies	578	2,888	\$0.9	\$4.6
Internal Revenue Service	17,808	89,040	\$18.8	\$94.0
TOTAL	18,385	91,927	\$19.7	\$98.6

Source: SBPRA Burden Reduction Data

4.8. Summary and Conclusions

The goal of ONO is to foster a more small business friendly regulatory environment. To achieve this objective, ONO processes small business comments, conducts outreach and meetings within communities and with federal agency representatives. ONO also rates agencies responsiveness to small business concerns and publishes an annual report to Congress. These activities promote change and encourage Federal agencies to focus more on providing compliance assistance and improving communication with small businesses.

Through ONO activities, agencies become more aware of impact enforcement actions have on small businesses. Interviews with federal agency representatives revealed that ONO activities have indeed helped shift federal agency focus from a "gotcha" to a "help you" enforcement approach. Help for small business can come in a number of ways from offering compliance assistance to reducing or waiving penalties. SBPRA established requirements for federal agencies to compile and submit quantitative data on the number and value of civil penalties issued to small businesses. The data also include monetary savings resulting from reduced or waived penalties.

Federal agency representatives agreed that ONO does impact the overall regulatory environment, yet could not offer any estimates. Study staff used the burden reduction data to develop an order of magnitude estimate of the effect of ONO on the regulatory enforcement environment. The estimate was calibrated to take into account the existing assistance and advocacy program of the IRS called the Taxpayer Advocate. Based on all available data, it was estimated that in ONO's impact on the regulatory environment in FY 2003, was approximately \$19.7 million in the low estimate and to \$98.6 million in the high.

The estimates are considered conservative due to the fact the burden reduction data is not entirely representative of ONO's impact. Shifts in enforcement or policy resulting from ONO actions are not recorded in regulatory enforcement reports. The data only reflects the volume and value of issued penalties. ONO's impact would also include the savings resulting from changes in policy or enforcement practices in which penalties were not levied to begin with.

5. Regulatory Fairness Boards, Public Hearings, and the Option Value of ONO

One of ONO's FY 2003 GPRA goals was to increase the number of small businesses contacted by ONO. To meet this goal the office conducts two core outreach activities. These include 1) organizing and coordinating the activities of ten volunteer Regulatory Fairness Boards and 2) chairing public hearings. This chapter describes these outreach efforts and estimates the number of small businesses informed of ONO services. The estimate is used to assess ONO's progress toward its GPRA goals. This chapter also introduces the concept of "option value", also called "nonuse value", and concludes with an estimate of the economic value of ONO activities. This chapter is organized into the following five sections:

1. ONO Core Outreach Activities
2. Study Methodology – Measuring the Impacts of ONO Outreach
3. Small Business Awareness and GPRA Goals
4. Option Value of ONO
5. Summary and Conclusions

5.1. *ONO Core Outreach Activities*

ONO organizes and chairs several different types of regulatory fairness events. These include hearings, roundtables, and inter-agency meetings. This section will describe the three different types of events organized and chaired by ONO staff and follow with a discussion of their overall contribution to the economic impact of ONO.

RegFair Boards and Public Hearings

The Regulatory Fairness Boards, or RegFair Boards, were created pursuant to SBREFA in 1996. This law authorizes the SBA Administrator to appoint five volunteer small business owners to each of the ten regional RegFair Boards. The table below outlines each board's region and area of emphasis. Board members attend training sessions, hosted by ONO, and learn about ONO's role and range of services. Members are also equipped with marketing materials to help spread ONO's message. This includes an ONO brochure entitled "How the National Ombudsman Can Help Your Small Business" and a PowerPoint presentation.

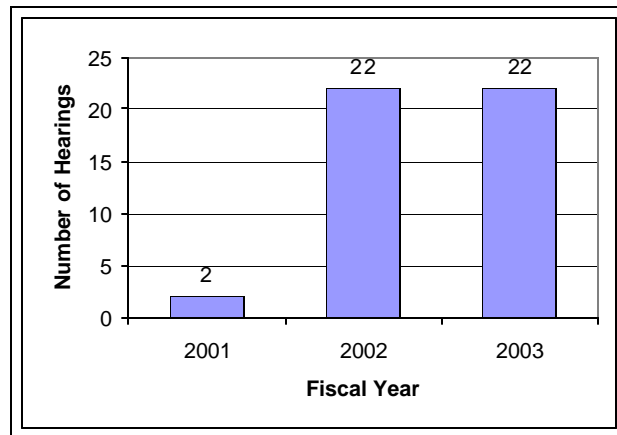
Table 5-1 Regional Regulatory Fairness Boards

Region	States
1	New England
2	Mid-Atlantic
3	South-Atlantic
4	Southeastern
5	Midwestern
6	South
7	Heartland
8	Rocky Mountain
9	Western
10	Northwestern

The main role of RegFair boards is to publicize and participate in regulatory enforcement hearings (RegFair Hearings) and regulatory enforcement roundtables (RegFair Roundtables). These RegFair hearings and roundtables bring individual small business owners, industry association and government agency representatives together to hear about specific regulatory enforcement issues affecting small businesses. These RegFair Hearings, which are also advertised by local SBA offices, the Federal Register, and the ONO website calendar, are chaired by the National Ombudsman. The ONO PowerPoint presentation is used to describe the purpose of the hearing and provide an overview of ONO services. Small businesses then testify about their particular case in approximately five to ten minute allotments. This may be followed by a panel discussion of possible avenues for help or the small business meets with the appropriate agency representative who may be in attendance. All jurisdictional comments from these hearings are forwarded to Federal agencies for review and follow-up.

Over the past three years ONO has increased the number of public hearings conducted. This is illustrated in the Figure 5-1 below. In FY 2003 and 2002, a total of 22 meetings were conducted compared to only two in 2001. For the second year in a row, ONO has exceeded its goal to conduct at least one hearing per region.³

³ The small number of hearings conducted in FY 2001 can be attributed to the lack of a permanent National Ombudsman, change in administration and the challenge of securing resources.

Figure 5-1 ONO Regulatory Fairness Public Hearings

In FY 2003, ONO also expanded its outreach efforts by taking into consideration the language and geographic location barriers that may prevent some businesses from attending. For example, in FY 2003 hearings in Denver, Colorado and Miami, Florida were conducted in English and Spanish. ONO also took advantage of teleconference and videoconference technology. Meetings in FY 2003 included the first region-wide teleconference hearing that allowed small businesses located in rural and remote locations across six states to participate. In Iowa, the Iowa Communication Network connected 12 sites with real-time video testimony from across the state and surrounding territory.

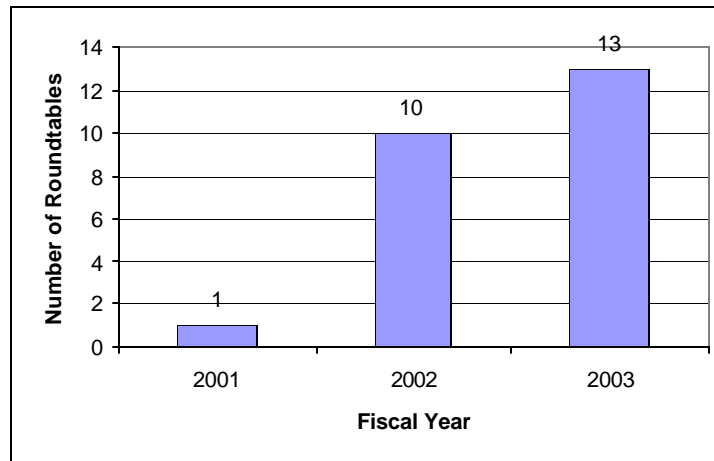
ONO Roundtable Meetings – From Enforcement to Education

ONO has a goal to change the Federal regulatory enforcement environment from one of uncompromising enforcement, or what the National Ombudsman calls a “gotcha approach” to a more small business friendly environment or a “help you” approach. To achieve this goal, the office also organizes and chairs RegFair Roundtables. While RegFair Hearings are geared toward collecting comments and hearing testimony from individual small businesses, RegFair Roundtables are geared towards educating trade associations and chambers of commerce as well as hearing comments from them.

Roundtables create a synergistic environment that brings both sides together. Agencies are able to inform the public about their statutory duties to conduct mandatory audits and inspections. Agencies are also able to present the different types of compliance assistance programs and information available. At roundtables conducted in Annapolis, Maryland on October 30th and Sacramento, California on December 4, 2003, study staff observed several agency representatives including the Department of Labor, IRS, Department of Agriculture, informing businesses about the different regulatory compliance assistance programs and specific individuals within each agency that could help them. For example, at the Sacramento meeting, an IRS representative presented educational CD-ROMS developed to help small businesses understand the steps needed to comply with tax regulations. Agency representatives also heard small business concerns and addressed them by providing updates on changes in agency policy, clarifying regulatory requirements, and informing businesses of new and proposed regulations.

ONO has increased the number of RegFair Roundtables conducted each year since. Figure 5-2 below illustrates ONO's ability to quickly reorganize and revamp its operations after relocating their headquarters from Chicago, IL. to Washington, D.C.

Figure 5-2 Increase in Roundtable Hearings



ONO Interagency Meetings

ONO also organizes and chairs interagency meetings, which take place at SBA Headquarters in Washington D.C. In FY 2003, ONO organized and hosted two interagency meetings. The purpose of these meetings is to bring together ONO staff with key staff from the various agencies with regulatory authority to discuss new ONO initiatives, new statutory requirements, ONO agency ratings and other issues of concern. At an interagency meeting on November 19, 2003, study staff observed staff from ONO and the Office of Management and Budget (OMB) assisting agency representatives in understanding requirements of SBREFA and the SBPRA. The meeting was well attended with representatives from several agencies and an RSVP list of 67. An agenda and an informational packet were distributed to each attendee.

Agency representatives were briefed on several topics and ample time was provided for questions and answers. Subjects included:

- The requirement under the SBPRA that directed agencies to estimate the enforcement actions against small businesses and penalty reductions in such actions.
- An overview of the agency ratings and the SBREFA Report to Congress.
- A discussion of the comment process and the revised ONO comment form.
- A review of compliance assistance reports and non-retaliation policies.

5.2. Measuring the Impacts of RegFair Boards and ONO Meetings

Organizing RegFair Boards and chairing public hearings provides benefits to small businesses and helps foster change in the regulatory enforcement environment. Quantifying the benefits in terms of dollars and job savings was difficult because in most cases there are no records of relief attributed *solely* to these events. RegFair Board hearings and ONO roundtables feed into ONO's comment activities and help keep small business issues a priority at federal agencies. Relief in the form of abated or waived penalties may occur after a comment has been filed and responded by a federal agency. These savings were included in a benefits estimate presented in Chapter 2.

In order to assess the economic benefits of these two core activities, study staff interviewed board members, agency representatives, and small businesses that have attended the events. Those interviewed agreed that there are significant, but less tangible benefits to these activities. The benefits of these activities include the following:

1. Improving the outlook of small businesses by allowing them to openly voice their concerns and learn about ONO Success Stories,
2. Connecting small businesses with agency representatives that can help them, and
3. Allowing agencies to hear first hand about the impacts of their regulations and to inform small businesses about the compliance assistance and advocacy programs available to them.

The following sections will describe these benefits and provide examples of how ONO has improved the position of small businesses.

Improving the Small Business Outlook - A Case Study

As described above, ONO organizes RegFair hearings and roundtables in an effort to take ONO's services outside the "beltway" and connect with small businesses and trade associations. These events have a impact on small businesses, as small businesses see that there are other businesses facing similar problems and there is an advocate to help them. An example of the ability of volunteer RegFair Boards to improve the outlook of small businesses and provide small businesses with a voice is illustrated in the case of a small business named Allied Protective Services.

In this case, business owner, Leon Brooks, filed a comment form with ONO and testified at a RegFair hearing held in San Francisco, California in November of 2002. Mr. Brooks voiced his concerns that his small business was the victim of retaliation. An IRS investigator audited his firm and determined that he owed approximately \$700 in taxes. The business owner personally knew the investigator's supervisor and believed that the investigator was going after his business as a result of friction between the investigator and the supervisor. Despite this, the owner agreed to the payment plan. According to testimony transcripts, about a month later Mr. Brooks discovered that IRS had issued a levy against his business and directly withdrew \$32,000 from his bank account. In an interview with the owner, study staff was informed that he received a notice from the IRS stating the issue was still being investigated. While no direct savings has occurred in this case, the business owner stated that testifying at the hearing and discussing his

case improved his personal outlook. “Going to San Francisco and talking about what happened to my business made me feel a lot better than before,” said Brooks. “I think the Ombudsman does a great service for small business.”

The Value of an Answer

RegFair board members, industry representatives and small business owners interviewed agreed that the economic value of RegFair hearings is not easily measured. RegFair Boards provide an avenue for small businesses to take their cases and to obtain an official answer to their specific issue. “Whether the response is favorable or unfavorable, the small business gets an answer and that’s much farther than they probably could have gotten by themselves,” said one RegFair board member.

The existence of ONO does not serve to replace or reduce the need for legal representation for small businesses facing unfair or excessive federal regulatory enforcement action. It does provide small businesses another avenue of assistance. The comment form itself and most ONO correspondence with businesses states that ONO services are not a substitute for legal action and recommend that businesses should “continue to pursue all legal options you believe are in the best interest of your small business.” However, ONO does provide another possible alternative for small businesses to utilize for their particular issue. For example, a small business brewery and restaurant business was facing regulatory enforcement actions from the DOL Wage and Hour Division regarding the fact that two of his employees were being paid a salary while DOL classified them as hourly employees. The company spent over \$7,000 in legal fees trying to have his case reviewed. After learning about ONO from his Congressmen, the business testified at a RegFair hearing and filed a comment. The result of the review included a personal visit and interview with a DOL Wage and Hour regional director and a subsequent reclassification of his two employees as salaried pending a few requirements. “Had I known about the Ombudsman I might have not spent all the money hiring a lawyer,” said the business owner. “The lawyer and the Ombudsman were basically doing the same job.”

Referral Benefits – Informing Small Business of Resources

Not only does ONO provide a forum for businesses to have their comments heard and addressed by federal agency representatives, these events provide these businesses an opportunity to obtain the names and contact information of specific individuals and programs that can help them. Byproducts of these events are called “Referral Benefits.” ONO public hearings are a clearinghouse for most small business concerns. In cases where issues are outside of ONO’s jurisdiction, RegFair board members, federal agency representatives, and SBA staff routinely provide small businesses owners with the names of people and agencies who may be able to help them. It is difficult to measure the value and impact of referral benefits because there is no available data or information that tracks the outcomes of businesses that use the information obtained through ONO to benefit their businesses. However, it is important to note that these benefits do exist.

5.3. Option Value of ONO

In calculating the value of resources that are not directly utilized by the public, economists have developed a methodology for calculating what are called “nonuse” or “option” values. For the purposes of this study, the resource was defined as the avenue provided by ONO that allows small businesses to report unfair enforcement actions. This section provides a background on this concept, describes the methodology used to develop an option value estimate for ONO services, and provides an estimate of the number of businesses aware of ONO services. This section also evaluates ONO’s progress toward achieving its GRPA goal of increasing small business contacts.

Overview of Option Values

Option Values refer to the utility that is derived from a good without physical interaction with the resource. Individuals place monetary value on resources despite the lack of any current or planned future use. The existence of ONO provides a benefit to small business owners, even if small entities do not currently use ONO services. Small business may value the existence of ONO because they may have a need for its services if they face unnecessary regulatory actions in the future.

The concept of assessing values for nonmarket goods and including them in the decision-making process of public policy and planning took shape in 1967 when Dr. John Krutilla, a resource economist for the think-tank Resources for the Future, published an article in the *American Economic Review* arguing that people do not have to be active users or consumers of a resource to have a value for that resource.⁴ The idea of Nonuse Value was built upon by others including Myrick Freeman, a professor of economics at Bowdoin College, in his 1979 book *The Benefits of Environmental Improvement: Theory and Practice*.⁵ Freeman established the fundamental framework for including Option Values in the planning processes used by the government agencies such as the EPA and Forest Service. Nonuse Values have become a standard part of economic analysis of resources. Though still controversial, the legitimacy of Nonuse Values was affirmed in the landmark 1989 case, *Ohio vs. Department of Interior*.⁶ The Court found that nonuse values could be used in liability cases.

Over the years, a standard framework has emerged to help measure and identify nonuse values. According to experts, nonuse values are measured using a survey method called the stated preference valuation.⁷ The survey asks individuals about their willingness to pay to have access to resources. Economists and natural resource agencies such as the EPA and the USDA Forest Service have included nonuse benefits in a wide variety of studies used to justify a program, proposed rule, or policy. Recently, in EPA’s promulgation of Clean Water Act rules that govern manufacturing and electric generating facilities withdrawing water for cooling purposes, nonuse

⁴Krutilla, John, “Conservation Reconsidered” *American Economic Review* No. 57, p. 77-786

⁵Freeman, A Myrick, *The Measurement of Environmental and Resource Values Theory and Methods*, Second Edition, Resources for the Future, Washington, DC

⁶Ohio vs. U.S. Department of Interior 880 F.2d 432 (D.C. Cir. 1989)

⁷See Freeman, Chapter 5: Nonuse Values

benefits comprised over 95 percent of total benefits involved with the rule.⁸ As part of the cost-benefit analysis, EPA used the stated preference methodology to develop the benefits estimate of the regulations. The agency used survey information regarding the value of certain habitats and fish stock and multiplied that data by the amount of resources lost as a result of not implementing the rule.

The large size of option values has been a potential source for criticism and controversy. However, such estimates should not be dismissed because of their size. According to the US Bureau of Reclamation, “Existing empirical studies demonstrate that nonuse value for resources in which there is widespread interest may be quite large both absolutely and relatively to estimates of economic use value. For this reason, inclusion of estimates of option in economic efficiency analyses may have important implications with regard to water resource management and decision making.”⁹ Using option values to conceptualize how much the public value a particular resource or service can be a valuable tool for policy-makers.

5.4. Study Methodology – Calculating the Option Value of ONO

In order to calculate the option value of ONO, study staff first developed estimates for the following two components:

1. An estimate of ONO’s value to small businesses
2. The number of small business aware of ONO services.

This section will describe the methodology used to develop these two components and lead into the option value calculation.

Willingness to Pay

Study staff used the stated preference method described in Section 5.1 to develop an option value estimate of the resources provided by ONO. A number of small businesses and industry association representatives were interviewed regarding their willingness to pay for the services ONO provides. Willingness to pay (WTP) is the total maximum amount of money an individual would give up in exchange for the benefits associated with the resource. Interview candidates were given basic information about ONO services and posed the following question:

“The Office of the National Ombudsman does not intend to charge a user or membership fee. However in order to understand the value of ONO services to individual small businesses, ONO is interested in examining the willingness of small business owners to pay for ONO services. Hypothetically how much would you be willing to pay to have access to the services ONO provides? For example, some businesses pay an annual fee to join a business association.”

⁸ See EPA, Chapter 11.9.6 “Economic Analysis of the Final Regulations Addressing Cooling Water Intake Structures for New Facilities,” November 2001 (<http://www.epa.gov/waterscience/316b/economics/ch11.pdf>)

⁹ Harpman, David, US Bureau of Reclamation, et al., “Nonuse Economic Value: Emerging Policy Analysis Tool,” November 1994.

ONO services were described as the ability to for a small business to a file a comment regarding a federal regulatory enforcement action and receive a prompt review of the issue by an independent and high-level representative of the enforcing agency. Study staff surveyed nine small business owners and trade association representatives. The seven responses to the option value question were tabulated to arrive at an average annual WTP per business of \$93.¹⁰ The average is the sum of all the responses divided by the total number of responses.

Staff also compiled annual business association membership fees to provide a baseline comparison between the option value of ONO and actual amount paid by small businesses to join associations. While ONO does not compete or duplicate existing private efforts to help small businesses, the annual membership fees businesses pay to have access to small business services can be used as an indicator of the comparable value of ONO services. However, it is important to note that ONO provides services not available by private business organizations. ONO has the legislative authority to request a high-level review by federal agency representative of particular cases where small businesses may be facing unfair or excessive federal regulatory action. Because of this legislative authority, ONO is able to offer small business a service no private association can provide.

ONO offers other services through their newly redesigned website (www.sba.gov/ombudsman). The site provides links to government agency websites that contain valuable information on regulations and the compliance assistance programs offered. ONO has also developed an online network to keep small businesses informed on regulatory issues. Over two thousand small business owners have signed up for the ONO E-Blast, an electronic newsletter that sends updates, notices, and additional information on fair regulatory enforcement issues.

Also, ONO provides a forum for discussion. The ONO website is equipped with an online forum, which includes several message boards where businesses can communicate with one another. Forums cover a range of issues including the following:

1. Sharing Success stories,
2. Retaliation by federal agencies,
3. Unfair enforcement activities,
4. Responsiveness of federal agencies, and
5. Excessive fines or penalties.

Study staff compiled membership fees for several small business associations to assess the market value of these types of small business services and to provide a comparison between the two resources. Table 5-2 below summarizes the average annual membership fees for several industry associations using data gathered from their websites. The average membership fee is approximately \$265.

¹⁰ This willingness to pay figure is intended to provide an order of magnitude estimate and is not a product of a scientific survey sample. In accordance with OMB survey regulations, this survey was limited to nine individuals. Study staff collected data on the fees associated with business association memberships to provide a point of comparison.

Table 5-2 Small Business Association Membership Fees

Industry Association	Cost/Year
The Heritage Foundation	\$ 25
National Association for the Self-Employed	\$ 96
National Federation of Independent Business Owners	\$ 200
National Restaurant Association	\$ 275
National Small Business Association	\$ 250
American Subcontractors Association	\$ 575
American Association for Homecare	\$ 83
Associated Builders and Contractors	\$ 485
Automotive Service Association	\$ 400
Average Annual Membership Fee	\$ 265

5.5. ONO Exceeds Small Business Contact GPRA Goal

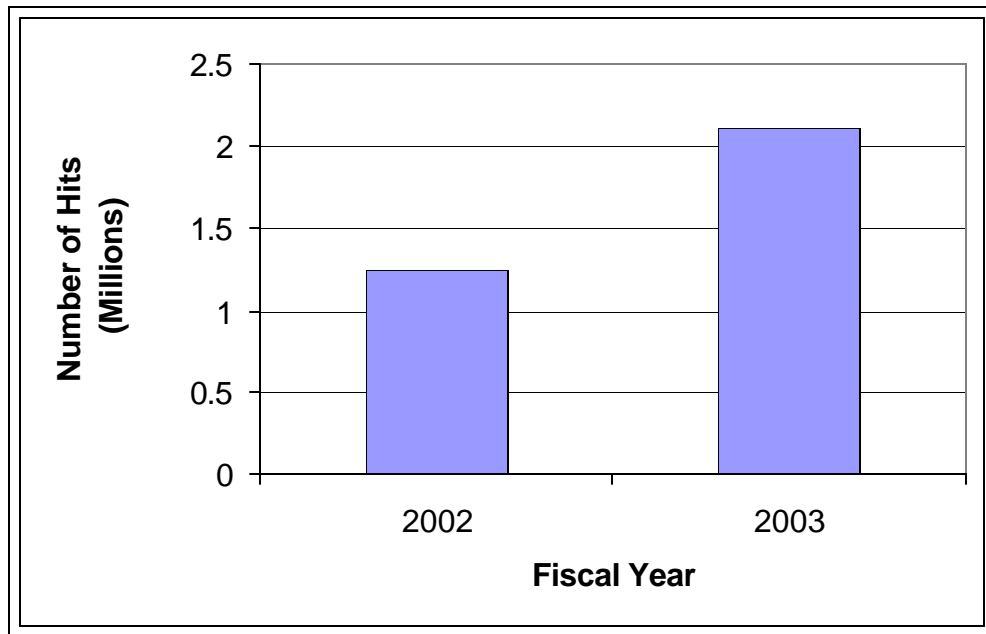
To calculate the option value of ONO and to assess ONO's progress toward its GPRA goal to increase the number of small business contacts, study staff developed an estimate of the number of small businesses aware of ONO services. This section will present several estimates of the number of businesses aware of ONO and develop a conservative baseline approximation to evaluate ONO's GPRA goal achievement and the option value benefits estimate.

Small Business Awareness Estimates

Throughout the course of research, several different estimates of small business awareness were discovered. According to SBA, in 2002 there were approximately 22.9 million businesses operating in the United States. In FY 2003, ONO estimates that 7 million small businesses owners have been introduced to services it provides. This estimate is based on a hypothetical one-in-three-notification rate from the 21 million media impressions made by ONO through news articles and radio and television interviews.

Another estimate developed in FY 2003 by ONO shows that RegFair members have spread the ONO message to 250,000 small businesses.¹¹ RegFair members represent ONO on the local level and participate in educational and outreach activities such as presenting the office at local businesses associations' conventions and events. Board members also help publicize ONO through media interviews. This figure includes the estimated number of businesses attending these events and includes the number of small businesses represented by any industry association present. One other indicator of small business awareness is the number of "hits" or visits to the ONO website. In FY 2003, the ONO website was visited over 2.1 million times; almost double the amount of FY 2002

¹¹ Office of the National Ombudsman "Draft FY 2003 Accomplishments"

Figure 5-3 Increase in ONO Website Visits

Developing a Baseline Estimate of Small Business Awareness

To develop a baseline estimate of the number of businesses aware of ONO services, study staff compiled data from available transcripts and summaries of RegFair Hearings and Roundtables. As shown in Table 5-3 below, approximately 1.4 million small businesses have been represented in ONO RegFair hearings, meetings, and roundtables.

Table 5-3 Estimated Number of Business Represented RegFair Events

Location	Number of Business Represented
Augusta, Maine	12,593
Jefferson City	17,000
San Francisco, CA	8,500
Miami, FL	12,500
Washington DC	1,100,000
Tucson, AZ	1,260
Dallas/Fort Worth TX	16,005
Nashville TN	400
Corpus Christi, TX	800
Cleveland, Ohio	547
Concord, NH	46,000
Salt Lake City, UT	3,763
Trenton, NJ	1,476
Denver, CO	1,028
Oklahoma City, OK	8,920
Dallas/Fort Worth TX	50,000
Nashville, TN	4,710
Corpus Christi, TX	1,586
Minneapolis, MN	3,000
Cedar Rapids, IA	1,253
Boise, ID	10,450
Anchorage, AK	205
Montpelier, VT	20,000
Pittsburg, PA	80
Albany, NY	71,000
TOTAL	1,393,076

Source: *ONO RegFair Attendance Records*

Using the conservative baseline estimate of 1.4 million small businesses represented at regulatory meetings and events alone, it is apparent that ONO exceeded its FY 2003 GPRA goal to increase small business contacts to 300,000 small businesses by over fourfold. This estimate does not include the estimated 250,000 small businesses informed through public speaking events conducted by RegFair board members nor does it include the number of businesses informed through ONO's print, broadcast radio, electronic, and television media exposure.

Estimating the Option Value of ONO

To derive the total option value of ONO, the number of small businesses aware of ONO was multiplied by \$93; the amount small business indicated they are willing to pay annually. The table below presents the resulting nonuse estimates. The estimate was based on 250,000 and 1.4 million contacts as the low and high estimates for small businesses aware of ONO. In FY 2003, small businesses valued ONO and the services the office provided at \$65.1 million using the low estimate of small business contacts and \$130 million in the high estimate. The high and low

nonuse value estimate is small in comparison to the costs the same businesses may have paid to join a private association.

Table 5-4 Option Value of ONO Compared to Association Membership Fees

Resource	Value of Service (Dollars)	Number of Small Businesses Contacts (Millions)		Option Value (Millions of Dollars)	
		Low	High	Low	High
Average Willingness to Pay For ONO Services	\$93	0.25	1.4	\$65.10	\$130.20
Average Small Business Association Membership Fee	\$265	0.25	1.4	\$185.50	\$371.00

5.6. Summary and Conclusions

This chapter highlighted several benefits to small businesses that resulted from ONO public outreach activities. ONO events provide small businesses with an opportunity voice their opinions and to obtain answers to their questions. ONO services improve their outlook on the regulatory enforcement actions they face by promising businesses that they would get a response from the agencies. Although comments may not receive favorable results, ONO promises an answer.

ONO meetings and hearings also help foster a more friendly small business environment by creating open lines of communication between businesses and agency representatives. These events also provide small businesses with valuable information on available compliance assistance programs and other sources of advocacy they might be able to use to resolve their issues.

This chapter also described the difficult nature of assessing a value to these answers. ONO efforts may save businesses time and money that could be spent on hiring new employees or expanding their business. Chapter 6 will provide recommendations that may help improve the estimates provided. This may include conducting follow-up surveys with comment filers that solicit information regarding the impact the comment had on their business.

In FY 2003, organizing RegFair boards and chairing public hearings enabled ONO to increase the number of small businesses aware of its services and exceed ONO's GPRA goal. According to an SBA GRPA report obtained from ONO, in FY 2002 ONO informed approximately 250,000 small businesses about its services. The FY 2003 goal was 300,000 small businesses. The baseline estimate provided in this chapter shows that ONO outreach efforts resulted in over 1.4 million small business contacts. This is over four times more than the FY 2003 goal.

The liaison capability of ONO is a valuable resource to small businesses throughout the country. The existence of ONO impacts small businesses everywhere by providing an easily accessible resource to report unfair federal enforcement actions and reinforcing the contribution of small businesses to the American economy. ONO comments also help emphasize the importance of small business within federal agencies. This chapter estimated the value of the resources provided by ONO to small businesses using a methodology used by economists and several federal agencies. Option value was explained as the economic value of a resource despite any current or planned future uses. It was estimated that the nonuse value of ONO ranged from \$65.1 to \$130 million using the assumptions employed. The \$65.1 million value is used throughout this study to in order to develop a conservative impact estimate. This value represents what ONO and the services it provides is worth to small business.

6. Results and Recommendations

The programs of the Office of the National Ombudsman have had far reaching impacts that accrue not only to the small businesses that submit comments, but to all small businesses. ONO's agency rating programs impact the fundamental ways that the agencies interact with the entities they regulate.

This chapter provides a summary of the results of the study and recommendations on how the measurement of the program's performance and impact might be improved. The chapter begins with a summary of the different types of economic impacts of ONO's programs. The economic impacts of ONO are then contrasted with the costs of the program. Next, data are examined that quantify ONO's progress against its performance goals. The chapter concludes with recommendations for improving future data collection for economic impact and performance measurement.

6.1. Summary of the Economic Impact Analysis

This study examined each of the ONO core programs and identified several different types of impacts on small businesses resulting from each activity. Table 6-1 summarizes the economic impacts estimates developed in each of the previous chapters. It is concluded that ONO programs had a total estimated impact of approximately \$85.64 million in the low and \$230 million.

Table 6-1 Baseline Economic Impact of ONO Core Activities - FY 2003

ONO Core Activity	Impact Category	Low Impact Estimate	High Impact Estimate
Receiving and Processing Comments	Direct Savings (Reversed Fines/Penalties)	\$236,839	\$236,839
	Business Impacts*	\$590,000	\$590,000
Rating Federal Agencies	Change in Regulatory Enforcement Environment	\$19,710,240	\$98,600,000
Organizing RegFair Boards and Chairing Public hearings	Option Value Benefits	\$65,100,000	\$130,200,000
	Total Impact	\$85,637,079	\$229,626,839

Note: Due to data limitations, a high and low value for the Business Impacts category was not developed.

The following sections will provide a brief summary of each core ONO activity and describe the impact involved.

ONO Core Comment Activities: Direct Savings and Business Impacts

It is estimated that in FY 2003 ONO comment activities saved small business that filed comments approximately \$237,000 in unfair or excessive fees and penalties. ONO had 19 success story comments. Over the last two years, the revamped and relocated Washington D.C.-based version of the ONO has provided a simple, easily accessible, and streamlined process for small businesses to report unfair or excessive federal regulatory enforcement actions. Businesses complete and submit a federal agency comment form, which can be obtained and submitted through ONO's website, by calling ONO's toll-free number or by fax. Comments are also received by testifying at RegFair hearings and roundtables. These comments are forwarded to the appropriate agency for an independent review and detailed response. Responses to comments may answer questions posed by the commenter and include favorable results such as a reversed or abated fine or penalty.

The savings estimate of \$237,000 falls under the category "Direct Savings to Commenter." This category represents the direct economic impact of ONO comments on the businesses that file them. By reviewing ONO case files and responses to small business comments, ONO success stories were identified. Study staff compiled all available information from the case files regarding the amount of reversed fines or fees as a result of favorable agency response. This data was supplemented with information from follow-up interviews with business owners and compiled into a database to estimate the total amount of dollar savings experienced by comment filers in FY 2003.

This study also developed estimates of the non-fine overarching productivity impacts of ONO comment activities on comment filers and other businesses. These business impacts include regulatory enforcement changes that allow the hiring of new employees, the ability to stay in or open a business, time saved, and business expansion. This "Business Impact" category was difficult to measure due to subjective nature of these benefits and the lack of a formal requirement to report them. By conducting interviews with individual business owners and industry association representatives to identify potential case studies, a *minimum* business impact estimate of \$590,000 was developed.

The Business Impact category represents the dollar value of any change in business operation as a result of a favorable decision to the commenting business and other businesses. Several case study examples uncovered by the study team were provided in Chapter 3 and served as examples of the widespread impact ONO success stories can have. In one case, as a result of an ONO comment, DOL overturned its initial classification of a firm's employees as non-exempt. It was discovered that this case set a precedent for similar businesses throughout the country.

This benefit figure should be considered a minimum estimate of the impact of ONO comments because it is extremely difficult to compile a complete set of data. There are approximately 25 million small businesses in the United States. To develop a more complete estimate of all the businesses that may be impacted by an ONO success story is extremely complicated and even a large-scale survey of businesses would most likely not provide usable results. Because these impacts are less tangible than simple reversed fines, small business may have difficulty isolating changes in operations attributable solely to ONO. This study relied upon interviews with

business association representatives in the industry sector of the success stories to develop this baseline estimate. While the study team followed every available lead in documenting success stories, certainly there existed other businesses that were either never reported or were not even recognized as the business owners. Therefore, it is not certain whether a more favorable business climate was due to a change wrought by ONO comment activities.

ONO Federal Agency Rating Activities: The Impact

Chapter 4 examined the impact of ONO's annual rating of federal agencies on the regulatory enforcement environment. Interviews study staff conducted with federal agency officials provided solid evidence that ONO's programs have improved the regulatory enforcement approach used by federal agencies. Agency representatives stated that ONO interagency meetings, annual ratings, and small business comment activities help identify areas of improvement in their enforcement programs. In particular, agencies have increased efforts to distribute compliance assistance information, adopt non-retaliation policies, and provide training on SBREFA-related issues for agency staff.

While representatives agreed there is a clear impact of ONO, they were unable to quantify the impact of ONO on their regulatory enforcement approach. Study staff used recently published burden reduction data compiled from initial regulatory enforcement reports submitted to ONO by federal agencies pursuant to the SBPRA. This burden reduction data details the number of civil penalties issued to small businesses and the total value of any waivers or reductions. This data was used to develop an order of magnitude estimate. To ensure the impact valuation was conservative, the estimate was calibrated to take into account existing efforts taken by federal agencies to reduce the burden on small businesses. A high and low valuation of ONO's impact on the regulatory environment was estimated at \$19.7 million and \$98.6 million.

ONO Core Outreach Activities: RegFair Boards and Public Hearings

Chapter 5 described the public outreach activities conducted by the ONO. ONO organizes and coordinates the activities of ten regional Regulatory Fairness Boards. Volunteer small business owners are trained to spread ONO's message to businesses throughout the country. Board members participate in RegFair hearings and are trained to publicize ONO programs at small business conferences and events. In FY 2003, ONO estimates that 250,000 small businesses were informed of ONO by RegFair board members' activities alone.

ONO also organizes and chairs regulatory fairness roundtables and interagency meetings designed to open the lines of communication between small businesses and federal agencies. In the past three years, ONO has steadily increased the number of public hearings from only two in FY 2001 to 22 in FY 2003. Regulatory fairness events allow small businesses to openly voice their concerns to ONO and agency representatives attending. This has an impact on the regulatory enforcement environment, creating a forum where businesses can get answers directly from agency representatives and where representatives can distribute information on compliance assistance programs and clarify regulatory requirements.

While the impacts of comments submitted through testimony at RegFair Hearings are included in the direct savings to small business estimate of \$437,000, the estimate does not include an assessment of the economic value of the two ONO core outreach activities described above. This direct savings small business estimate was described in Chapter Two and summarized in Table 2-3. To include the value of outreach activities in this analysis, option value of ONO resources was calculated.

Option values represent what ONO is worth to small businesses despite current or planned future use. The existence of ONO provides a benefit to small businesses because they may have a need for its services and value having the ability of submitting a comment if they face unfair enforcement actions. Option values are often used to justify environmental regulations, are widely accepted in the field of economics and have even survived scrutiny by the Supreme Court.

Option values are typically measured using revealed preference surveys of willingness to pay. In this study a small survey was conducted and an average value of \$93 per year was estimated. This estimate was then multiplied by an estimate of the number of businesses aware of ONO services to estimate a total nonuse estimate. The numbers of small businesses aware of ONO services were tabulated using available records of attendance at ONO events and meetings where RegFair board member publicized ONO.

Because option values are dependent on the number of small businesses aware of ONO services, a high and low estimate was developed. Using a minimum estimate of 250,000 and a high estimate of 1.4 million as the number of small business informed about ONO in FY 2003, the nonuse value of ONO services was determined to range from \$65.1 to \$130 million. The resulting option value represents the amount small businesses would be willing to pay to have access to ONO programs.

6.2. Benefit-Cost Analysis

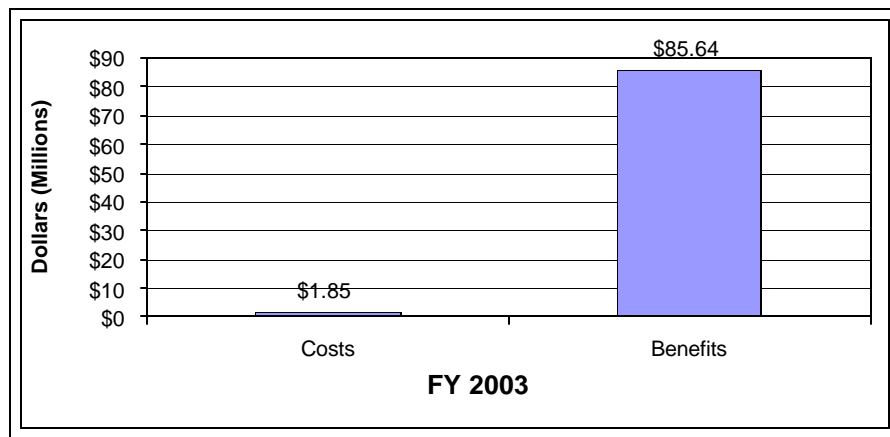
Evaluations of the positive economic impacts of a government activity are usually analyzed within the context of the cost of that activity. This comparison of the positive impacts of a program to its costs is referred to as benefit-cost analysis.

For the purposes of this study, all economic impacts are counted as benefits. However, it should be cautioned that economists often draw a distinction between the two. In economic literature, whether a particular action is recognized as a benefit or a transfer depends on whether real resources are consumed and the perspective of the observer. For example, if a government regulatory enforcement activity causes a business to spend money on an activity that produces no usable output, productive resources are wasted and a benefit can be realized by ending the enforcement activity. The refund of a fine however is merely a transfer of money from the point of view of society even though the small businesses owner would clearly count it as a benefit.

Comparison of Benefits and Costs

The economic impacts of ONO have been quantified in Chapters 2 through 5 and summarized above in Section 6.1. Figure 6-1 compares ONO’s FY 2003 benefits and costs. Congress provides a line item budget of \$500,000 to fund the ONO. ONO also receives additional budget, logistical, and staff support from the SBA. ONO’s FY 2003 budget, used to maintain a permanent office and staff and provide regulatory fairness and comment processing services, was estimated at \$1.852 million. As shown in this figure, the benefits of ONO in FY 2003 are much larger than the costs of the program even using the low estimate of \$85.64

Figure 6-1 Cost-Benefit Comparison of ONO



A benefit-cost ratio was tabulated to measure the overall cost-effectiveness of the ONO program. Benefit-cost ratios represent the amount of return for each dollar spent. The ratio for ONO in FY 2003 is provided in the table below.

Table 6-2: Benefit-Cost Ratio for ONO (FY 2003)

Total Benefit	Program Cost	Benefit / Cost Ratio
\$85.64 Million	\$1.85 Million	46.24

ONO programs produced a benefit-cost ratio of 46.24. That means that for each dollar spent on each of the four ONO core activities over \$46 was generated in benefits for small business. This indicates that ONO programs are very cost-effective; yielding a significant amount of benefits per dollar spent.

This ratio should be considered a low-end estimate because the total benefit value of \$85.64 million includes only the *minimum* estimated values. The higher the total benefits figure, the more cost-effective the program. For example this ratio would be much higher if more business

impacts resulting from ONO success stories were identified and included in the total amount of benefits, or if a less conservative estimate of option value benefits was chosen.

6.3. ONO's Progress Toward GPRA GOALS

ONO has several GPRA goals that include both outcome and output measurements. Outcome goals focus on measuring percent changes while output goals involve the quantification of the impacts. The major ONO GPRA goals for FY 2003 are as follows:

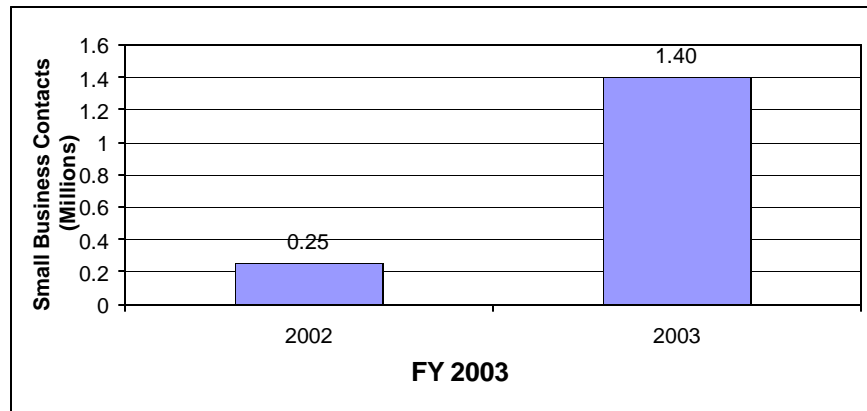
- Goal #1 - Increase in the number of small businesses aware of the ONO by 300,000 contacts
- Goal #2 - Increase in compliance assistance offered by Federal agencies by 5 percent
- Goal #3 - Improve federal agency responsiveness to small business comments by 5 percent
- Goal #4 - Decrease excessive or unfair federal regulatory enforcement actions by 5 percent
- Goal #5 - Increase in reduced or waived penalties for small business by federal regulatory agencies by 5 percent

The following sections will describe each of these GPRA goals and use information compiled throughout this study to evaluate ONO's progress.

Goal #1 Increase Awareness of ONO by 300,000 contacts

There are approximately 22 million small businesses operating in the United States. According to an SBA GPRA report, ONO contacted an estimated 250,000 small businesses in FY 2002 and set a goal to increase that number by 300,000 in FY 2003. Analysis conducted in this study estimate that ONO completed this goal more than fourfold. Using records of the business attending and/or represented by industry representatives at ONO regulatory fairness events and meetings held in FY 2003, it was estimated that at least 1.4 million small businesses were informed about the services provided by ONO.

An analysis of small business comments submitted also illustrates the increase of ONO's public visibility. As discussed in Chapter 2, ONO has experienced rapid growth in the numbers of comments submitted from FY 2001 to 2003. Between FY 2002 and 2003, the total numbers of comments submitted grew by 22 percent. More importantly, there was an increase by 42 percent in the number of jurisdictional comments. This suggests that the overall quality of comments has improved because ONO was more effective in conveying their mission and program to small businesses.

Figure 6-2 Number of Small Business Contacts (FY 2002 & FY 2003)

Goal #2 - Improve Federal Agency Responsiveness by 5 percent

For FY 2003, ONO had a goal to improve agency responsiveness by 5 percent. Over the last year as a result of ONO activities, the overall responsiveness of federal agencies to small business comments has improved. Perhaps the most dramatic evidence is the 29 percent increase in the number of comments addressed, from 80 in FY 2002 to 103 in FY 2003. In addition, the average grades for the quality of the agency responses have steadily climbed from a B in FY 2001 to a B+ in FY 2002 to an A in FY 2003. Timeliness grades have not shown as large an improvement rising from a C+ in FY 2001 to a B- in both FY 2002 and 2003. However, the agencies have commented that expediting replies is often complicated by statutory or legal restraints.

Goal #3 - Increase Compliance Assistance by 5 percent

Part of ONO's mission is to shift the focus of federal agencies with authority over small business from strict enforcement to one of compliance assistance and education. ONO activities help initiate change. For example, RegFair hearings, roundtables and interagency meetings open the lines of communication between small businesses and federal agency staff. Roundtables enable small businesses and trade associations to have their questions regarding regulations answered and allow agencies to distribute information about new compliance assistance programs such as free facility inspections that preemptively identify areas of noncompliance without any penalty. Interagency meetings also help agencies identify best practices occurring at other agencies.

A major theme that was uncovered in the agency interviews was the overall belief that the existence of ONO and its rating programs had caused the agencies to dramatically increase the level of compliance assistance to small businesses. ONO's ratings of agencies for their compliance assistance programs were reviewed in chapter 4. The average grades that ONO gave to agencies revealed an overall decrease in compliance assistance from 2002 to 2003 of A- to B. While this was a slight decrease, the number of agencies or sub-agencies that ONO rated increased by 60 percent from only 30 in FY 2002 to 48 in 2003. The newer agencies and sub-agencies had consistently lower grades than the agencies that had been previously rated, illustrating the positive impact of their ONO rating system. Several agency representatives noted

that the ONO ratings allow them to identify the weak aspects of their programs and to improve them.

Goal #4 - Decrease Excessive Enforcement by 5 percent

Attempting to measure the decrease in excessive enforcement is extremely difficult and provides a strong argument for reworking this goal. This is because the prevalence of excessive enforcement is an unknown. All that is known is the number of comments which are an indication of a complaint about excessive enforcement. Presumably, many small businesses do not know to complain, do not bother to complain or are afraid to complain. As a result, any analysis of decreases in excessive enforcement must be based on the number of complaints. However, the total number of complaints is not a good measure of the amount of excessive enforcement, but rather provides a better measure of how well ONO has done in making small businesses aware of their right to complain in a safe environment.

The best available measure of the decrease in excessive enforcement is the increase in the number of comments addressed. If a comment is addressed, then the small businesses has presumably had their issue addressed at a high level and received a fair chance to have their grievance heard. As revealed in Chapter 2, the number of comments addressed by federal agencies increased by 28.8 percent from FY 2002 to FY 2003, which far exceeds the five percent goal.

Goal #5 - Increase Waived Penalties by 5 percent

In Chapter 2, data were tabulated on penalties and fines that were waived or reduced. In total, over 20 cases were found where either a fine or penalty was waived or some other action occurred that had significant positive economic impacts. FY 2003 savings totaled to approximately \$437 thousand.

These data represent only the burden reduction that has occurred through direct comments to ONO. Undoubtedly, other complaints are resolved based on the various agency programs that ONO ratings and other initiatives have helped to establish.

These numbers represent a significant improvement over FY2001 when only 22 total comments were received. In FY 2003 there were 410 comments, an increase of 29 percent from FY 2003 and nineteen-fold the number of comments in FY 2001. The data strongly support a conclusion that the increase in the number of waived penalties is increasing at a rapid rate, far exceeding the five percent goal.

6.4. Recommendations

The results of the impact analysis conducted in this study should be considered a baseline estimate of the economic impacts of ONO core activities. Study staff based the impact analysis on all of the information that was available. By routinely collecting both quantitative and qualitative information, ONO will be able to develop a more complete impact analysis. This final

section of the study contains recommendations that may help ONO more thoroughly assess its outcomes and outputs in the future.

Recommendation #1 - Business Impact Surveys

Chapter 3 described the barriers study staff faced when developing an estimate of the business impacts of ONO comments. ONO comments not only have an affect on the comment filer's business, but also impact similar businesses. While there is no complete method to compile information on the impact on every small business possibly affected, ONO can conduct follow-up surveys with all comment filers. This survey could include questions that ask the business to describe what qualitative and quantitative impacts the comment process had on their business. Questions included on follow-up surveys may include:

1. Did the result of your comment impact your business?
2. Did it save you time? If so, approximately how much is that worth?
3. Did you save money? If so, how much?
4. Were you able to hire new employees?
5. Were you able to retain your current staff?
6. Is it possible that any decisions made in response to your comment have had a positive impact on other businesses?
7. If so, is there a business association that might have further information on these impacts?

Businesses should also be queried as to their willingness to pay for ONO services, although it should be stressed that the question is purely hypothetical. In addition, it might be useful to follow-up the survey after one or three years to see if additional positive impacts have resulted.

Recommendation #2 - Increase Small Business and Agency Awareness of ONO Events

ONO's ability to measure increases in agency responsiveness and small business contacts may be expanded by including a formal attendance sign-in form at ONO events. Attendance records are good indicators of increases in small business awareness and agency participation. While ONO does maintain attendance records, it is recommended that a standardized form be distributed and used to generate more data. Other than the basic contact information, sign-in forms at ONO events might solicit the following information:

- Industry sector of the small business
- Number of small businesses represented by the association member
- Estimated number of small businesses under the agency's regulatory jurisdiction
- How they became aware of the meeting

Routinely gathering these types of information can increase the accuracy of performance measures.

Recommendation #3 – Revise and Improve GPRA Goals

As discussed in this report, ONO has a series of GPRA goals and has made significant progress against these goals. This report quantified where possible ONO's progress toward meeting these objectives. However, several of these goals are difficult to measure and it may be possible to improve the definitions slightly to make the goals more transparent. Better-defined goals will make reaching them more attainable. An example is the goal of decreasing excessive enforcement by five percent. Measuring progress toward this goal is complicated because most excessive enforcement may not be reported. Where the ability to measure progress is limited, the goal should be examined.

6.5. Study Conclusion

This study is the first economic assessment of the services provided by the Office of the National Ombudsman. Overall, the analysis shows ONO has made tremendous progress in assisting small businesses facing federal regulatory enforcement action, fostering a more friendly small business environment, and achieving its GRPA goals. It is estimated that ONO's economic impact in FY 2003 ranged from \$85.6 to \$229 million depending on the assumptions used in the analysis. This economic impact valuation includes ONO's proven ability to save small business from excessive or unfair fines levied by federal agencies and change the enforcement approach of federal agencies.

In addition to these achievements, ONO made significant progress on their GPRA goals. For example, ONO surpassed their GPRA small business awareness goal of informing 300,000 small businesses of ONO's advocacy services. In FY 2003, over 1.4 million small businesses were represented at ONO Regulatory Fairness roundtables, hearings, and interagency meetings. In addition, the number of agencies adopting written non-retaliation policies increased from 12 in FY 2002 to 21 in 2003.

The results of this impact analysis should be considered a baseline estimate of the economic impacts of ONO core activities. Other variables, including the referral benefits experienced by small businesses informed of other resources at ONO RegFair events and small business sector-wide impacts caused by ONO Success Story precedents, are inherently difficult to measure. By revising ONO's GPRA goals and adopting the recommendations outlined above, future impact analyses will undoubtedly illustrate ONO's positive impact on small businesses and American taxpayers at large.