



FOSTERING A MORE BUSINESS FRIENDLY REGULATORY ENFORCEMENT ENVIRONMENT

**Office of the National Ombudsman
Fiscal Year 2000 Report**

July, 2001

“Fostering A More Business Friendly Regulatory Enforcement Environment”

Table of Contents

TABLE OF CONTENTS	3
SUMMARY	6
SBA’S NATIONAL OMBUDSMAN	6
THE FAIRNESS ACT.....	6
AGENCIES MAKE DETERMINED EFFORT	6
MEASURING RESPONSE	6
OCTOBER 2000	7
FISCAL YEAR 2001	7
A WEB-BASED COMMENT SYSTEM	7
OMBUDSMAN OFFICE RELOCATED TO WASHINGTON, DC.....	7
CONTACTING THE OMBUDSMAN.....	7
PHONE, FAX, E-MAIL ADDRESS.....	7
BACKGROUND	8
THE NATIONAL OMBUDSMAN	8
BY STATUTE.....	8
THE PAST FOUR YEARS	8
ACTION TAKEN BY THE NATIONAL OMBUDSMAN.....	9
IMPROVING THE REGULATORY ENVIRONMENT	10
25 MILLION SMALL BUSINESS OWNERS	10
FACILITATING SMALL BUSINESS PARTICIPATION	10
SPONSORING THE FIRST NATIONAL REGULATORY FAIRNESS CONFERENCE	10
IMPROVING COMMUNICATION WITH THE HOME HEALTH CARE INDUSTRY	11
COOPERATING ON EPA REPORTING REQUIREMENTS	11
CONTINUING THE SMALL BUSINESS LEADER ROUNDTABLES	12
TESTIFYING AT REGFAIR BOARD HEARINGS	12
SIMPLIFYING REQUIREMENTS FOR DRY CLEANERS	12
FAIRNESS OF AGENCY ENFORCEMENT AND COMPLIANCE ACTIVITIES.....	14
REQUIRED BY THE FAIRNESS ACT.....	14
AGENCY RESPONSES TO THE EXPERIENCES OF SMALL BUSINESSES	14
AGENCY ADOPTION AND IMPLEMENTATION OF THE ONO’S ANNUAL RECOMMENDATIONS	15
AGENCY RESPONSES TO ONO’S REGULATORY FAIRNESS QUESTIONS	16
TABLE 1: AGENCY RESPONSIVENESS RATING	17
FY2000 RATED RECOMMENDATIONS AND CRITERIA.....	18
RECOMMENDATION 1: INCREASED VOLUNTARY COMPLIANCE REVIEWS.....	18
RECOMMENDATION 2: DELEGATED ENFORCEMENT AUTHORITY FAIRLY	19
RECOMMENDATION 3: DISSEMINATED REGFAIR INFORMATION.....	20

RECOMMENDATION 4: REDUCED SMALL BUSINESS DATA COLLECTION	21
RECOMMENDATION 5: PROVIDED ALTERNATIVE COMPLIANCE ARRANGEMENTS	22
TABLE 2: AGENCY RATINGS ON SELECTED RECOMMENDATIONS	23
AGENCY PARTICIPATION IN REGFAIR BOARD HEARINGS	25
40 PUBLIC HEARINGS	25
500 AGENCY REPRESENTATIVES	25
TABLE 3: AGENCY PARTICIPATION RECORD	26
AGENCY BEST PRACTICES.....	27
INTRODUCTION	27
ENVIRONMENTAL PROTECTION AGENCY.....	27
FEDERAL ENERGY REGULATORY COMMISSION	28
DEPARTMENT OF LABOR	28
<i>Occupational Safety and Health Administration.....</i>	<i>28</i>
<i>Mine Safety and Health Administration</i>	<i>29</i>
<i>Compliance Guide to Assist Mine Operators with Training Programs</i>	<i>29</i>
<i>Office of Small Business Programs.....</i>	<i>29</i>
<i>Wage and Hour Division.....</i>	<i>29</i>
CUSTOMS SERVICE	30
SMALL BUSINESS ADMINISTRATION.....	30
INTERNAL REVENUE SERVICE	31
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	32
FEDERAL COMMUNICATIONS COMMISSION	32
FEDERAL TRADE COMMISSION	33
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.....	33
PENSION AND WELFARE BENEFITS ADMINISTRATION	34
SUCCESS STORIES	37
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION	37
<i>OSHA Helps Small Business Save \$134,000 Annually</i>	<i>37</i>
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	38
<i>Small Business Saved NASA a Launch Delay and \$200,000</i>	<i>38</i>
FEDERAL COMMUNICATIONS COMMISSION	38
<i>FCC Works to Educate Hospitality Industry About Operator Service Provider Obligations.....</i>	<i>38</i>
CUSTOMS SERVICE	39
<i>Friendlier Customs Lessens Pain and Provides More Relief.....</i>	<i>39</i>
DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOOD AND DRUG ADMINISTRATION	39
<i>FDA Facilitates Marketing of Small Business Product</i>	<i>39</i>
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.....	40
<i>EEOC's Small Business Liaison Resolves a Dispute Before it Becomes a Discrimination Charge</i>	<i>40</i>
APPENDIX	41
REGULATORY FAIRNESS BOARD MEMBERS	42
REGION 1	42
REGION 2.....	42
REGION 3.....	42
REGION 4.....	42
REGION 5.....	42
REGION 6.....	43
REGION 7	43

REGION 8.....	43
REGION 9.....	43
REGION 10.....	43
PREVIOUS RECOMMENDATIONS.....	44
FISCAL YEAR 2000 RECOMMENDATIONS	44
FISCAL YEAR 1999 RECOMMENDATIONS	45
FISCAL YEAR 1998 RECOMMENDATIONS	47
OUTLINE OF THE PROVISIONS OF THE SMALL BUSINESS ACT.....	49
OMBUDSMAN.....	49
<i>Ombudsman's Official Title</i>	49
<i>Reporting Structure</i>	49
<i>Sources of Assistance for Implementation of Ombudsman's Function</i>	49
<i>Ombudsman's Duties</i>	49
<i>Which Small businesses are entitled to comment</i>	50
<i>What should the comments concern?</i>	50
<i>Basis for the Annual Report</i>	50
<i>Contents of the Annual Report</i>	50
REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS	51
<i>Who establishes the boards and appoints members?</i>	51
<i>How many Boards should be established?</i>	51
<i>Composition of Board and Qualifications of Members</i>	51
<i>Term Of Board Members</i>	51
<i>Chairperson</i>	51
<i>Decision Making</i>	51
<i>Duties of the Board</i>	51
<i>Powers of Regulatory Fairness Boards</i>	52
<i>Mail: use Government franking privilege</i>	52
<i>Compensation</i>	52
SAMPLES AND FORMS	53
SAMPLE REGULATORY FAIRNESS QUESTIONS ASKED FEDERAL AGENCIES.....	53
COMPLAINT FORM FOR SMALL BUSINESS.....	54
INSTRUCTIONS FOR REGULATORY COMPLAINT FORM	57

Summary

SBA's National Ombudsman

This document is the Clinton Administration's final National Ombudsman Report to Congress. Ratings and comments in this report reflect federal agency compliance and enforcement activity during fiscal year 2000.

The Fairness Act was intended to foster a regulatory enforcement environment that is sensitive to the unique needs and concerns of small business

Over the past four years, SBA's Office of National Ombudsman (ONO) has made it a priority to notify the nation's 25 million small businesses of their right to comment on federal regulatory enforcement and compliance activities. RegFair is meeting this outreach challenge through speeches, presentations, and media interviews throughout the country; through partnerships with major trade associations, members of Congress, and other prominent actors in the small business community; and through a number of outreach avenues, such as the Small Business Leader Roundtables, the Association of the Month program, the *RegFair Report* monthly newsletter, and the RegFair Information Card. These outreach activities were described in ONO's *2000 Report to Congress and the Administration*.

The Fairness Act

The Fairness Act was intended to foster a regulatory enforcement environment that is sensitive to the unique needs and concerns of small business. The Act was also intended to change federal agency practices and

culture so that agencies take those needs and concerns into account in their regulatory enforcement and compliance activities, and to foster positive dialog and partnership between agencies and small businesses.

Agencies Make Determined Effort

Overall, it appears that most agencies are making determined efforts to apply the principles of the Act to their small business activities:

- they have designated high-level, independent officials to review small business comments; and
- they have in place or are establishing formal and periodic training for personnel responsible for small business enforcement or compliance activities.

Measuring Response

The evaluations are helpful in measuring agency response toward small businesses. However, ONO has no immediate method of determining how extensively agencies are enacting the efforts and programs described in their written responses to the recommendations. ONO currently evaluates whether agency personnel are carrying out these policies in the field by matching agency responses with small business comments received, by testimony offered in RegFair hearings, and by daily experiences of RegFair Board members.

October 2000

In October 2000, ONO and all ten regional RegFair Boards met in Washington, D.C., for the first National Regulatory Fairness Conference. Members of Congress, White House officials, high-level federal representatives, and association leaders attended the conference to build support and momentum for the program and to brainstorm on regulatory fairness issues.

Fiscal Year 2001

A Web-based Comment System

We expect to initiate web-based complaint/comment filing during the fourth quarter of 2001. This process will have several benefits:

It will automatically notify RegFair Board members of any new comments from small businesses in their regions and will link them to web pages containing the actual comment text and supporting documents. The system will also notify Board members

of, and link them to, agency responses. Complaint and comment documents will be password protected and encrypted to ensure privacy.

Ombudsman Office Relocated to Washington, DC.

The Office of the Small Business & Agriculture Regulatory Enforcement Ombudsman relocated from Chicago, IL to Washington, DC during the second quarter of fiscal year 2001.

Contacting the Ombudsman

Small businesses, small government entities and non-profit organizations may choose to correspond with the Office of the National Ombudsman by e-mail, fax, or USPS mail. Additionally, small business owners will soon be able to track the status of their complaints/comments and any agency response to their correspondence online.

Phone, Fax, E-mail Address

Phone Number: 1 (888) REG-FAIR

Fax Number: (202) 481-5719

E-mail Address: Ombudsman@sba.gov

Internet Website: www.sba.gov/regfair

Background

The National Ombudsman

The U.S. Small Business Administration Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman) works with the 50 Small Business Regulatory Fairness (RegFair) Board members to address the federal regulatory enforcement and compliance issues that may impede business success for 25 million small businesses. federal regulations affect small business disproportionately. In fact, per employee, small firms spend almost double that of large firms to comply with federal regulations. By removing these regulatory obstacles, business success will depend more on navigating the marketplace rather than on circumnavigating federal government rules.

By Statute

By statute, SBA's National Ombudsman is an independent, impartial, and confidential agent, who investigates small business complaints (and comments) in the regulatory enforcement and compliance arena. The Ombudsman's mission is to foster a fair and responsive regulatory environment for small businesses. This occurs principally through an effective complaint system, one that is easily accessible, simple to invoke,

objective, confidential, reasoned and understandable. Through recording and analyzing public comments/complaints, the Ombudsman and RegFair Board feed information to regulatory agencies so that appropriate action can be taken to avoid a recurrence –and/or offer a remedy. The underlying principle or premise embraces “complaints as opportunities.” When our

clients complain, we can root out problems, improve services, raise customer satisfaction, and increase good will and respect. Our motto “make it easy for the clients to complain, and our clients will make it easy for us to improve.”

The Past Four Years

Over the past four years, thousands of small business owners have complained to the Office of the National Ombudsman (ONO) about how agency regulations have become unfair burdens on their businesses. Complaints range from inadequate federal agency outreach and education, and poor compliance guidance, to conflicting or overly complex requirements and disproportionate enforcement activities. Another frequent complaint is poorly trained and supervised enforcement and compliance personnel. Time and again, small business owners tell us that some compliance costs have nothing to do with regulatory

The Small Business Regulatory Enforcement Fairness Act of 1996 (the Fairness Act) made the National Ombudsman an office with the Small Business Administration. The Act also created a RegFair Board, with 50 national small business leaders as members.

requirements and that the ease of compliance often depends largely on how clearly a regulation is written and what it requires. federal agencies, too, are frequently frustrated by the often overwhelming effort and cost associated with compliance. Reforms are needed that will improve communication, simplify requirements, and eliminate inadvertent difficulties. While zero-cost regulation may be an unrealistic goal, common-sense solutions can radically reduce compliance costs.

Action Taken By the National Ombudsman

SBA's National Ombudsman (ONO) has taken action. Through newly established working relationships with 34 federal agencies, SBA has helped create a new federal regulatory environment that is fairer and more business-friendly for America's small businesses.

Take "Company 950", a small New Hampshire law firm, that had been filing its taxes on a regular monthly basis for years before receiving a notice of penalty based on its filing practice. The business thought it made more sense for the IRS to have notified it that its practices needed to be changed rather than jumping to a punitive approach by assessing a penalty. After ONO and IRS reviewed the matter, the IRS

reconsidered its procedures and dropped the enforcement action.

Or, consider "Company 933," a small waste oil recycler from the Pacific Northwest. The company had worked for several years to obtain definitive guidance from EPA on whether waste oil needed to be treated as hazardous waste. The RegFair Board looked into the matter and discovered that there was no authoritative regulation, putting almost an entire industry into limbo. As a result, ONO worked with Company 933 and EPA and obtained definitive guidance.

In short, small businesses and ONO raise regulatory fairness questions and suggestions to the agencies that directly affect the small business owner. ONO ensures the credibility of the review and uses the responses to help rate agency performance, drive reforms, and develop recommendations to the Administration and to Congress.

In the past year, ONO continued to see strong interest among small businesses and federal agencies to work cooperatively in resolving some of the more difficult compliance issues. They discuss the issues at ONO's national meetings, regional hearings, and Small Business Leader Roundtables. What they came away with is a strong conviction that by working together industry and government can generate significant and positive results that will profit the entire nation.

Improving the Regulatory Environment

25 Million Small Business Owners

Over the past four years, ONO has made it a priority to notify the nation's 25 million small businesses of their right to comment on federal regulatory enforcement and compliance activities. RegFair is meeting this outreach challenge through speeches, presentations, and media interviews throughout the country; through partnerships with major trade associations, members of Congress, and other prominent actors in the small business community; and through a number of outreach avenues, such as the Small Business Leader Roundtables, the Association of the Month program, the *RegFair Report* monthly newsletter, and the RegFair Information Card. These outreach activities were described in ONO's *2000 Report to Congress and the Administration*.

Facilitating Small Business Participation

In increasing numbers, small businesses are using the Internet for buying and selling, researching and marketing, and organizing and advocating. The development of ONO's online system will take advantage of new technologies that will make ONO regulatory reform assistance easier and more effective for small businesses.

In early 1999, ONO recognized that a large number of small business visitors to the RegFair website were not sharing their experiences, pro or con, regarding federal regulatory enforcement and compliance activities. Determined to get as much feedback as possible and to help the small business owner further, ONO, with the advice of the

RegFair Boards, re-engineered its workflow processes and designed a database and began developing a new web-based comment process.

Sponsoring the First National Regulatory Fairness Conference

In October 2000, ONO and all ten regional RegFair Boards met in Washington, D.C., for the first National Regulatory Fairness Conference. Members of Congress, White House officials, high-level federal representatives, and association leaders attended the conference to build support and momentum for the program and to brainstorm on regulatory fairness issues.

Agency-Board workshops were held with Department of Labor's Employment Standards Administration's Wage and Hour Division, the Mine Safety and Health Administration, the Occupational Safety and Health Administration, and the Office of Small Business Programs, Department of Agriculture, Internal Revenue Service,

The SBA National Ombudsman has made it a priority to notify the nation's 25 million small businesses of their right to comment on federal regulatory enforcement and compliance activities.

Environmental Protection Agency, and Health Care Financing Administration (HCFA, Centers for Medicare & Medicaid Services). The workshops resulted in significant agency commitments to increase their marketing of RegFair to their small business customers and to address issues raised by Board members that stem from the small business comments and testimony ONO has received over the past four years.

Improving Communication With the Home Health Care Industry

In September 2000, ONO and RegFair Board members from Regions II and III hosted a small business roundtable with the Health Care Financing Administration (HCFA). Past enforcement and compliance concerns were discussed, as well as how the federal government may work more cooperatively with small home health care providers to ensure quality patient care, cost-effective treatment, and a friendlier regulatory environment.

The focus of the roundtable was how to strengthen the industry's and HCFA's efforts to improve their communication regarding policy and budget changes and to reduce the associated disruption and burden on small businesses.

One association representative, Mary St. Pierre, noted that since the introduction of HCFA's Prospective Payment System, the staff at HCFA has been accessible and has answered her and her association members' questions. Scott Lara, another industry representative, also believes communication is improving.

Tom Hoyer, a HCFA representative, received industry praise for the agency's website. He was looking forward to receiving the results of Gary Bowers' work with the Association of Independent

Certified Public Accountants regarding the quality of the audits performed by some of HCFA's fiscal intermediaries. Ann Howard, an industry member, made it clear that providers should be involved in the meetings HCFA has with its contractors.

Audits continue to be a particularly nettlesome topic. The industry is concerned about substandard, subjective audits; contractor inconsistency in applying HCFA rules; and the lack of accountability among HCFA's contractors. The industry believes that HCFA has lost control of the intermediaries—particularly in the areas of audit and reimbursement—and that the Government Accounting Office and the Inspector General push HCFA to drive its contractors to recoup as much money as possible.

HCFA is commissioning a survey of small home health care providers to identify specific areas of HCFA service that need improvement. HCFA is also taking action to ensure that its Program Integrity Group is responsive to the industry's feedback regarding specific enforcement activities. ONO looks forward to working further with industry and government representatives in 2001 on home health care issues.

Cooperating on EPA Reporting Requirements

In the spring of 2000, EPA launched an initiative to enforce an industry requirement to report nitrate emissions. At the time, industry leaders with exemplary compliance records were unaware of this requirement, and so they did not report nitrate emissions.

SBA's Office of Advocacy, ONO, a group of industry representatives, and EPA enforcement officials worked together to

resolve this dilemma fairly. The agreement calls on EPA to:

- ask affected facilities to commit to conducting a toxic releases inventory (TRI) audit to cover the last four years (from January 1995 to December 1998) for releases of nitrate compounds and other chemicals;
- give facilities up to 120 days to complete the audit, submit the reports for the last four years, and certify compliance with applicable statutory requirements;
- give facilities participating in the agreement additional time to report nitrate compounds for TRI reporting year 1999;
- assess a \$1,000 penalty for small businesses with no additional penalties assessed for any TRI noncompliance identified and corrected as part of the audit;
- assess the penalty per company, regardless of the number of years of noncompliance;
- allow facilities that choose not to participate in the agreement to pursue individual settlements with the appropriate EPA region pursuant to the existing terms of the national settlement; and
- work with several trade associations that have agreed to sponsor a TRI Reporting Conference for member companies.

The industry believes that the settlement is a fair resolution of the issue. While the Office of Advocacy's Chief Counsel and ONO believe no penalty should be assessed, the industry was eager to rapidly resolve the initiative along the final terms of the agreement. The penalties represented a significant reduction from EPA's original assessment. The audit provision allows

facilities an opportunity to correct any past noncompliance, thereby promoting greater compliance with applicable TRI reporting requirements.

Continuing the Small Business Leader Roundtables

In fiscal year 2000, ONO and the RegFair Boards held ten Small Business Leader Roundtables across the country to strengthen relationships with small businesses and their trade associations at the state and local levels. These discussion groups aid ONO and the RegFair Boards in gauging the effectiveness of their past marketing efforts, in gaining insight on how to improve the program, and in enlisting local support in informing small businesses of their rights to regulatory fairness.

Testifying at RegFair Board Hearings

ONO posted on its website the transcripts of all ten RegFair hearings held in 2000 (<http://www.sba.gov/regfair>). Small business owners reviewing the transcripts can see that businesses in other parts of the country have similar concerns, which encourages many of the owners to testify about their compliance and enforcement experiences. The transcripts allow federal agencies to review the testimony and systematically address small business concerns. The transcripts also update members of Congress about the federal regulatory experiences of their constituents and the recurring enforcement and compliance issues that are emerging from the small business community.

Simplifying Requirements for Dry Cleaners

In 1998, a Dry Cleaners Work Group Committee was formed to aid Denver-area

dry cleaners in complying with EPA guidelines. Committee members included the Rocky Mountain RegFair Board members, Denver EPA officials, representatives from the Rocky Mountain Fabricare Association, owners of other dry cleaning businesses, a representative from a dry-cleaning supply company, and ONO. The committee drafted *Plain English Guide*

for Perc Dry Cleaners. This publication is a comprehensive, user-friendly guide, which summarizes EPA requirements for the dry cleaning industry and is available at <http://www.epa.gov/opptintr/dfe/garment/perc/perc.pdf> on the Internet.

Fairness of Agency Enforcement and Compliance Activities

There is an obvious benefit to reforming the enforcement and compliance culture from one that is reactive with fines, penalties, and restrictions to one that is proactive in eliminating unnecessary barriers to compliance. Ultimately what will be achieved is a greater level of compliance per tax dollar spent and greater credibility among small business leaders.

Small business owners have told ONO that the excessive time it takes federal agencies to hear their requests, carry out regulatory enforcement or compliance activities, and review their appeals hurts their business. Agencies also tend to set and strictly enforce tight deadlines and often do not comply with their own response time commitments.

Required by the Fairness Act

One of ONO's objectives, as required by the Fairness Act, is to improve federal agency accountability by evaluating and rating enforcement and compliance activities. The ratings in this section are based on the written comments and testimony of small business owners and on the responsiveness of agencies to ONO's regulatory fairness questions. The ratings also illustrate agency commitment to implement the National Ombudsman's annual recommendations, which were designed to create a more friendly, non-punitive regulatory environment.

Agency Responses to the Experiences of Small Businesses

Small business owners want to know that their complaints and comments are being considered. ONO and the RegFair Boards treat every comment as a case study with the potential for significant national impact. Thorough and thoughtful agency responses aid ONO and the RegFair Boards regarding enforcement and compliance concerns, as well as where potential solutions may lie.

In instances of substantiated regulatory enforcement problems, agencies are asked to describe to ONO how they will eliminate or greatly reduce the problem's occurrence and better monitor their own performance. The personnel or policy changes that are brought about by the input of small business owners have significant positive impacts on the overall enforcement and compliance environment. In effect, their comments help thousands of other small business owners, many of whom have not participated in the RegFair process.

An ONO objective: To improve agency accountability by evaluating and rating enforcement and compliance activities.

Agency Adoption and Implementation of the ONO's Annual Recommendations

The National Ombudsman and the regional RegFair Boards employed comments and testimony by small business owners to develop *The National Ombudsman's Annual Recommendations*. After publishing the recommendations and discussing them with the agencies, ONO evaluates and rates agencies' adoption and implementation of selected recommendations.

This past summer and fall, ONO asked RegFair Board members and agencies for their input on the criteria to be used to evaluate agencies for *The National Ombudsman's 2001 Report (Fiscal Year 2000) to Congress*. Specifically, ONO asked the Board members to provide comments and suggestions for criteria for evaluating agency efforts to implement the 2001 rated recommendations.

ONO, after reviewing the proposed criteria, incorporated them into draft evaluation where appropriate. ONO then distributed the final criteria to the agencies (presented in Appendix A) and asked the agencies to provide a status report on their efforts to implement the fiscal year 2000 rated

recommendations and to improve the regulatory enforcement environment for small business.

In evaluating and rating the agencies' performance, ONO took into account efforts to achieve the same ends sought in the recommendations, but by different means. As was the case last year, ONO considered substantiated instances of enforcement or compliance activity that appeared inconsistent with agency responses to the rated recommendations.

ONO and the RegFair Boards firmly believe that recommendations published before 2000 continue to resonate with small businesses and will help promote a more friendly, fairer, regulatory enforcement and compliance environment for the nation's 25 million small

ONO used all agency responses in its ratings, including responses to the draft of the fiscal year 2000 report. Table 2 shows that thirteen agencies achieved a rating of *Good* or *Excellent* on all five rated recommendations. Those agencies are the Consumer Product Safety Commission, Customs Service, Equal Employment Opportunity Commission, Federal Trade Commission, Food and Drug Administration, Immigration and Naturalization Service, Internal Revenue Service, Department of Justice (Civil Rights Division), Department of Labor, Occupational Safety and Health Administration, Small Business Administration, Department of Transportation, and Department of Veterans Affairs.

Agency Responses to ONO's Regulatory Fairness Questions

Small business owners often state that it is unfair to be severely penalized for violating a rule they do not know exists. Indeed, when significant numbers of responsible small businesses are not aware of a rule that affects them, then it is a clear signal that the regulatory agency has not successfully educated those businesses regarding compliance requirements. (*See Cooperating on EPA Reporting Requirements.*) In this situation, although the agency's enforcement activity may be within its authority, the agency is not upholding basic regulatory fairness standards because it failed to effectively communicate the regulatory requirements.

The sample regulatory fairness questions that follow are designed to elicit agency

consideration of basic process issues that ONO and the RegFair Boards believe form the structure of a fair enforcement and compliance environment. The questions illustrate that regulatory fairness goes beyond an agency's authority to initiate an enforcement or compliance activity. Rather, the agency should cope with how the small business owner must comply with the regulatory standards.

These questions are posed in modified forms appropriate for a given comment and the level of identity disclosure the small business owner elects. (Small business owners may elect to disclose their company's identity to agencies so that the agencies may review the actual circumstances of the enforcement or compliance activities and how their regulatory fairness standards were applied to the companies.)

Table 1: Agency Responsiveness Rating
Adequacy, Thoroughness and Response Time of 15
Agency Responses to Small Business Comments

Agency	Responses to Small Business Comments	Responses to ONO's Questions	Response Time FY2000 Rating	Overall Rating
Department of Agriculture	A	A	A	A
Department of Commerce	B	A	A	A-
Commodity Futures Trading Commission	B	B	A	B+
Environmental Protection Agency	C	C	B	C+
Equal Employment Opportunity Commission	B	B	C	B+
Federal Communications Commission	B	B	F	C+
Federal Deposit Insurance Corp.	A	A	B	A-
Health Care Financing Administration	A	B	F	C
Department of Housing and Urban Development	B	B	F	C-
Department of Labor	B	B	C	B-
• Occupational Safety and Health Administration	C	B	B	B-
Department of Transportation	A	A	C	B+
Department of the Treasury	C	F	B	C-
• Internal Revenue Service	B	C	C	C+
• Customs Service	A	A	A	A
A Excellent	All of the small business' issues were fully addressed. The response demonstrates a thorough and reflective review of the issues or questions. Courses of action are discussed for any substantiated concerns. Initial written response time to small business comments was within 45 days of RegFair's transmitting comments for agency review and response.			
B Good	The response addressed most of the small business' issues. It demonstrates the agency seriously considered the issues or questions during its review. Where applicable, the response does not address the agency's reaction to substantiated small business or RegFair concerns. Initial written response time to small business comments was 46-60 days after RegFair transmitted comments for agency review and response.			
C Average	The response addressed most of the small business' issues in a moderately complete fashion. Initial written response time to small business comments was 60-90 days after RegFair transmitted comments for agency review and response.			
F Unsatisfactory	The response very minimally addressed a few of the small business' issues and did not address a significant number of the issues. Initial written response time to small business comments was more than 90 days after RegFair transmitted comments for agency review and response.			

NOTE: The above ratings are based on the 28 complaints and comments received by the Office of the National Ombudsman regarding federal agency performance during fiscal year 2000.

The number of agencies listed in this table reflects agencies that have provided a final response to small business comments reviewed in FY2000. There are additional comments on other agencies for which RegFair has not received adequate final agency responses. Those comments were not evaluated at the time this report was printed.

FY2000 Rated Recommendations and Criteria¹

Recommendation 1: Increased Voluntary Compliance Reviews

Provided a violation does not involve serious injury or harm, agencies should institute programs that:

to come into compliance without being penalized, and

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Give small businesses notice of violations and reasonable opportunities | <ol style="list-style-type: none"> 2. Increase voluntary compliance reviews to give businesses the guidance they need without the fear of penalty. |
|--|---|

A Excellent	<ul style="list-style-type: none"> • The agency has implemented agency-wide policies to notify small businesses of violations and opportunities to come into compliance without penalty in cases where: • The relevant statute(s) do not compel the agency to penalize the small business (to the extent a penalty is required by statute, the agency's policy sets the minimum penalty); • The small business operated in good faith to comply with the agency's rules; • No serious harm occurred; and • There was no imminent risk of serious injury or harm (ONO carefully reviews each agency's response with regard to how its penalty waiver policy addresses potential injury or harm). • Since 1998, the agency has: • Significantly increased the availability of voluntary compliance review programs, which give small businesses the guidance they need to come into full compliance and avoid penalties; and • Taken reasonable steps to notify small businesses of the availability of these programs.
B Good	<p>The agency has:</p> <ul style="list-style-type: none"> • Implemented item 1 or item 2, detailed above; and • Committed to implementing, within 12 months, the item not yet in place.
C Average	<p>The agency either has either:</p> <ul style="list-style-type: none"> • Committed to implementing, within 12 months, both item 1 and item 2; or • Already implemented one of the two items, but will not commit to implementing the other.
F Unsatisfactory	<p>The agency either has neither:</p> <ul style="list-style-type: none"> • Implemented the recommendation; nor • Provided sufficient information to determine whether the recommendation was satisfactorily implemented.

¹ Each year the National Ombudsman selects a reasonable number of both prior and current recommendations to rate federal agencies. Of the 30 prior and present recommendations, the Ombudsman elected to rate federal agencies on five. These five are listed in this section along with the rating criteria for each.

Recommendation 2: Delegated Enforcement Authority Fairly

When federal agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum federal standards (e.g., Fairness Act standards) are met. This includes a flow-down of all federal small business protections and cooperative objectives that

guarantee small businesses their rights without the use of costly judicial remedies. Agencies should review and report on state government and other intermediaries' compliance with all applicable federal standards.

<p>A Excellent</p>	<p>When the agency delegates or re-authorizes the delegation of regulatory enforcement and compliance authority to states or other entities, it has policies in place to ensure that:</p> <ul style="list-style-type: none"> • Small businesses have negotiation, review, and appeal rights that are at least as favorable—regarding cost, expediency, and burden of proof—as those the agency would provide if it had taken enforcement or compliance activity itself; • Small businesses are given the rights accorded to them under the 1996 Fairness Act, including the timely notice of their right to comment on regulatory enforcement and compliance activities with ONO; • Small businesses are advised by the entity undertaking an enforcement activity, that the activity, in whole or in part, is based on a federal agency delegation of authority and qualifies, at least in part, as a federal regulatory enforcement or compliance activity; and • The agency periodically verifies with the entities to whom it has delegated enforcement or compliance authority their conformance with these fairness standards, and has policies in place to take corrective action for nonconformance and, when appropriate, revoke its delegation of authority.
<p>B Good</p>	<p>The agency has:</p> <ul style="list-style-type: none"> • Implemented at least two of items detailed above; and • Committed to implementing the remaining item(s) within 12 months.
<p>C Average</p>	<p>The agency will implement at least three of items listed above under Excellent within 12 months.</p>
<p>F Unsatisfactory</p>	<p>The agency either has neither:</p> <ul style="list-style-type: none"> • Implemented the recommendation; nor • Provided sufficient information to determine whether the recommendation was satisfactorily implemented.

Recommendation 3: Disseminated RegFair Information

Federal agencies should use their small business liaison offices to inform small businesses on an ongoing basis about their rights to regulatory fairness. These liaisons

should disseminate RegFair information materials in mailings, at offices, and through existing outreach efforts.

<p style="text-align: center;">A Excellent</p>	<p>The agency's small business liaison offices:</p> <ul style="list-style-type: none"> • Inform small businesses on an ongoing basis about their rights to regulatory fairness; and • Regularly disseminate RegFair materials in mailings to small businesses and through existing outreach efforts.
<p style="text-align: center;">B Good</p>	<p>The agency:</p> <ul style="list-style-type: none"> • Occasionally uses its small business liaison office to inform small businesses about their rights to regulatory fairness and to disseminate RegFair materials; and • Has developed plans for converting this occasional function to an ongoing function.
<p style="text-align: center;">C Average</p>	<p>The agency has committed to either:</p> <ul style="list-style-type: none"> • Establishing within 12 months, procedures to ensure that its small business liaison office is informing small businesses about their rights to regulatory fairness; or • Regularly disseminating, within 12 months, RegFair materials in mailings to small businesses and through existing outreach efforts.
<p style="text-align: center;">F Unsatisfactory</p>	<p>The agency's response indicates either:</p> <ul style="list-style-type: none"> • The agency did not respond to the recommendation, or responded to the recommendation, but offered no relevant information; or • The agency does not use internal offices to inform small businesses about their rights to regulatory fairness or to disseminate RegFair materials, and offered no information on whether it is planning to do so.

Recommendation 4: Reduced Small Business Data Collection

Agencies should review and reduce their small business data collection and reporting requirements and eliminate duplication of requested information. Agencies should also

periodically conduct field studies of the actual time small businesses spend complying with their reporting requirements.

<p style="text-align: center;">A Excellent</p>	<p>The agency:</p> <ul style="list-style-type: none"> • has assigned staff, with sufficient authority, to review all small business data collection and reporting requirements; • has eliminated known duplicative data collection and reporting requirements and has reduced, where possible, the amount of data collected; • periodically measures the time and financial burdens its data collection and reporting requirements place on the small business communities it serves; and • will, within 12 months, develop and publicize a feedback mechanism for small business owners to report duplicative requirements within the agency.
<p style="text-align: center;">B Good</p>	<p>The agency has:</p> <ul style="list-style-type: none"> • implemented at least two of items, detailed above; and • committed to implementing the remaining item(s) within 12 months.
<p style="text-align: center;">C Average</p>	<p>The agency will implement at least three of items listed above under Excellent within 12 months.</p>
<p style="text-align: center;">F Unsatisfactory</p>	<p>The agency either has neither:</p> <ul style="list-style-type: none"> • implemented the recommendation; nor • provided sufficient information to determine whether the recommendation was satisfactorily implemented.

Recommendation 5: Provided Alternative Compliance Arrangements

Agencies should establish avenues through which small businesses can expeditiously raise the concern that the enforcement of a compliance action threatens their economic viability. The reviewing entity should have authority to provide for alternative payment

arrangements, enforcement or compliance actions, or other arrangements on a timely basis (such as within 30 days). The availability of this avenue should be made clear to small businesses.

<p style="text-align: center;">A Excellent</p>	<p>The agency has:</p> <ul style="list-style-type: none"> • established an avenue through which a small business can expeditiously raise a concern with a regulatory enforcement or compliance activity that threatens its economic viability; • authorized, with appropriate guidelines, staff to exercise discretion with regard to its enforcement or compliance activities in response to a substantiated allegation that its activities threaten a small business' economic viability (unless specifically prohibited by statute. Categories of discretion may include compliance deadlines, penalty assessments, payment arrangements, and prohibition modifications); and • taken reasonable steps to communicate the availability of this avenue to the small business communities it serves.
<p style="text-align: center;">B Good</p>	<p>The agency has established an avenue through which a small business can expeditiously raise concerns about economic viability. The agency either:</p> <ul style="list-style-type: none"> • has the authority to provide for alternative payment arrangements, alternative enforcement or compliance actions, or other arrangements, and has made little effort to inform small businesses about the availability of this avenue; or • has limited authority to provide for alternative payment arrangements, alternative enforcement or compliance actions, or other arrangements, and has made extensive efforts to inform small businesses about the availability of this avenue.
<p style="text-align: center;">C Average</p>	<p>The agency:</p> <ul style="list-style-type: none"> • has established an avenue with limited authority to examine and change its enforcement or compliance activities, or provide for alternative arrangements; and • has made some efforts to inform small businesses about the availability of this avenue.
<p style="text-align: center;">F Unsatisfactory</p>	<p>The agency has neither:</p> <ul style="list-style-type: none"> • implemented the recommendation; nor • provided sufficient information to determine whether the recommendation was adequately implemented.

Table 2: Agency Ratings on Selected Recommendations

Agency Ratings on the National Ombudsman’s Fiscal Year 2000 Recommendations

Note: The agencies selected for rating, the factors rated and the rating criteria utilized in Table 2 were established under the previous Administration. On July 24, 2001, the Acting Ombudsman will meet with representatives from each regulatory agency to discuss the criteria that will be used in future reports to rate the responsiveness of those agencies, by region and program office, which have been the subject of substantiated comments by small business concerns.

Agency	<i>Rec. 1</i> <i>Increased Voluntary Compliance Reviews</i>	<i>Rec. 2</i> <i>Delegated Enforcement Authority Fairly</i>	<i>Rec. 3</i> <i>Disseminated RegFair Information</i>	<i>Rec. 4</i> <i>Reduced Small Business Data Collection</i>	<i>Rec. 5</i> <i>Provided Alternative Compliance Arrangements</i>	Overall Rating
Department of Agriculture	B	A	B	B	A	B+
Department of Commerce	B	No Delegates	B	C	A	B
Commodity Futures Trading Commission	B	No Delegates	C	B	A	B
Consumer Product Safety Commission	A	No Delegates	A	A	B	A-
Environmental Protection Agency	A	C	A	B	A	B+
Equal Employment Opportunity Comm.	A	No Delegates	A	B	A	A-
Farm Credit Administration	B	No Delegates	B	B	C	B-
Federal Communications Commission	B	B	A	A	B	B+
Federal Deposit Insurance Corporation	C	No Delegates	C	A	B	C+
Federal Energy Regulatory Commission	B	No Delegates	A	B	A	B+
Federal Trade Commission	A	No Delegates	A	B	A	A-
Food and Drug Administration	A	A	A	B	A	A-
Centers for Medicare & Medicaid (HCFA)	B	No Delegates	B	C	C	C+
Department of Housing and Urban Dev	B	No Delegates	A	Not Rated	Not Rated	Not Rated
Department of the Interior*	A	B	B	B	A	B+
Department of Justice						
• Immigration and Naturalization Serv	A	No Delegates	A	B	A	A-
• Civil Rights Division	A	No Delegates	B	Not Rated	A	A-
Department of Treasury						
• Customs Service	A	No Delegates	A	B	A	A-
• Internal Revenue Service	A	No Delegates	A	A	A	A

	<i>Rec. 1</i>	<i>Rec. 2</i>	<i>Rec. 3</i>	<i>Rec. 4</i>	<i>Rec. 5</i>	
Agency	<i>Increased Voluntary Compliance Reviews</i>	<i>Delegated Enforcement Authority Fairly</i>	<i>Disseminated RegFair Information</i>	<i>Reduced Small Business Data Collection</i>	<i>Provided Alternative Compliance Arrangements</i>	Overall Rating
Department of Labor	A	No Delegates	A	A	A	A
• Occupational Safety and Health Admi	A	No Delegates	A	B	A	A-
National Aeronautics and Space Admin.	C	No Delegates	A	Not Rated	A	B+
National Labor Relations Board	A	No Delegates	B	Not Rated	B	B+
Pension Benefit Guarantee Corporation*	B	No Delegates	A	B	B	B+
Securities and Exchange Commission	B	No Delegates	A	A	B	B+
Small Business Administration	A	No Delegates	A	A	A	A
Department of State	C	No Delegates	A	B	B	B
Tennessee Valley Authority	C	No Delegates	B	B	C	C+
Department of Transportation	A	A	A	B	A	A-
Department of Veterans Affairs	A	No Delegates	A	B	Not Rated	A-

A = Excellent; B = Good; C = Average; F = Unsatisfactory ²

² As stated in *The National Ombudsman's 1999 Report to Congress*, Section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 is part of "Subtitle B—Regulatory Enforcement Reforms." Section 221 contains the "definitions" applicable to Subtitle B. It adopts the Freedom of Information Act (FOIA) definition of "agency," as follows: "each authority of the Government of the United States, whether or not it is within or subject to review by another agency . . ." (5 U.S.C. §551). Accordingly, ONO, with advice from the regional RegFair Boards, has concluded that Section 222 applies whenever a federal agency, as defined above, exercises regulatory enforcement or compliance authority with respect to a small business concern (15 U.S.C. §657(b)(2)(B)).

In determining which agencies are covered under the Regulatory Fairness Program, ONO is strictly guided by the statute. In Section 221, Congress adopted FOIA's broad definition of "agency" to define the agencies covered under Section 222. Moreover, Section 222 addresses "each agency with regulatory authority over small businesses." Accordingly, the Regulatory Fairness Program has rejected the position of some agencies that they are not covered by the Act because they are not a regulatory agency. In other words, as required under Sections 221 and 222, an agency may exercise "regulatory authority over small businesses" without being a regulatory agency.

In Section 222, Congress also addressed "actions by agency employees conducting compliance or enforcement activities with respect to the small business concern." As stated in *The National Ombudsman's 1999 Report to Congress*:

In keeping with Congressional intent, as manifested by the statutory language, RegFair has not limited small business concerns to fines and penalties. The National Ombudsman believes that Congress did not intend such a narrow scope, or it would have used the words "fines" and "penalties." The Regulatory Fairness Boards and the National Ombudsman believe this is significant because, as seen in the feedback received by RegFair through written comments, testimony, and RegFair Board contact, small businesses have significant regulatory enforcement and compliance concerns which are not restricted to fines and penalties.

Agency Participation in RegFair Board Hearings

40 Public Hearings

In four years, ONO and the RegFair Boards have convened 40 public hearings nationally. Agency participation in these hearings increases the dialog between small businesses, RegFair Board members, ONO, and agency officials. It also gives agencies the opportunity to discuss their efforts to improve their enforcement environment and to address the issues that small businesses have raised.

These public hearings are strengthening RegFair's relationship with SBA's regional and district offices. Improved relationships

have resulted in a more varied base of small business owners attending the hearings and have garnered more diverse testimony.

500 Agency Representatives

This year, federal agency participation in the ten regional hearings was significantly higher than in prior years. More than 500 agency representatives attended, and nearly 100 small business representatives presented testimony. Agency representatives heard small business comments, answered on-the-spot questions, and followed up on regulatory fairness issues.

We are greatly honored, once again, to have strong congressional participation at the regional hearings during fiscal year 2000. Congress is an essential partner in achieving regulatory fairness for small businesses. The involvement of U.S. senators and representatives at the public hearings demonstrates to the small business participants that their concerns are being earnestly addressed.

Table 3: Agency Participation Record

Agency Participation in RegFair Board Hearings

Date	Region	Location	Agencies Invited	Agencies Testified	Agencies Attended
08/22/00	1	Manchester, NH	DOD, HCFA	DOD, HCFA	EPA, OSHA, DOL, EPA
05/17/00	2	San Juan, PR	Commerce, VA	Commerce, VA	IRS, EPA, Customs
06/22/00	3	Baltimore, MD	SEC, DOT	SEC, DOT, EPA	DOL, OSHA, Customs
08/01/00	4	Tougaloo, MS	FCC, USDA, NASA	None	IRS, OSHA, SSA, DOL, HUD, DOE, USDA
09/11/00	5	Rockford, IL	EEOC, DOL, NASA, DOD, DOJ	EEOC, DOL, DOJ	Commerce, EPA, OSHA, IRS, Customs, FDA, NASA
04/17/00	6	Houston, TX	DOL, NASA	DOL	DOL, OSHA, HCFA, EPA, Customs
06/13/00	7	W. Des Moines, IA	USDA, EPA	USDA, EPA	DOL, OSHA
05/01/00	8	Sioux Falls, SD	IRS, EPA, USDA, DOI	IRS, EPA, USDA, DOI	HUD
03/03/00	9	Tempe, AZ	Customs, OSHA	Customs, OSHA	DOT, DOL
09/26/00	10	Anchorage, AK	DOE, USDA, DOI	USDA	USDA, IRS, DOL, OSHA, DOT, EPA, Customs

Agency Best Practices

Introduction

Several federal agencies have adopted innovative approaches to make their enforcement and compliance efforts fairer and friendlier to small businesses. These innovations are impressive, and ONO and the RegFair Boards believe that both small business advocates and additional federal agencies will benefit from learning about these improvements.

While “best practices” frequently relate to reported enforcement issues and ONO’s past recommendations, they are not restricted to these categories. Rather, best practices are illustrative of novel approaches developed by agencies to aid small businesses in voluntarily complying with regulatory requirements. The best practices contained in this report include agency efforts to:

- improve their communication with small businesses to achieve greater compliance;
- use partnerships between agencies to increase awareness of the law among small businesses; and
- actively seek feedback from small businesses to improve customer service.

The best practices noted in this report are a sampling of agency efforts to create a regulatory environment where small businesses communicate, cooperate, and

Federal agencies have adopted innovative approaches to make their enforcement and compliance efforts fairer and friendlier to small businesses.

ultimately voluntarily comply with regulatory requirements. ONO encourages all agencies to consider establishing measures similar to those

highlighted in this section.

Environmental Protection Agency

Revising EPA’s Small Business Strategy

In 1984, EPA unveiled its first strategy for improving its regulation of small businesses and the level of compliance with those regulations. This year, EPA sharpened the focus of its 1984 strategy, putting more effort into enhancing the environmental performance of small businesses, unifying EPA’s approach to small businesses, and seeking workable policies and approaches that are most effective in addressing small business issues and needs.

EPA this past spring held a series of meetings with in-house and external stakeholders to identify issues and recommendations. Ultimately, EPA hopes to produce a strategy that balances environmental regulation with the needs of small businesses. A copy of the 1984 strategy can be found at <http://www.epa.gov/sbo/strat1984.pdf>. More information on the revisions to the strategy can be found at

<http://www.epa.gov/sbo/july00n1.pdf> or by contacting Andy Teplitzky at (202) 564-4088 or at Teplitzky.Andy@epa.gov.

Developing Compliance Assistance Needed by Small Businesses

In a continuing effort to tailor its compliance assistance to the needs of small businesses, EPA asked SBA for help in identifying the types of assistance small businesses need most. In particular, EPA sought direct input from small businesses through SBA's contacts in the small business community, including the RegFair Board members.

This effort culminated in an EPA presentation to the RegFair Board members at the October 2000 SBA Conference held in Washington, D.C. At that time, the National Ombudsman committed to assisting EPA's efforts by soliciting input from SBA's small business contacts regarding needed compliance assistance.

Federal Energy Regulatory Commission

Review of Burden by Layer

FERC has increased its ability to respond to the needs of small businesses by breaking the compliance process into layers and reviewing ways to reduce the burden at each layer separately. The process is as follows:

- FERC inspectors first attempt to find ways to meet the Commission's needs without burdening the small business.
- If the inspectors do not succeed, FERC's compliance section undertakes the same effort.
- Finally, if the first two layers are not successful, FERC's enforcement

section tries to help the small business come into compliance.

Information on the FERC Website

The FERC website contains information about ONO and the RegFair Boards, a toll-free number that small businesses may call to comment on the Commission's enforcement actions, and a link to SBA's website.

Department of Labor

Occupational Safety and Health Administration

Susan Harwood Training Program Grants

OSHA negotiated a pilot project with the Association of Small Business Development Centers to award Harwood Training Program grants to several SBA Small Business Development Centers. The grant funds are being used to develop print and website educational materials on safety and health issues that target specific small business industries and to conduct training and outreach to those industries.

Interactive Electronic Expert Advisors

Interactive software programs enable small businesses and others to answer a few simple questions and receive reliable answers on how OSHA regulations apply to their unique work sites. These programs can be downloaded for free and anonymously from OSHA's website, www.osha.gov (click on "OSHA Advisors").

Small Business Website

This website (<http://www.osha-slc.gov/SmallBusiness/index.html>) provides

one-stop shopping for the most popular materials for small businesses, from free on-site consultation, to interactive computer software, to technical information, to easy-to-follow guides for specific OSHA standards. It also includes links to local OSHA offices and to SBA's website.

Mine Safety and Health Administration

Compliance Guide to Assist Mine Operators with Training Programs

Mine operators are now required to develop training programs for employees working at shell dredging operations and at mines producing sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone. MSHA's compliance guide is continually updated as a result of questions and issues raised by the mining community as they develop mine-specific training for their employees. Because safety and health hazards are mine-specific, operators need flexibility to design training programs that meet the particular needs of their employees. The training rule, and the options given in the compliance guide provide operators with this advantage.

Mine Safety and Health Administration Web-Based Interactions

Mine operators may use MSHA's website at www.msha.gov to file employment, production, legal identity reports, and training plans. The capability to use electronically formatted forms and to complete on-line filing of reports is a resource-saving benefit for operators. Additionally, data is available for operators to download so they may analyze accident, illness and injury information about their mines. This analysis can be used to improve their safety and health programs.

Office of Small Business Programs

The Coordinated Compliance Assistance for Business Program

A partnership initiative designed to assist small businesses in knowing and meeting statutory and regulatory requirements with emphasis on compliance assistance and prevention. The goal is to eliminate the need for after-the-fact enforcement. The Office of Small Business Programs coordinates the Department's initiatives which include the Department's regulatory enforcement agencies and partnerships with SBA Small Business Development Centers in Delaware and New York, and the Penn State Cooperative Extension of Allegheny County Pennsylvania (Pittsburgh). The program provides comprehensive and direct technical assistance to small business owners. This multi-faceted approach gets information directly to small businesses on how to comply with the Department's laws and regulations through seminars, workshops and individual counseling. Since April 2001, additional partnerships have been established with the Florida, Maryland and Virginia SBA SBDCs. Other jurisdictions have also expressed interest in participating in this initiative.

Wage and Hour Division

Technology for Excellent Customer Service (TECS)

Small businesses and other interested parties may call a toll-free number, 1-800-4US-WAGE, to obtain information about laws and regulations under the Wage and Hour Division. During the initial phases, the national TECS call center will refer employers to appropriate Wage and Hour Division offices for assistance. TECS refers

non-WHD calls (about half the total calls received) to the appropriate agency. Subject to requested increased funding, expected future enhancements will include the ability to provide answers to basic employment standards questions. TECS is a pilot program of a Department-wide integrated information technology system to provide employers, including small business and workers, with prompt assistance on their DOL-specific requests and needs.

Labor Standards Information for Small and New Businesses

The Wage and Hour Division has updated its Labor Standards Information package that helps new and small business employers decide which labor standards apply to them, and then offers relevant information available in various formats. The information will be available in local Wage and Hour Division offices and on the Internet in both HTML and PDF formats.

Employment Laws Assistance for Workers and Small Businesses

The Wage and Hour Division continues to update and expand the information it provides on its e-laws (Employment Laws Assistance for Workers and Small Businesses) advisors on the Internet. E-laws can provide an answer to many questions any time of the day or night. This free interactive program was designed to give advice to small business owners – and other interested parties – in a question and answer format, similar to that used by a human expert.

Multi-Agency Small Business Resource Guide

The Wage and Hour Division partnered with the Small Business Administration, Internal Revenue Service and others to develop “The

Small Business Resource Guide” compact disk to further help small businesses understand labor standards and other laws affecting them.

Customs Service

Regional Regulatory Fairness Board Meetings Make a Difference

One of the latest practices established by Customs Service was to notify its senior managers and their staffers of any Regional Fairness Board hearings in close proximity to their ports and invite them to attend. Our agency was represented at six of the ten hearings, including the one at which we provided testimony. More importantly, feedback from those representatives revealed that attendance at these hearings provided them with a better understanding of the impact of regulatory compliance and enforcement requirements on small businesses.

Small Business Administration

SBA Does Legal Homework to Assist Small Business Owners

When considering the termination of an 8(a) firm, SBA involves agency counsel on the front end of the process—*before* putting a firm through the necessity, and associated burdens, of defending itself—to confirm that legally sufficient grounds for termination exist. Once SBA decides to move forward with the termination process, it provides the small business the opportunity to have counsel represent its case in an informal administrative proceeding. It is hoped this informal proceeding, rather than a more formal hearing, will minimize the expense to the small business.

Internal Revenue Service

Improving Performance Measures

Historically, the IRS has measured its success largely by things it can count, such as the number of returns processed, refunds issued, and calls answered. However, recently, the IRS Customer Service Task Force found that customers want service that is more qualitative than quantitative: fair, respectful, and courteous treatment; minimal contact with the IRS; simpler forms and notices; easy access to help; and quick resolution of problems.

As a result, the IRS has created the new Balanced Measurement System. Its three elements—customer satisfaction, employee satisfaction, and business results—comprise quality, quantity, and outreach measures. The system is helping the IRS to identify and communicate its organizational priorities, guide and motivate its performance, determine how well it is meeting customer and stakeholder expectations, and obtain feedback for improving its performance.

Reducing Taxpayer Burdens

The IRS frequently issues regulations and guidance to help small businesses comply with tax laws and regulations. Some recent examples include:

- reducing paperwork requirements for filing tax returns and other information with the IRS by permitting electronic reporting;
- ensuring the quality, clarity, accuracy, and timeliness of all IRS communications;
- inserting toll-free phone information on compliance notices so that taxpayers

may speak directly to the tax examiner working their case;

- informing taxpayers of their appeal rights and providing comprehensive assistance before and during their appeals;
- reducing the time taxpayers have to wait on the telephone line before being connected with an IRS representative;
- offering twenty-four hour a day seven days a week responses to general tax law and procedural questions;
- holding monthly Problem-Solving Days at all IRS District Offices for taxpayers to resolve their problems with IRS personnel;
- providing non-English-speaking taxpayers interpreting services on the phone and at thirty-six Tax Assistance Centers across the nation; and increasing walk-in office hours for the 2000 filing season.

Small Business and Self-employed Community Web Site

<http://www.irs.gov/smallbiz/index.htm> enables small business owner, self-employed individuals, and tax practitioners easy access to industry specific information to help small businesses and self-employed individuals comply with tax laws and regulations. The web site provides links to IRS forms, publications, frequently asked questions, and revenue procedures. In addition, links to other government web sites and many National Associations and Organizations offer the user complementary and comprehensive information. Other features include a calendar listing of all IRS Small Business Workshops and the ability to download the SS-4 form to obtain an Employer Identification Number.

National Aeronautics and Space Administration

Reemphasizing Safety

In an effort to protect the public, its astronauts and pilots, its employees and its high value equipment, both in space and on the ground, NASA has begun an intensive series of safety initiatives within the Agency. One such initiative involves the contracting process. NASA now includes contract clauses and safety brochures that provide for dealing with the breaches and the taking of appropriate remedial actions.

Incorporating small businesses into this initiative the NASA OSDBU ensured that the issue of safety exists in all of the agency's small business programs and initiatives. In its Training and Development for Small Businesses in Advanced Technologies (TADSBAT) course, for

example, the OSDBU included a module of safety.

Moreover, the OSDBU made a small business's approach to safety a critical factor in the selection of such companies for NASA's Quarterly Aerospace Technology Forums and its Semi-Annual Forums for Small Businesses, in which small, disadvantaged and women-owned businesses present their capabilities to NASA's technical manager at the field centers.

Safety was also made a criterion in a small disadvantaged business being selected for the agency's annual Mentor Protégé of the Year Award. It was also made a selection criterion for NASA's Annual Minority Contractor, Minority Subcontractor and Women-Owned Business of the Year Awards.

These actions resulted in small businesses both pursuing and performing contracts in a manner consistent with the number one priority of the agency. As a group it has kept small businesses away from safety violations and in tune with the high safety compliance standards set by NASA.

Federal Communications Commission

FCC News Release Addresses Ombudsman Issues

The FCC issued an *FCC News Release* title, "Reminder to Small Businesses: SBA's Office of the National Ombudsman is Available to Assist with Federal Enforcement Matters". The *News Release* consists of three parts. The first part describes the Office of the National Ombudsman and the Office's written agency comment program and hearing process for

regulatory fairness matters. The second notes that “small businesses may request expedited treatment of an enforcement action against them where they believe that the delay may threaten the economic viability of the business.” The last part makes clear that if a small entity requests Ombudsman assistance on a matter, the FCC will not retaliate in response. The *News Release* provides Ombudsman and FCC contact numbers for further information. We believe that the *News Release* will facilitate small business’ knowledge of their rights under SBREFA and their access to services of the Office of the National Ombudsman.

Federal Trade Commission

Ongoing Reg-Flex-Style Review of Rules and Guidelines

The Commission’s comprehensive regulatory review program is patterned after reviews conducted under the Regulatory Flexibility Act. The agency actively seeks the participation of those affected. Since the program’s inception in 1992, the Commission has reviewed nearly all its rules and industry guides, and has repealed 50% of the guides and discretionary rules in effect in 1992. It has streamlined and simplified disclosure requirements, provided more flexible compliance options, and revised rules to promote international harmonization and facilitate trade. Such regulatory improvements, important to companies of all sizes, can be particularly important to small businesses.

Public Workshops

The Commission’s considerable industry outreach to small businesses and others includes numerous public workshops and conferences in a variety of contexts.

Workshops allow informal but intensive discussion, both to obtain input on FTC activities and to educate industry members about their legal responsibilities and how they can meet them. Workshops can also facilitate industry self-regulations. Staff actively contacts small businesses, small business representatives, and small business trade press, and places prominent notices on the agency’s website, to obtain input and encourage participation.

Equal Employment Opportunity Commission

EEOC’s Small Business Initiative

EEOC’s Small Business Initiative, launched in 1999 by Chairwoman Ida L. Castro, aims to promote voluntary compliance by building a more cooperative and collaborative relationship with the small and mid-sized business community and to address EEO concerns expressed by small business owners. To implement the Initiative, the EEOC Chairwoman and other Commissioners traveled to dozens of US cities to meet with and receive feedback from a broad range of stakeholders representing small and medium-sized businesses. The main components of the Initiative include:

Small Business Liaisons

EEOC has designated Small Business Liaisons in its field offices who provide technical assistance, serve as a customer-referral resource, and help small employers with concerns about charges of discrimination. Small businesses can raise concerns about the length or scope of an investigation or any other matter involving the handling of a charge with these Liaisons, who have the knowledge and the authority to provide an effective response.

Small Business Website

This website (www.eeoc.gov) provides answers to commonly asked questions about EEOC's laws and charge processing procedures. The website provides quick access to basic information about EEOC-enforced laws, including which employers are covered, record keeping and reporting requirement, charge processing procedures, and a variety of other issues of concern to small employers. It also directs small businesses to the appropriate small business liaison.

Outreach, Education and Technical Assistance Seminars

EEOC field offices conduct many specialized outreach activities based on input and requests from the small business community. For example, EEOC holds Technical Assistance Program Seminars (TAPS) throughout the country, many with special workshops geared specifically to small employers' needs. The SBA "Reg Fair" cards are available to all TAPS participants. EEOC also offers customer-specific training provided at the employer's business site and tailored to the topics requested by the employer.

"Plain Language" Enforcement Guidance

EEOC writes its enforcement guidance in the user-friendliest format possible, such as in a question-and-answer format and with executive summaries wherever appropriate. In addition, EEOC provides special, short summaries geared to small businesses for many of its more complex enforcement guidances. Moreover, small businesses who are name in a charge of discrimination are given a specially tailored letter and fact sheet explaining EEOC's enforcement procedures, what to expect in an investigation, and who to contact at the

EEOC for assistance with any questions or concerns they might have.

Pension and Welfare Benefits Administration

Voluntary Correction & Compliance Programs

PWBA has initiated two successful programs to assist plan officials in voluntarily correcting certain violations and complying with federal employee benefit laws.

The Voluntary Fiduciary Correction Program is an enforcement program designed to encourage self-correction of certain violations of ERISA. Anyone who may be liable for fiduciary violations under ERISA, including employee benefit plan sponsors, officials, and parties in interest, may voluntarily apply for relief from enforcement actions provided they meet the criteria and follow the procedures outlined in the VFC Program. Thirteen specific financial transactions and appropriate steps to fully and quickly correct them are contained in the Program. Applicants who fully comply with all of the terms and procedures of the VFC Program will receive a "no-action letter" from PWBA, and will not be subject to civil monetary penalties under section 502(l) of ERISA. The Delinquent Filer Voluntary Compliance Program is targeted at plan administrators who are delinquent in filing annual reports and who are subject to late filing penalties of up to \$1,000 a day. Through the DFVC Program plan administrators who voluntarily correct their filing deficiencies may be eligible to pay reduced civil penalties.

Compliance Assistance Help Desk

A toll free hotline has been established for pension and health plan sponsors to contact for assistance with their annual report filing. The hotline is staffed by both PWBA staff and contractors. The help desk provides a resource to the approximate 1.2 million filers to have their Form 5500 filing questions answered expeditiously. It also helps filers to quickly determine how they should correct their filings that have failed the Department's processing edit tests.

Compliance Assistance Seminars/workshops

PWBA staff conduct compliance assistance seminars throughout the country, often in conjunction with other employee benefits groups. PWBA is holding compliance assistance seminars around the country this year in partnership with state insurance commissioners to discuss new requirements under HIPAA and other health benefits laws. The target audience for each of these conferences is 250 - 500 small to mid-size employers who are currently offering health insurance to their employees, third party administrators and insurers. In conjunction with these outreach conferences, PWBA created a new compliance assistance tool to assist plan officials in identifying common mistakes, providing tips on how to comply. PWBA joined the International Foundation of Employee Benefit Plans again this year in conducting seven outreach sessions around the country to assist small employers and plan service providers in complying with ERISA by providing updates on recent developments for pension and health plans. Several of PWBA's field offices have provided seminars for small employers in conjunction with the Small Business Development Centers on topics such as pension plan options.

Compliance Assistance Educational Materials

A series of compliance assistance publications has been developed for small employers, plan sponsors and practitioners to inform them about a number of requirements related to such issues as reporting and disclosure, new health laws, 401(k) fees, MEWAs, pension plan options, and bonding. These brochures are available through the Agency's website and its toll free publications hotline. The materials are distributed by PWBA staff in various workshops and seminars and are also distributed by a number of trade associations and employer organizations.

Compliance Assistance Websites

In addition to maintaining a compliance assistance page on PWBA's main website with links to publications and other informative materials for small employers [www.dol.gov/dol/pwba/public/pubs/compl1.htm]. PWBA has established two separate websites to provide compliance assistance to small employers and plan sponsors. To provide updated filing information to plan sponsors and to receive annual reports electronically, PWBA established the website, www.efast.dol.gov. In conjunction with the U.S. Chamber of Commerce and the Small Business Administration, PWBA developed an interactive website, www.selectretirementplan.org, to assist small employers in selecting the best pension plan option for their business.

Small Business Videos

To augment the small business website, a video was produced in conjunction with the U.S. Chamber of Commerce and the Small Business Administration to promote the advantages of offering a pension plan to employees. The video features small business executives talking about their experiences. Our Benefits Advisors use the

video when they conduct seminars for small business owners to discuss the various pension plan options.

Compliance Assistance Grassroots Outreach

PWBA's Benefits Advisors provide technical assistance to small employers and

plan sponsors by responding to their questions as well as by proactively seeking out local organizations and events to distribute printed compliance assistance materials and to provide technical assistance.

Success Stories

Occupational Safety and Health Administration

OSHA Helps Small Business Save \$134,000 Annually

South Tech, Inc., an Alabama company, which manufactures agricultural materials handling equipment, requested Consultation assistance in 1993. At the time, the company's annual workers' compensation cost was \$162,000, there was no worksite safety and health program, and each year one in every five employees experience an injury that required at least a day away from work.

At the initiation of the consultation visit the project determined that the company's Lost Work Day Injury rate (LWDI) was 20 injuries per 100 workers. The national average for its industry was 5.7 injuries per 100 workers. Since then, the company has worked with the Alabama Consultation Program to eliminate hazards and implement a safety and health program. By 1998, the workers' compensation premium had dropped to \$28,000, and only one in 67 employees were experiencing a lost time injury (LWDI 1.5 down to almost ¼ the national average for the industry). In 2000, the Alabama Consultation Program recognized this company's outstanding performance by approving it to the Safety

and Health Achievement Recognition Program (SHARP) thereby granting an exemption from OSHA's programmed inspection. Currently, the LWDI is zero.

The unexpected benefit derived from OSHA's relationship with this company is that now the company produces manuals to accompany their products, which include safety tips for their customers.

OSHA Delivers for Small Business: "0" Work Days Lost to Injury vs. 7,696 Lost Days Before

Omak Wood Products is a manufacturer of lumber and plywood located in Omak, Washington. In 1993, Omak Wood Products was chosen to participate in a project called WorkSafe 90s, offered by the Department of Labor & Industries. The project was conducted in Region 6 by Consultation Services and was offered to companies that reflected a higher-than-average accident frequency and higher industrial insurance rates.

Before becoming involved in the project, the company's main contact with the Department was through compliance. Consultation Services worked with Omak over a one-year period, providing safety, ergonomic, vocational, and claims consultation services.

Omak met with the Labor & Industries Consultation Team in a series of meetings. As a result of these meetings held to educate

Omak Wood Products in the benefits of safety and health for all workers and the resulting benefits to the community at large, Omak developed a labor/management team.

Today, Omak Wood Products is operating with a significant reduction in workday injuries and industrial insurance premiums as well as a heightened awareness of benefits of good hiring practices, working safely, and good claims management return-to-work programs.

Omak Wood Products time loss days went from 7,696 days in fiscal year 1991 to 1,225 days in fiscal year 1994, to zero for the current fiscal year.

National Aeronautics and Space Administration

Small Business Saved NASA a Launch Delay and \$200,000

Just prior to the May 2000 launch of the Space Shuttle Atlantis, NASA noticed mechanical problems within the spacecraft as it set vertically on the launch pad at the Kennedy Space Center in Florida. The internal safety procedures dictated that the shuttle be put in a horizontal position and transported to the cargo bay for repairs. This is because of the fluid lines, which would have leaked during an attempted repair of the shuttle in a vertical position. Moving the shuttle to the cargo bay, however, would have meant a delay in the launch, resulting in substantial cost to the agency.

A small disadvantaged business, Dynacs Engineering, which was performing a contract at Kennedy, had developed a technology, which would freeze the fluid

line and allow the mechanics to make the necessary repairs with the shuttle in a vertical position. Working within the existing internal procedures, NASA allowed the SDB's technology to be used with the shuttle being in a vertical position and it worked.

Thus, the small business saved NASA a launch delay and \$200,000.

Federal Communications Commission

FCC Works to Educate Hospitality Industry About Operator Service Provider Obligations

The Communications Act of 1934, as amended, see 47 U.S.C. § 226, generally requires that operator service providers (OSPs) and owners of telephones serving away-from-home consumers provide consumers information about their calling choices and allow them to choose any OSP by dialing an access code. On November 1, 2000, the FCC's Enforcement Bureau announced that it is working with the American Hotel and Motel Association (AHMA) to implement an operator service education and compliance campaign for the hospitality industry. In this cooperative effort, the AHMA has informally agreed to publish articles in its two trade periodicals detailing such consumer protection requirements as the posting of information to enable consumers to make an informed choice of a long distance carrier, and the unblocking of OSP access codes. One of the AHMA periodicals reaches over 45,000 hotels and motels across the United States. Further, the AHMA informally agreed to distribute educational materials on operator

services at its November 2000 conference in New York City.

Customs Service

Friendlier Customs Lessens Pain and Provides More Relief

- A small business in the southwest, found liable for false invoicing, was fined nearly \$90,000 for the violation. The company requested mitigation provided for under the Small Business Regulatory Enforcement Act of 1996 (SBREFA). After further review, Customs granted the company full relief of the penalty amount.
- A small business, importing lithographic posters from Europe, was adversely affected when Customs began reclassifying the posters under a tariff number subject to US sanctions levying an additional 100% duty on certain EU imports. The small business owner filed a “consistent treatment” claim with Customs, requesting a delay in the reclassification of his posters and relief from the additional duties. The claim was granted, the additional duty demand was canceled, and the company was afforded a period of time to bring future shipments into compliance.
- A small business in the mid-west, suspected by Customs of committing commercial fraud, performed a self-audit of importation records dating back to 1992. The audit revealed the company had failed to correctly declare to Customs the value of its merchandise on various shipments. Customs initiated a penalty action and the company

requested relief provided for under the Small Business Regulatory Enforcement Act of 1996 (SBREFA). The request was granted and a lessened penalty was assessed.

Customs assessed a small business in the southeast a penalty of over \$305,000 after the company continued to improperly classify its merchandise after Customs had informed them of the proper classification. Because the company requested that penalty action taken against them be in accordance with the Small Business Regulatory Enforcement Act of 1996 (SBREFA), the company was only required to make restitution for the actual loss of revenue, approximately \$76,000.

Department of Health and Human Services, Food and Drug Administration

FDA Facilitates Marketing of Small Business Product

Company M manufactured a cold pack promoted and labeled by the manufacturer as a treatment for migraine headaches. Generally speaking, cold packs that are labeled and promoted to treat specific medical conditions must obtain affirmative FDA clearance prior to marketing, whereas cold packs intended for medical purposes that are not labeled for specific conditions enjoy a safe harbor that exempts them from preclearance requirements. In this case, Company M had not sought premarket clearance, possibly in the belief that its device rightfully belonged in the safe harbor.

At the conclusion of an inspection of Company M’s establishment, FDA notified

the firm by letter that the cold pack was intended to treat migraine headache, a specific medical condition requiring premarket clearance. Ordinarily, a firm that receives such a letter and fails to take prompt and appropriate corrective action is subject to additional regulatory action, possibly including product seizure or the imposition of civil money penalties. In this case, FDA did not take an enforcement action, instead allowed Company M to continue to market its product while the company worked with FDA to determine whether the product could be brought with the safe harbor provision.

To assist Company M in its efforts to come into compliance, FDA staff provided the firm with extensive guidance and support. As we understand the matter, Company M utilized detailed guidelines that FDA has published covering cooling devices like the one that Company M markets. Also, in a series of telephone calls and fax exchanges with Company M, FDA scientists gave the firm additional advice on how its product could be relabeled to bring it into compliance with the safe harbor provision. This series of exchanges culminated in a meeting between Company M and FDA scientists to work out the final details about the products relabeling.

As a result of the discussions between FDA and Company M, the firm amended its labeling to bring the product into the safe harbor. Because Company M's medical device remained on the market during the time that the firm was working with FDA, economic hardship was reduced.

Equal Employment Opportunity Commission

EEOC's Small Business Liaison Resolves a Dispute Before it Becomes a Discrimination Charge

A small business contacted EEOC for technical assistance and requested that the EEOC Small Business Liaison conduct a training seminar for all of its managers and supervisors at its facility, on prevention of sexual harassment. After the training, the Human Resources Manager asked the EEOC Liaison to speak to an employee who had approached the HR Manager about a possible complaint of sexual harassment. The Liaison met privately with the employee, and after counseling the employee about the employee's right to file a charge of discrimination with EEOC, suggested that the employee attempt to resolve the complaint working with the HR Manager. The Liaison's follow-up calls the next week to both the employee and the HR Manager revealed that as a direct result of the counseling and the training seminar, the company and the employee were able to resolve the complaint before it developed into a charge of discrimination. By establishing a cooperative and collaborative relations, EEOC's Liaison helped bring about a voluntary resolution of a potential enforcement matter and saved this small business the time and resources required to respond to a charge of discrimination. EEOC's on-site training, like that provided to numerous other small companies throughout the country, will help the business to continue to maintain, a discrimination-free work environment.

Appendix

Regulatory Fairness Board Members

Region 1

Roxanna D. Adams, Chair

Atlantic Awards, Inc
Bangor, ME 04401
(207) 942-6464

Ronald N. Auger

American Industrial Casting, Inc.
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Doris Ballard

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Vinh Cam

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Ronald V. Williams, Vice Chair

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Region 2

Manuel Cidre, Vice Chair

Pasteleria Los Cidrines
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Joan Haberle, Chair

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Phyllis Hill Slater

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Sandra K. Lee

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E. Peter Ruddy

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Wilkins McNair, Chair

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Martin L. Shaffer

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Region 4

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LeRoy G. Walker

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Jackson, MS 39204
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Livia L. Whisenhunt, Chair

PS Energy Group, Inc.
Atlanta, GA 30359
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Region 5

Thelma Ablan

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Hardie Blake, Chair

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Irwin G. Haber, Vice Chair

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Donald Magett

Magic P.I. & Security, Inc.
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Region 6

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Clark D. Stewart, Chair
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C. K. Tseng
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Region 10

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Keith Sattler, Chair
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Milford E. Terrell
DeBest Plumbing & Mechanical, Inc.
Boise, ID 83713
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Board Members are appointed by the SBA Administrator for terms up to three years. Members are nominated by the leadership of the House and Senate Committees on Small Business, Members of Congress, small business and trade associations, and SBA leaders. All current Board Member terms expire February 2002.

Previous Recommendations

The Office of the National Ombudsman and RegFair Boards include recommendations in each annual Report to Congress. Each year, agencies are evaluated and rated on the prior year's recommendations. The recommendations are ongoing. The National Ombudsman, with advice from the RegFair Boards, will evaluate and rate agency regulatory enforcement and compliance activities against recommendations made by the National Ombudsman. Small businesses will be given the recommendations in order to learn of the progress that has been made on regulatory fairness and to frame their concerns.

The Office of the National Ombudsman and RegFair Boards feel that the recommendations should not be treated as a one-time concession to small businesses, but as part of an ongoing process by which agencies and small businesses establish a small business friendly regulatory environment.

The following recommendations are from the National Ombudsman's first and second Annual Reports to Congress.

Fiscal Year 2000 Recommendations

Recommendation 1

To the extent practicable and before nationwide implementation, agencies should empirically test new or significantly modified enforcement and compliance policies that may affect small businesses through cooperative pilot projects. The pilots should be developed in partnership with affected industries and stakeholders

and should consider the varying impact of policies across major demographic factors. Finally, agencies should fully address the feedback from pilot participants.

Recommendation 2

Agencies should provide feasible compliance guidance to small businesses, but should not dictate the means by which small businesses achieve compliance.

Recommendation 3

Provided a violation does not involve serious injury or harm, agencies should institute programs that give small businesses notice of violations and reasonable opportunities to come into compliance without being penalized. Agencies should also increase voluntary compliance reviews to give businesses the guidance they need without fear of penalty.

Recommendation 4

When federal agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum federal standards, including SBREFA, are met. This includes a flow-down of all federal small business protections and cooperative objectives that guarantee small businesses their rights without the use of costly judicial remedies. Agencies should review and report on state government and other intermediaries' compliance with all applicable federal standards.

Recommendation 5

Agencies should make full use of federal law that prohibits giving false information to the government (e.g., False Claims Act) or using the government as a tool to unjustly retaliate against employers. Agencies should notify individuals of their legal obligations to give truthful information and the penalties for giving false information. Agency staff should be well trained in evaluating the credibility of the information obtained and the information threshold necessary before undertaking an enforcement or compliance activity against a small business.

Recommendation 6

Agencies should carefully evaluate, in partnership with affected industries, the development and use of voluntary industry standards before considering or implementing new mandatory regulations.

Recommendation 7

In an ongoing effort, federal agencies should utilize internal offices that work with small businesses to inform small businesses about their rights to regulatory fairness at minimal costs.

Recommendation 8

Agencies should conduct objective reviews of their implementation of SBREFA.

Recommendation 9

Agencies should review and reduce their small business data collection and reporting requirements and eliminate duplication of requested information. Agencies should also periodically conduct field studies of the actual time small businesses spend complying with their reporting requirements.

Recommendation 10

Small businesses tell the Office of the National Ombudsman and the RegFair Boards that some agency staff that perform

inspections or compliance audits are not well-trained, and sometimes are not familiar with the industries they inspect, much less the operations of those industries.

Fiscal Year 1999 Recommendations

Recommendation 1

Develop a regulatory fairness protocol for federal agency staff who undertake enforcement or compliance activities involving a small business. This protocol may include a form containing information such as a checklist for the following:

- Consideration of the size of the business when determining the enforcement or compliance action;
- Consideration of the economic impact of the enforcement or compliance action on this small business and on small businesses generally;
- Consideration of any mitigating circumstance the small business was dealing with;
- Consideration of a lesser action; and
- Whether the small business had sufficient notice and appropriate opportunity to correct the cause of the violation.

Recommendation 2

Agencies should establish avenues through which small businesses can expeditiously raise the concern that the enforcement or compliance action threatens the economic viability of the business. The reviewing entity should have the authority to provide for alternative payment arrangements, enforcement or compliance actions, or other

arrangements on a timely basis (such as within 30 days). The availability of this avenue should be made clear to small businesses.

Recommendation 3

Federal agencies should publicize data on agency enforcement and compliance activities, annually. Information gathered should improve agency self-assessment of its fairness to small businesses at all stages of enforcement and compliance activities as well as small business understanding of those activities. Agency heads could select data they believe most relevant to their agency's statutory authority, requirements or mission. Examples of appropriate data include the following:

- Number and type of enforcement and compliance activities, with regional and program office breakdowns;
- Inspections, on-site visits, audits, or similar field activities;
- Activities involving licensed versus unlicensed facilities;
- Small business feedback, compliments and complaints with agency responses;
- Number of fines, penalties, restrictions, license suspensions, or other debarments and similar actions;
- Use of success or informal and formal appeal channels for small versus large businesses.

Recommendation 4

Agency heads should certify to the National Ombudsman that their designated RegFair Program representatives are independent of enforcement or compliance activities.

Recommendation 5

Federal agencies should provide formal training on a periodic basis for all enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Regulatory Fairness Program representatives are independent of enforcement or compliance activities.

Recommendation 6

Federal agencies should be encouraged to give awards annually to personnel that improve the regulatory enforcement and compliance environment of small business. Federal agencies are also encouraged to nominate the top individual or team within each agency that did the most to improve the small business regulatory enforcement and compliance environment for an award to be given by the National Ombudsman.

Recommendation 7

In an effort to promote improved customer service concerning regulatory enforcement issues, agencies are encouraged to develop a formal customer referral system, within and among agencies, to help ensure that customers are directed to the appropriate office or agency.

Recommendation 8

Federal agencies should make a greater effort to monitor the tone and clarity of letters and notices sent to small businesses. The National Ombudsman has learned of instances in which small businesses have received what appeared to be threatening letters and notices in situations that do not warrant such an approach.

Recommendation 9

The Public Affairs Coordinator or other appropriate personnel within each regional office of the U.S. Small Business Administration should be designated as a

contact person for the Regulatory Fairness Program.

Recommendation 10

In order to reduce small business confusion about the role of the National Ombudsman, the name should be changed by Congress to clarify the role of the office. Customers often confuse the role of this office with that of the traditional ombudsman for individual agencies, especially that of the SBA. Currently, the Ombudsman's official title, by statute is the Small Business and Agriculture Regulatory Enforcement Ombudsman.

Fiscal Year 1998 Recommendations

Recommendation 1

Agencies should be more aggressive in informing small businesses when they change or amend the rules, processes, or regulations that specifically affect small business.

Recommendation 2

Agencies should develop an expedited review process in circumstance where agency actions may have severely negative impact or threaten small businesses' survival. Additionally, time limits should be instituted to restrict the length of time agencies may take to review the circumstances of a case and issue response.

Recommendation 3

Agencies should build on the policy that employees are rated based on their efforts to ensure small businesses' compliance with federal regulations rather than on the number of fines they collect. Also, evaluations should include factors that could lead to a negative rating for employees who take action without careful and objective

review of the actual circumstances of each case.

Recommendation 4

Agencies must adopt policies and procedures that make it clear to small businesses that they will not face retaliation for raising concerns about compliance and enforcement. While the National Ombudsman can assure small businesses that his office will not use their names when dealing with federal agencies, small businesses seeking resolution directly from an agency should be equally assured that no retaliation will be taken for asserting their rights.

Recommendation 5

All agencies should place an executive summary on the cover of every major notice sent to small businesses to make them immediately aware of whether an action is required or whether the notice is informational, the purpose of the publication, and to which businesses or industries it applies.

Recommendation 6

Agencies should use the mechanisms of the Office of Information and Regulatory Affairs at the Office of Management and Budget to resolve regulatory and jurisdictional disputes as quickly as possible. Agencies need to resolve interagency conflicts quickly and respond to small businesses' need for clear and consistent guidance.

Recommendation 7

Agencies should provide more systematic and consistent education about SBREFA to all personnel to ensure they are familiar with the law and sensitive to small business needs—especially those that work with small businesses regularly.

Recommendation 8

The Internal Revenue Service (IRS) should develop a program that provides a reasonable opportunity to get absolute and final interpretation of tax issues and allows small businesses a reasonable opportunity to pursue compliance without fear of penalty.

Recommendation 9

Small Business Development Centers (SBDC), Senior Corp of Retired Executives

(SCORE), and other SBA resource partners should help aggressively disseminate information about SBREFA and RegFair.

Recommendation 10

Federal agencies should publicize information about their enforcement activities with regard to small businesses as compared with those taken with regard to larger businesses, individuals, non-profit organizations, and other entities, where appropriate.

Outline of the Provisions of the Small Business Act

Outline of the Provisions of the Small Business Act incorporating SBREFA as it pertains to the Ombudsman and Regional Small Business Regulatory Fairness Boards

Ombudsman

Ombudsman's Official Title

“Small Business and Agriculture Regulatory Enforcement Ombudsman”

Reporting Structure

The Ombudsman reports directly to the Administrator

Sources of Assistance for Implementation of Ombudsman's Function

1. SBA: Ombudsman is to utilize “personnel of the Small Business Administration to the extent practicable.”
2. Regulatory Agencies: Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of the statute

Ombudsman's Duties

1. “Work with each agency with regulatory authority over small businesses to ... ensure that small business concerns are provided a means to comment on the enforcement activity.
2. Establish a means to receive comments.
3. Establish a means to refer comments to the IG of the affect agency.
4. Keep the identity of the person and small business commenting confidential
 - STD for confidentiality: the manner in which employee identities are protected under section 7 of the IG Act of 1978 (5 USC APP.)
5. Report annually to Congress AND affected agencies
6. Coordinate and report annually on the activities, finding & recommendations of the Regulatory Fairness Boards
7. Provide affected agencies an opportunity to comment on the draft of the annual report; and

8. Include a section in the annual report where affected agencies can make comments if the Ombudsman does not include them in his revisions to the draft

Which Small businesses are entitled to comment

Those subject to:

- Audit
- On-site inspection
- Compliance assistance effort
- Other enforcement related communication or contact by agency personnel

What should the comments concern?

Actions by agency employees conducting compliance or enforcement activities with respect to the small business concern.

Basis for the Annual Report

Substantiated comments from small business concerns

Contents of the Annual Report

1. Evaluation of the enforcement activities of agency personnel;
2. A rating of the responsiveness to small business of the various regional and program offices of each agency;
3. Findings and recommendations of the Boards made to the Administrator and to the heads of affected agencies; and a
4. Section where affected agencies can tell their side of the story if the Ombudsman does not include them in the final revisions to the circulated draft.

Regional Small Business Regulatory Fairness Boards

Who establishes the boards and appoints members?

The SBA Administrator appoints members after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate.

How many Boards should be established?

One in each regional office of the SBA

Composition of Board and Qualifications of Members

- Five members per Board
- Members must be owners, operators or officers of small business concerns
- Members can not be officers or employees of the federal Government in Congress or the Executive Branch
- A Board can not consist of more than three members from the same political party

Term Of Board Members

- Serve at the pleasure of the Administrator
- For a term of three years or less

Chairperson

- Selected by the Administrator
- Serves at the pleasure of the Administrator
- Term of not more than 1 year

Decision Making

A majority of the members of the Board constitute a quorum for the conduct of business

Duties of the Board

1. Meet

How often: at least annually.

What is the purpose of meeting?

To advise the Ombudsman on matters of concern to small businesses relating to the agency enforcement activities

2. Report

To whom? The Ombudsman

On what?

Matters regarding “substantiated instances” of excessive enforcement actions” of agencies against small business concerns

What should the report cover?

Instances of excessive enforcement action

Findings and recommendations as to agency enforcement policy or practice

3. Comment on the Ombudsman’s annual report prior to publication

Powers of Regulatory Fairness Boards

1. To hold hearings

Less than a quorum of board members can conduct a hearing

2. To collect information as appropriate for carrying out this section

Mail: use Government franking privilege

1. Accept Donations of services

- Must be necessary for conducting Board business
- Donations and sources must be disclosed

2. Travel at Government expense:

- When conducting official Board business
- Away from home or regular place of business
- Per diem in lieu of subsistence per 5 U.S.C. § 57

Compensation

Members of the Board are not compensated

Samples and Forms

Sample Regulatory Fairness Questions Asked Federal Agencies

- **Why and how did you take the enforcement or compliance action?**
- **Did you notify the small business of the applicable requirement(s)? If so, when and how?**
- **Did you consider the economic impacts of the requirement(s) on small businesses? If so, how?**
- **Did you notify the small business about the enforcement or compliance action? If so, did you give it adequate opportunities to correct the cause(s) of the violation(s)?**
- **How did you determine the enforcement or compliance action?**
- **Did you factor the compliance history of the small business into your determination?**
- **Did you consider the economic impacts of the restriction, denial, penalty, recoupment, or repayment terms on the small business? If so, specifically how?**
- **Did you consider the mitigating circumstances of the small business?**
- **Did you follow your agency's policies and procedures?**
- **Were your agency's regional and program offices responsive to the small business? If so, please cite some examples.**
- **What policies and procedures does your agency have in place (1) to ensure that excessive enforcement and compliance activities do not take place and (2) to monitor internal compliance with agency policies and procedures as well as agency responsiveness to small businesses?**
- **Do you believe the specific enforcement or compliance action reflects the requirements of the Fairness Act? If so, why? If not, then should your agency reconsider the enforcement or compliance action, in this and in future matters, in light of the comments of the small business owner and the Act's requirements?**



Small Business and Agriculture Regulatory Enforcement NATIONAL OMBUDSMAN

Complaint Form for Small Business

Note: The Ombudsman Complaint Process is not a substitute for legal action. You should pursue all legal action you deem to be in the best interest of your small business.

Business Name: _____
Street Address: _____
City: _____
State: _____ Zip Code: _____
E-mail Address: _____
Telephone No: _____ Fax No: _____
Business Contact Name/Title: _____

Confidentiality / Disclosure

Please select one of the following options. (Federal laws, 5 USC § 552(b) and 15 USC § 657(b)(2)(B), protect the identity of the person and of the small business concern submitting this form from disclosure, unless Option 3 is selected).

- My identity and the identity of my small business may be disclosed only to the Office of the Ombudsman and the Regional Fairness Board. (If you do not select an option, this option will be assigned to your case).
- My identity and the identity of my small business may be disclosed only to the relevant federal government agency (EPA, IRS, OSHA, etc.), the Ombudsman's Office and the Regional Fairness Board.
- My identity and the identity of my small business may be fully disclosed and made public. (see instructions)

Please provide information about your organization:

The Office of the National Ombudsman is authorized to investigate complaints filed by small businesses concerning the regulatory enforcement and compliance activities of federal agencies. In order for us to determine whether our office is authorized to assist you, please indicate your type and size of organization.

- Small Business in: (please circle appropriate industry) Service, Manufacturing, Wholesale/Retail, or Construction, with gross revenues of _____ and _____ number of employees.
- Not-for-Profit (a small not-for-profit enterprise, independently owned and operated, and not dominant in its field).
- Governmental (government of city, county, town, township, village, school district or special district with a population of less than 50,000)

Does the complaint involve a Federal agency and regulatory compliance or enforcement activities? Circle one: Yes No

Please provide information about the agency:

Federal Agency: _____ Contact person: _____
Office/Division: _____
Address: _____
City: _____ State: _____

Phone: _____ Fax: _____

Has a citation or other written documentation of the enforcement or compliance action been issued to you? **(Please state citation, document and case reference numbers as well as dates and the specific regulation involved.)**

What is the nature of the enforcement/compliance activity you are complaining about? **(Check all applicable activity.)**

- | | |
|--|---|
| <input type="checkbox"/> Examination | <input type="checkbox"/> Record-keeping review |
| <input type="checkbox"/> Audit | <input type="checkbox"/> Classification |
| <input type="checkbox"/> Inspection | <input type="checkbox"/> Bonding requirements |
| <input type="checkbox"/> Bar to opening/expanding a business | <input type="checkbox"/> Application for permit, permission, etc. |
| <input type="checkbox"/> Other Agency review: _____ | |

What is your complaint? Why do you believe the Agency's action is unfair? (See attached instructions. Add attachments as necessary).

Have you contacted the Federal Agency responsible for the enforcement/compliance action? Circle one: Yes No
If no, why have you not contacted the Agency?

What steps have taken place with respect to the enforcement or compliance activity? (Check all applicable factors below.)

- | | |
|---|--|
| <input type="checkbox"/> Initial audit/inspection | <input type="checkbox"/> Information negotiation |
| <input type="checkbox"/> Formal negotiation | <input type="checkbox"/> Agency order |
| <input type="checkbox"/> Administrative hearing | <input type="checkbox"/> Final Agency action |
| <input type="checkbox"/> Prosecution process | <input type="checkbox"/> Federal District Court appeal |
| <input type="checkbox"/> Circuit Court appeal | |
| <input type="checkbox"/> Other: _____ | |

Which aspects of final action are pending (P) as of today or final (F)? (Enter P or F on the line below.)

Did the agency give your company an opportunity to cure or resolve the non-compliance problem informally before initiating the enforcement or compliance activity? Circle one: Yes No

Did the Federal Agency notify your small business of its right to comment with the National Ombudsman? Yes No

Describe the result or outcome you seek.

Has any agency employee retaliated against you for defending your business against the enforcement or compliance activity? Circle one: Yes No

If yes, please describe the retaliatory action, the time frame of the retaliation, and identify the responsible individuals, if known.

Signature of Business Contact: _____ Date: _____

Contact:

Office of National Ombudsman
Small Business Administration
409 3rd Street, SW
Washington, DC 20416
Call: 1-888-REG-FAIR (1-888-734-3247)
Fax: (202) 481 2673
www.sba.gov/regfair/

Agency Action: Rec'd: _____ First Action: _____ Closed: _____ _____

Paperwork Reduction Statement: This form is designed to improve public access to the Office of the National Ombudsman, and is voluntary. Through this form, small businesses may electronically register a complaint with the Office of the National Ombudsman. We estimate that it will take, on average, 25 minutes to complete the form. Under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. That number is _____, which also appears in the upper right-hand corner of the first page of this form.

(version as 01 June, 2001 / 12:43 PM)

Instructions for Regulatory Complaint Form

To record your complaint, please:

- Fill out each section of the form;
- Print or type the information;
- Select an appropriate confidentiality / disclosure option, and;
- Sign and date the form.

Information to include with the Complaint Form:

- Indicate organizational type and estimate the number of employees and gross revenues for the year in which the compliance or enforcement action or inspection/review activities took place.
- State Federal Agency involved in the enforcement or compliance action.
- Describe briefly the enforcement or compliance inspection or review activity performed and its result.
- If an enforcement action was taken, provide specific facts and supporting documentation such as correspondence between your small business and the agency, starting with the date of your first agency contact (the agency's enforcement or other letters, such as a citation, a copy of your business' canceled check to the agency, etc.-also see Confidentiality / Disclosure, below) Specifically include:
 1. EXACT ENFORCEMENT OR COMPLIANCE ISSUE,
 2. law or regulation being applied,
 3. dates, i.e. when enforcement/compliance activity began, you received notice of your right to comment on the regulatory enforcement/compliance activity, negotiations started, you filed a written response to the agency, agency replied to your response, you requested an administrative hearing, and a hearing was initially scheduled,
 4. offices and officials involved,
 5. what contacts you have had with the Federal agency (name of official and date),
 6. mitigating factors that the agency should have considered such as: New rule or requirement, limited agency educational outreach on requirement, complex rule or requirement, good faith compliance attempt, part history of compliance, economic impact of compliance.

Confidentiality / Disclosure

If you have chosen disclosure Option 3, "*My identity and the identity of my small business may be fully disclosed and made public*", any and all information you provide to the Ombudsman's Office will be subject to full disclosure to any person who files a request to see this information under the federal Freedom of Information Act (FOIA). If you select Option 3, please keep this in mind in deciding which materials to provide to the Ombudsman's Office in support of your concern with the federal agency.

Important Information about this program:

- The Ombudsman/Fairness Board process has no effect on your rights or obligations under the procedures of the agency on which you are commenting. You must still comply with all of that agency's processes and procedures.
- Only federal government agency regulatory compliance and enforcement actions are covered by this process.
- Neither the Ombudsman nor the Regulatory Fairness Boards can overrule an agency decision or stay an action.
- This process is not a substitute for any legal action you may choose to exercise. You should pursue all options you believe to be in your best interest.

Return the completed, signed and dated form and supporting materials to:

National Ombudsman, Small Business Regulatory Enforcement Fairness
U. S. Small Business Administration
409 Third St, SW.
Washington, DC 20416
1-888-REG-FAIR (1-888-734-3247)
Fax: (202) 481 2673
www.sba.gov/regfair/