

LONG-TERM OBJECTIVE 1.1

Minimize the regulatory burden on small business.

As a rule, regulatory assistance is important for small businesses. Despite their importance to the economy, the cost of government regulation and excessive paperwork heavily burdens small businesses. Office of Advocacy research suggests that America's smallest firms of 20 or less staff bear the largest per-employee burden of Federal regulatory compliance costs at \$7,647 per employee vs. \$5,282 per employee at firms with 500 or more workers.⁷

There are two ways of minimizing the burden: when regulations are established, and when the regulations are enforced. The SBA provides regulatory assistance on the front-end, through the Office of Advocacy, by:

- Early intervention within Federal agencies in the regulatory process on issues that affect small business;
- Training Federal agencies on how to comply with Regulatory Flexibility Act (RFA);
- Producing research to inform policymakers on the impact of the regulatory burden on small business; and
- Increasing States' regulatory flexibility toward small business

Simultaneously, the SBA assures equity and fairness in the Federal regulatory enforcement process through the Office of the National Ombudsman by:

- Raising awareness of the regulatory assistance available
- Providing means to register comments about unfair regulatory enforcement actions by Federal agencies
- Acting as a neutral liaison between the parties
- Helping to move the relationship between government and industry to one of mutual collaboration and benefit

The expected outcomes for the SBA regulatory assistance are:

1.1.1 Achieve a yearly regulatory cost savings that increases at a rate of 10% annually over a base amount of \$3.8 billion set in 2002, due to Advocacy intervention, by FY 2008.

1.1.2 Ensure 66 Federal agencies have in-house expertise on how to comply with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, by FY 2008.

7. W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (U.S. Small Business Administration, Office of Advocacy: 2005).
<http://www.sba.gov/advo/research/rs264tot.pdf>

- 1.1.3** Achieve a total of 50 States that have formally considered legislative or executive action to increase regulatory flexibility for small businesses, by FY 2008.
- 1.1.4** Insert Advocacy data and reports into the curricula at 80 of the top 100 universities with major entrepreneurship programs, by FY 2008.
- 1.1.5** Achieve a 10% decrease in the annual number of Federal regulatory enforcement actions taken against small businesses.
- 1.1.6** Achieve a 5% increase in the number of enforcement actions in which the civil penalty is reduced or waived, by FY 2008.

For each of these outcomes, incremental targets have been set for each fiscal year until FY 2008. The results for these outcomes are being reported, at an Agency level, under Strategic Goal 1, LTO 1.1 of the Management Discussion and Analysis section. The next section provides information at the program level.



SBA Regulatory Assistance

Performance and Cost to Achieve Results

For FY 2005, the SBA had established a goal of \$5.1 billion in regulatory cost savings. As of the end of the fiscal year, the SBA had achieved \$3.95 billion in savings through intervention in the Federal regulatory process.

An example of the outcome of the SBA's role in support of the RFA, to improve the regulatory environment for small businesses is the case of the "Do-Not-Call" regulation under the Federal Communications Commission (FCC). In July 2003, the FCC adopted this regulation, which required senders (including small businesses) to obtain written consent from recipients before sending them unsolicited commercial faxes. The result would be that trade associations, businesses and membership organizations sending faxed newsletters, announcements, and similar materials without prior consent could be fined \$1,500 per recipient. This would mean, for instance, that a real estate broker who faxes weekly home loan interest rates to realtors (with whom the broker has a business relationship) would have to obtain prior written consent from the realtors and maintain records of the consent forms.

Unlike the similar "Do-Not-Call" requirements, the FCC removed the existing "established business relationship" exemption. The SBA informed the FCC that the regulation would impact small entities and suggested ways that the FCC could lighten the burden. The SBA's involvement was triggered by the FCC's failure to meet the requirements of the RFA. Due to repeated intervention by the SBA and small businesses, the FCC stayed enforcement of the rule three times until January 9, 2006.

Subsequently, the SBA and small businesses supported legislation requiring the FCC to recognize the established business relationship exemption. In response, Congress passed the Junk Fax Prevention Act of 2005, which was signed into law by President Bush on July 9, 2005. By reinstating the exemption, a cost savings of \$3.5 billion initially and \$711 million annually resulted.

The SBA started working with the FCC on this issue in 2003, but other similar actions with other Federal agencies have taken much longer to finalize — some as long as 14 years. This illustrates how difficult it is to predict with any degree when Federal agencies will publish final rules that reflect cost savings resulting from Advocacy's intervention. Nevertheless, the SBA has begun working with agencies earlier in the rulemaking process and has trained many agencies on how to comply with RFA by considering less-burdensome alternatives in their regulatory proposals. Training and early intervention by the SBA may mean that more agencies are complying with the RFA at the outset of the drafting of regulations, and that cost savings are reduced because the regulations are less burdensome to small businesses to begin with.

In the past year, the SBA had a goal of ensuring that 25 Federal agencies gained in-house RFA expertise through training. The SBA was able to train only 19 agencies; however several agencies were trained more than once to accommodate large numbers of employees interested in the training. Although the SBA conducted as many training sessions as the previous year, the Agency did not recount agencies where more than one training session occurred.

To reduce the small business regulatory burden from States, Advocacy's Regional Advocates promoted State-level regulatory flexibility legislation. The SBA projected that 10 states would formally consider legislative or executive action to increase regulatory flexibility for small businesses in FY 2005. The SBA excelled in this endeavor, with 19 states introducing legislation⁸ and Arkansas signing an Executive Order.

Research focused on small business is important because it helps to evaluate the impact of Federal policies on them and identifies demographic and other statistics that help communicate the important role of small businesses in the economy. The SBA had an output goal of releasing 20 small business research reports in FY 2005. Instead, the SBA was able to release 34 reports.

Some two-thirds of college students intend to be entrepreneurs at some point in their careers; however, business school textbooks stress examples of large firms rather than small firms — something that has frustrated many students after graduation. To generate interest in entrepreneurship research among academics and to broaden awareness of existing research, the SBA works with universities and colleges to insert Advocacy's data into their curricula. The SBA projected that a total of 16 of the "top 100 universities/colleges" with major entrepreneurship programs (so-labeled by Entrepreneur magazine) would do so. The SBA met this goal by having a total of 18 universities and colleges insert the SBA's data into their curricula. An additional 12 universities and colleges that were not identified as having top entrepreneurship programs also did so.

The first step for the SBA to ensure equity and fairness in the Federal regulatory enforcement process is public awareness of regulatory relief services available: how the SBA can help small businesses to succeed

8. Alabama, Alaska, Hawaii, Indiana, Iowa, Mississippi, Missouri, Montana, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Virginia and Washington.

in getting issues with government departments solved, and how the SBA might help shepherd through regulatory relief for current and future small business entrepreneurs.

In 2005, the SBA's Office of the National Ombudsman (ONO) provided a forum (via roundtables, hearings and media outreach) through which regulatory concerns of the small business community could be addressed.

For instance, the Agency hosted 17 hearings and roundtables throughout the country and conducted outreach efforts through media outlets reaching a potential audience of more than 10 million small businesses. Additionally, the Ombudsman Website was visited over 1,000,000 times and 13 meetings targeted toward groups facing special competitive opportunity gaps took place in various geographic locations across the country.

The function of the SBA's Office of the National Ombudsman's (ONO) and the Regulatory Fairness Board is to ensure that small entities⁹ that experience unfair regulatory enforcement actions by Federal agencies have a means to register their comments about such actions. Some examples of these actions would include excessive audits, retaliation and unfair and excessive penalties. The SBA receives the comments through on-site hearings held throughout the country, through our Web site, and by mail and fax.

To achieve this goal, the SBA receives comments from small businesses concerning any Federal regulatory enforcement issue the businesses may be facing and acts as a neutral liaison between the parties. In FY 2005, the SBA received and helped address more than 382 comments from small businesses and trade associations representing the concerns of their total organizational membership. Testimony and comments reflected several major concerns including: the high cost and unavailability of health care; taxes; safety and insurance requirements; regulations and enforcement actions; and paperwork requirements. The SBA forwarded these comments for high-level agency review and requested an official response from them.

In addition, the SBA continued to communicate with these key Federal agency decision-makers about the SBA's regulatory assistance activities, further strengthening existing cooperation, establishing new partnerships, and in the process, helping to move the relationship between government and industry to one of mutual collaboration and benefit. The Agency targeted a goal of achieving a 10% decrease in the annual number of Federal regulatory enforcement actions taken against small businesses and a 5% increase in the number of enforcement actions in which the civil penalty is reduced or waived. The SBA was unable to meet these goals. Nevertheless, the SBA's approach resulted in an increased quality and rate of response by the agencies.



9. Small businesses, small non-profits and small jurisdictions representing a population of less than 50,000.

A distortion in the results may be attributed to the overwhelming influence of the number of IRS actions, which made up approximately 98 to 99% of all actions, even though there were at least 40 agencies/sub-agencies reporting data.¹⁰

With Treasury data removed from the equation, both the “Number of Enforcement Actions with Civil Penalty Reduced or Waived for Small Entities” and “the Number of Enforcement Actions with Civil Penalty Assessed for Small Entities” have more than exceeded the Agency’s goal of increasing the waivers or reducing the number of penalties to small businesses.

The table that follows contains program output-measure values, total costs, and unit costs for indicators selected as the basis for program efficiency measurement.

Performance Statement Program Level Regulatory Assistance

Strategic Goal 1. Improve the economic environment for small businesses.

Long Term Objective 1.1: Minimize the regulatory burden on small business.

| SBA Programs Output Measures | | FY 2002 Actual | FY 2003 Actual | FY 2004 Actual | FY 2005 Goal | FY 2005 Actual | FY 2005 % Goal Variance |
|---|--------------------------------------|----------------|----------------|----------------|------------------|----------------|-------------------------|
| Advocacy | Research publications | 18 | 30 | 21 | 20 | 34 | 70.0% ^B |
| Ombudsman | Regulatory assistance meetings | N/A | N/A | 40 | 35 | 32 | -8.6% ^Y |
| Total Regulatory Assistance Provided | | 18.0 | 30.0 | 61.0 | 55.0 | 66.0 | 20% |
| SBA Programs Costs | | FY 2002 Actual | FY 2003 Actual | FY 2004 Actual | FY 2005 Estimate | FY 2005 Actual | FY 2005 % Cost Variance |
| Advocacy | Total Cost (\$000) | \$7,780 | \$8,680 | \$9,360 | \$9,163 | \$9,439 | 3.0% |
| | Cost per \$1 million in savings (\$) | \$369 | \$1,367 | \$549 | \$1,797 | \$2,390 | 33.0% |
| Ombudsman | Total Cost (\$000) | \$2,945 | \$1,200 | \$1,469 | \$1,557 | \$1,348 | -13.4% |
| | Cost per meeting ('000) | N/A | N/A | \$37 | \$44 | \$42 | -5.3% |
| Total Regulatory Assistance Cost | | \$10,725 | \$9,880 | \$10,829 | \$10,720 | \$10,787 | 0.6% |

In addition, Federal agencies¹¹ reported¹² to the SBA nearly \$2 billion in civil penalty abatements, reductions or waivers for small entities corresponding to FY 2004 activities, with 120,665 fewer civil penalties assessed in FY 2004 compared to FY 2003.¹³

10. Additionally, the Agency did not receive any data from DoD, VA or the GSA.

11. 19 Agencies, Treasury, HUD, DOT, DOL, HLS, DOA, Education, HHS, DOC, DOI, DOJ, PBGC, SEC, EPA, NRC, RRB, FRB, EEOC, CFTC, FTC, FDIC, ITC, FMC, FCC all self-reported to the SBA the number and corresponding dollar amount of civil penalties reduced or waived for small businesses — as defined by them.

12. Under the Small Business Paperwork Relief Act of 1992 (SBPRA)

13. Agencies report their activities the following fiscal year.

Goals Exceeded

| Outcome Measure | | |
|---|---------------|------------------------|
| 1.1.3. Achieve a total of 50 States that have formally considered legislative or executive action to increase regulatory flexibility for small businesses, by FY 2008. | | |
| Target | Result | Above Target by |
| 10 States | 19 States | 90% |
| Reasons for performance result | | |
| Advocacy's Regional Advocates promoted State-level regulatory flexibility legislation for the first time with a complete team. | | |
| Steps being taken to improve performance or targets | | |
| The Agency is not revising its targets. The target of 50 States will be achieved sooner than anticipated at which point the Agency will declare the target achieved and consider adding a new indicator. A reduction in SBA's Office of Advocacy's travel budget in the future could harm performance. | | |
| Impact of result to program | | |
| SBA will achieve its long-term target of 50 States faster. The impact of the overage is that more States have regulatory flexibility laws on the books in a shorter time which means that state governments will have a mechanism to analyze the cost of their regulations on small businesses and consider less-burdensome alternatives. | | |

| Outcome Measure | | |
|---|-----------------|------------------------|
| 1.1.4. Insert Advocacy data and reports into the curricula at 80 of the top 100 universities with major entrepreneurship programs, by FY 2008. | | |
| Target | Result | Above Target by |
| 16 Universities | 18 Universities | 13% |
| Reasons for performance result | | |
| The variance in the result for inserting SBA's data into university curricula may be accounted for by the fact that the Agency had a complete team of 10 regional advocates for the first time in many years. The regional advocates are able to meet directly with universities and academics. | | |
| Steps being taken to improve performance or targets | | |
| Nothing is needed to improve performance (since the goal was exceeded); although a reduction in SBA's travel budget in the future could harm performance. There are no plans to adjust goals at this time. | | |
| Impact of result to program | | |
| More colleges or universities incorporate small business data and research into their curricula which may get more academics and students interested in small business/entrepreneurship research. | | |

| Outcome Measure Research Publications | | |
|---|-----------------|------------------------|
| Target | Result | Above Target by |
| 20 Publications | 34 Publications | 70% |
| Reasons for performance result | | |
| The variance in the number of research publications has to do with the increased number of internal reports that are now produced (e.g., Quarterly Indicators) and the fact that several multi-year research projects were all completed this year. | | |
| Steps being taken to improve performance or targets | | |
| Given the increased number of regularly published internal reports, this target can be increased to 25 in the future. | | |
| Impact of result to program | | |
| The impact of the overage is that more small business research is available to inform policymakers. | | |

Goals Not Met

| Outcome Measure 1.1.1. Achieve a yearly regulatory cost savings that increases at a rate of 10 percent annually over a base amount of \$3.8 billion set in 2002, due to Advocacy intervention, by FY 2008. | | |
|--|----------------|------------------------|
| Target | Result | Below Target by |
| \$5.1 billion | \$3.95 billion | 23% |
| Reasons for performance result | | |
| The cost of regulations promulgated by agencies varies and unfortunately, cannot be anticipated or controlled by the SBA. Although the number of regulations issued annually is relatively constant, the cost of those regulations varies. Also, although the number of "major" or "significant" regulations has decreased, the cumulative impact of all regulations, big and small, has risen. Moreover, the Agency has no enforcement authority to guarantee cost savings will result from intervention. | | |
| Steps being taken to improve performance | | |
| SBA will continue to work with agencies to encourage them to improve their consideration of small business impacts and to reduce burden associated with their regulations. Current targets represent the best available estimates and will not be adjusted at this time. | | |
| Impact of result to program | | |
| The impact of the shortfall is not known. It is not fair to say that small businesses saved less. Perhaps it is simply the case that the regulations were not as expensive (individually) as they were last year. This program continues to have a significant impact on small business, by reducing their regulatory costs. | | |

| Outcome Measure | | |
|---|-------------|-----------------|
| 1.1.2. Ensure 66 Federal agencies have in-house expertise on how to comply with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, by FY 2008. | | |
| Target | Result | Below Target by |
| 25 agencies | 19 agencies | 24% |
| Reasons for performance result | | |
| The variance in ensuring Federal agencies have expertise in complying with the Regulatory Flexibility Act may be explained by the fact that several agencies have requested additional training for additional groups of employees. Although SBA conducted as many training sessions as the previous year, the SBA did not re-count agencies where more than one training session occurred. Nevertheless, the Agency is on the road to achieving its target of 66 agencies by 2008. | | |
| Steps being taken to improve performance or targets | | |
| SBA decided to divert some of its resources to conducting additional training of agencies that have so requested. This should help reinforce both the letter and the spirit of RFA to these agencies leading to more benefits for small businesses. | | |
| Impact of result to program | | |
| No adverse impact on this indicator is expected, because two-thirds of the five-year goal has already been achieved. | | |

| Outcome Measure | | |
|---|--|---------------------|
| (a) 1.2.1. Achieve a 10 percent decrease in the annual number of Federal regulatory enforcement actions taken against small businesses. | | |
| (b) 1.2.2. Achieve a 5 percent increase in the number of enforcement actions in which the civil penalty is reduced or waived, by FY 2008. | | |
| Target (a) | Result (a) | Below Target (a) by |
| 1,540,205 Regulatory Enforcement Actions | 120,665 Regulatory Enforcement Actions | 92% |
| Target (b) | Result (b) | Below Target (b) by |
| 90,217 Enforcement Actions | (11,748) Enforcement Actions | 113% |
| Reasons for performance result | | |
| The distortion in the results may be attributed to the overwhelming influence of the number of IRS actions, which made up approximately 98% to 99% of all actions, even though there were at least 40 agencies/sub-agencies reporting data. Also, the Agency did not receive any data from DoD, VA or the GSA. | | |
| Steps being taken to improve performance | | |
| Due to non-renewal of Section 4 of the Small Business paperwork Relief Act (SBPRA), this output Indicator will be replaced with another performance/budget indicator. | | |
| Impact of result to program | | |
| With IRS data removed from the equation, the "Number of Enforcement Actions with Civil Penalty Reduced or Waived for Small Entities" and "the Number of Enforcement Actions with Civil Penalty Assessed for Small Entities" have more than exceeded the Agency's goal of increasing these waivers or reductions in penalties to small businesses. | | |