

***CREATING
A MORE SMALL BUSINESS FRIENDLY
REGULATORY ENFORCEMENT AND
COMPLIANCE ENVIRONMENT***

**Office of the National Ombudsman
U.S. Small Business Administration**

Fiscal Year 2001 Report

Message from Administrator Hector V. Barreto

I am pleased to transmit the FY 2001 Annual Report for the Office of the National Ombudsman. Small businesses are critical to our Nation's economy, but they are faced with many obstacles and the burden of regulation is often cited as one of their greatest challenges. President George W. Bush, a former small businessman himself, recognizes that small business is the engine that drives our economy and that it is incumbent upon us to eliminate the over-regulation of small businesses. As such, the President has made regulatory fairness one of the cornerstones of his small business agenda.

To help meet the President's goal, one of my first actions as Administrator of the U.S. Small Business Administration (SBA) was to appoint Michael L. Barrera as the Small Business and Agriculture Regulatory Enforcement Ombudsman. Mr. Barrera is an attorney by trade and brings extensive small business experience to the position. Since his appointment, Mr. Barrera has worked hard with our field offices, Federal agencies and the Regional Small Business Regulatory Fairness boards to bring the Office of the National Ombudsman (ONO) to the forefront of the SBA's efforts to serve the Nation's 25 million small businesses.

According to the SBA Office of Advocacy, each year Federal regulations cost small businesses with fewer than 20 employees almost \$7,000 per employee, 60 percent more than the cost to large businesses. Moreover, these costs do not include compliance with state and local regulations. Eliminating unfair Federal regulations and unfair enforcement tactics is critical to the growth of the small business community and the stability of our Nation's economy. Reducing regulatory impediments allows entrepreneurs to use their time and money to run their businesses rather than trying to comply with unfair and unnecessary regulations and enforcement tactics.

To support the efforts of the ONO, I have made the office a core function of the SBA. A strong ONO is vital to small businesses, providing entrepreneurs with a safe forum to report their treatment by Federal regulatory agencies. The ONO further supports the President's government-wide initiative to become more citizen-centered by listening to small business concerns and working with Federal agencies to resolve these concerns in a fair and expeditious manner. The efforts of the ONO also help keep the American dream of business ownership alive. Together with the National Ombudsman, our Federal agency colleagues, and our legislative partners, I look forward to creating a better, fairer, and more effective Federal regulatory enforcement environment for small business.

Hector V. Barreto
Administrator

“Creating A More Small Business Friendly Regulatory Enforcement And Compliance Environment”

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I. Background

Office of The National Ombudsman

In 1996, the Small Business Regulatory Enforcement Fairness Act (15 USC 657) established the Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman) at the U.S. Small Business Administration (SBA) to give small businesses a voice in the Federal regulatory enforcement process. The National Ombudsman conducts hearings across the country to receive comments from small business concerns on how Federal regulatory agencies treat small business concerns during an enforcement or compliance action. These comments are then transmitted to the appropriate Federal agency so that the agency can respond to the small business' comment and take appropriate action. The National Ombudsman also coordinates the activities of ten Regulatory Fairness Boards (RegFair) each comprised of five independent business owners or officers of small businesses from throughout the country. The RegFair members are appointed by the SBA Administrator. One of the primary roles of the RegFair Boards is to serve as state and regional liaisons to the National Ombudsman in an effort to reduce and remove unfair and unnecessary regulatory impediments to small business growth.

Easing the regulatory burden on small businesses is a major component of President George W. Bush's small business agenda. Federal regulations affect small business disproportionately. In fact, per employee, small firms spend almost double that of large firms to comply with Federal regulations. The Office of National Ombudsman (ONO) strives to simplify the Federal regulatory process so that America's entrepreneurs can spend their much needed resources on their business and customers rather than trying to comply with the unfair enforcement of complex and confusing Federal regulations.

Statutory Authority

The ONO was created pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (15 USC 657), also known as SBREFA. The Ombudsman is independent, impartial, and confidential. The office receives comments from small business concerns regarding their experiences during Federal regulatory enforcement actions. These actions may include an audit, inspection, fine or other penalty. The comments are then sent to the Federal agency that initiated the enforcement action for their response. These comments and the Federal agency response are then collected, analyzed and made part of the annual report to Congress. This annual report rates Federal regulatory agencies on how they treat small business concerns during enforcement actions, the timeliness and quality of the agencies' written response to the small business concern, the agencies' response to ONO questions, and what, if any, action the agency took to resolve the small business' comment.

II. Fiscal Year 2001

Despite the lack of a permanent National Ombudsman, the transition of Administration and the challenge of limited resources, the ONO accomplished several important tasks that will help strengthen the office for the future. These accomplishments are as follows:

National Ombudsman Appointed

On August 24, 2001, U.S. President George W. Bush appointed Michael L. Barrera as the National Ombudsman for the Small Business Administration.

Ombudsman Office Relocated to Washington, DC

During August of 2001 the Office of the National Ombudsman completed its physical relocation from Chicago, IL to Washington, DC.

Web-based Comment System

The ONO's mission is to **"Foster A More Small Business Friendly Federal Regulatory Enforcement Environment."** This is accomplished principally through a comment system. Comments are received primarily through hearings, RegFair members, the ONO toll-free number and the mail. The goal is to create a comment system that is easily accessible, simple to invoke, objective, confidential, reasonable and understandable. Therefore, late in fiscal year 2001, the ONO established a web-based complaint/comment filing system. This allows the small business concern to determine on-line if their comment is within ONO's jurisdiction and then download the comment form and fax it to the ONO. For fiscal year 2002, ONO plans to upgrade the on-line system to allow the small business concern to complete the comment form, provide substantiation and then email it back to the ONO. This will provide a quicker response time.

The National Regulatory Fairness Board Meeting

In June 2001, ONO and representatives from the ten RegFair Boards met in Washington, D.C., for a national meeting. High-level Federal representatives and small business association leaders also attended the conference. The conference served as a brainstorming meeting that ONO used to develop strategies and goals for the coming year. During the sessions RegFair Board members identified areas of continuing concern. One of the major frustrations for the RegFair Board members was an overall lack of Federal agency comprehension of the true cost and burden of their enforcement actions. The seven most serious problem areas identified during the sessions were:

1. Overlapping enforcement requirements at the Federal, state and local levels;
2. A continuing lack of effective communication by agencies regarding regulations;
3. A fear of retribution and a lack of agency assistance in compliance situations;
4. The disproportionate economic impact on small businesses;
5. Lack of clear channels for small businesses to address their regulatory complaints;
6. Lack of a customer service process/approach at Federal agencies; and
7. Inconsistent enforcement activities and shifting compliance requirements.

Regulatory Fairness Board Roundtable & Hearing

Due to the challenges set forth above, there were no Regulatory Fairness hearings held for fiscal year 2001, until after the appointment of National Ombudsman Barrera. However, a small business roundtable was held to discuss technology concerns of small businesses.

Roundtable-Fresno, California

On March 30, 2001, acting National Ombudsman Jim Van Wert conducted an informal small business roundtable at Cal State University in Fresno, California. Those in attendance included small business leaders, staff from Congressman Rodanavich's office and representatives from the Departments of Labor, Transportation, Agriculture and Interior as well as the Internal Revenue Service (IRS), Immigration and Naturalization Service (INS), and the Environmental Protection Agency (EPA). As a result of this meeting, the ONO began implementing improvements to its website and began better utilization of technology for ONO outreach. Representatives from the Federal agencies also heard the message from the small business community to make better use of technology to assist small businesses in the regulatory compliance arena.

Hearing-Newport, Rhode Island

On August 30, 2001, the ONO held a town hall hearing in Newport, RI. The hearing was chaired by newly appointed National Ombudsman Michael Barrera, and was attended by four Regional RegFair Board members from Region I and Region III. Additionally, 11 representatives from Federal regulatory agencies and SBA district directors from Regions I and III attended. Approximately 70-75 people attended, and seven small business owners presented testimony concerning regulatory enforcement and compliance problems with Federal agencies. Several of the business owners expressed their concern about Federal agency intimidation and overly harsh enforcement activities by Federal agencies. Some of the comments centered on EPA's enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC ch.103), also known as "Superfund". These business owners were concerned that, despite following all laws and regulations, they were being held fiscally responsible for a cleanup caused by another entity. The EPA spokesman provided small business owners with "Ability to Pay" forms that would enable them to obtain exemptions on the Superfund inquiries. In addition, testimony was offered regarding payment problems and Medicare reimbursement delays for small businesses dealing the Centers for Medicare and Medicaid Services (CMS). Small business owners expressed concern over the negative financial implications of delayed payments caused by frequent audits and complex payment reimbursement procedures.

The ONO also received testimony regarding the fear of retaliation that prevents many small business owners from testifying about their experiences with Federal agencies. Overall, the agency representatives addressed the concerns raised by the business owners and in many instances were able to provide guidance and assistance. In sum, the hearing demonstrated that positive results could be achieved if sufficient outreach is performed and comments are collected.

Hearings Online

The ONO posts online transcripts of all RegFair hearings (<http://www.sba.gov/ombudsman>-see Events). The transcripts allow Federal agencies, members of Congress, and small business owners to review and systematically address small business concerns and recurring enforcement and compliance issues. In the last five years, the ONO and the RegFair Boards have convened 43 public hearings. Agency participation at these hearings is critical as it increases the dialogue between the agencies and small business concerns. It also gives Federal agencies an opportunity to hear directly from small business concerns address the issues raised and gain input on how to improve their regulatory enforcement and compliance procedures.

III. Federal Agency Rating Criteria

Small Business Comments and ONO Annual Recommendations

SBREFA directs the ONO to receive, substantiate and evaluate comments from small business concerns. The comments and a set of standard questions from the ONO are forwarded to the appropriate Federal agencies for their response and appropriate action. The ONO's questions¹ seek additional information from agencies to determine whether regulatory enforcement and compliance fairness is part of the agency's environment. The ONO uses these questions to prompt the agencies to consider how the small business owner must comply with regulations. If needed, these questions are modified for a given comment and the level of identity disclosure chosen by the small business concern.²

SBREFA directs the ONO to rate Federal agencies on their enforcement and compliance activities. In addition, SBREFA specifically requires the ONO to rate agencies on their responsiveness to the small business concern's comment, and their response to the ONO's questions. These comments also assist the ONO in analyzing how agencies implement the ONO's annual recommendations.

As previously set forth, there was only one Regulatory Fairness hearing held in fiscal year 2001. Moreover, there were less than a dozen substantiated comments collected for the entire fiscal year. Despite the lack of comments, many Federal agencies continued to apply the principles of SBREFA. For example, several agencies have designated high-level, independent officials to review small business comments. Some agencies have in place or are establishing formal and periodic training for personnel responsible for small business enforcement or compliance activities. They are also working to improve their responsiveness and reduce the regulatory burden.

¹ See appendix B

² Small business concerns may disclose their identity to 1) solely the ONO and the RegFair board; 2) ONO and the federal agency, or 3) any interested party.

Agency Implementation of the ONO's Annual Recommendations

As previously set forth, the dearth of substantiated comments and matching agency responses limited the ONO in its ability to rate Federal agencies. As such, agencies were asked to respond on how they complied with five of the ONO's recommendations listed in its Fiscal Year 2000 report. These are the same five recommendations used by the ONO in its fiscal year 2000 report in order to provide the agencies some consistency in reporting. Many of the recommendations from the past five years were developed with the input from the RegFair Board members. For the Fiscal year 2001 report, the ONO sent the agencies ten (10) criteria questions. These criteria questions were based on the five Fiscal Year 2000 report recommendations. The purpose of these ten criteria questions was to help guide the agencies in their responses. In evaluating and rating the agencies' performance for Fiscal Year 2001, the ONO relied on the responses received from the Federal agencies.

IV. Fiscal Year 2001 Rated Recommendations and Criteria

Recommendation 1: Increased Voluntary Compliance Reviews

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

- 1. Give small businesses notice of violations and reasonable opportunities to come into compliance without being penalized, and*
- 2. Increase voluntary compliance reviews to give businesses the guidance they need without the fear of penalty.*

CRITERIA:

A - Excellent

The agency has policies to notify small businesses of violations when 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 harm. Also provides opportunities to achieve compliance in cases where statute(s) does not compel the agency to penalize the small business (if a penalty is required by statute, the agency sets the minimum penalty). The agency also has significant voluntary compliance review programs, which give small businesses the guidance they need to come into full compliance and avoid penalties, and takes steps to notify small businesses of these programs.

B - Good

The agency has:

- Implemented item 1 or item 2, detailed above; and
- Committed to implementing, within 12 months, the item not yet in place.

C - Average

The agency has either:

- 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

The agency either has not:

- Implemented the above recommendation; or
- Provided sufficient information to determine whether the recommendation will be satisfactorily implemented.

Recommendation 2: Delegated Enforcement Authority Fairly

When Federal agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum Federal regulatory enforcement fairness standards are met. This includes a flowdown 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.

CRITERIA:

A - Excellent

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:

- Small businesses have negotiation, review, and appeal rights that are at least as favorable as those the agency would provide if it had taken the enforcement or compliance action itself;
- Small businesses are given the rights accorded to them under the 1996 SBREFA Act, including the timely notice of their right to comment on regulatory enforcement and compliance activities with ONO;
- Small businesses are advised by the enforcement entity, that the enforcement 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 regulatory fairness standards, and has policies in place to take corrective action for nonconformance and, when appropriate, revoke its delegation of authority.

B - Good

The agency has:

- Implemented at least two of items detailed above; and
- Committed to implementing the remaining item(s) within 12 months.

C - Average

The agency will implement at least three of items listed above under Excellent within 12 months.

F - Unsatisfactory

The agency either has neither:

- 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.

CRITERIA:

A - Excellent

The agency's small business liaison offices:

- 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.

B - Good

The agency:

- Only 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.

C - Average

The agency has committed to either:

- 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.

F - Unsatisfactory

The agency's response indicates either:

- The agency did not respond to the recommendation, or responded, 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.

CRITERIA :

A - Excellent

The agency:

- Has assigned staff, with sufficient authority, to review all small business data collection and reporting requirements;
- Has eliminated 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.

B - Good

The agency has:

- Implemented at least two of items, detailed above; and
- Committed to implementing the remaining item(s) within 12 months.

C - Average

The agency will implement at least three of items listed above under Excellent within 12 months.

F - Unsatisfactory

The agency either has neither:

- 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.

CRITERIA :

A - Excellent

The agency has:

- 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 in 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. 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.

B - Good

The agency has established an avenue through which a small business can expeditiously raise concerns about economic viability. The agency either:

- 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.

C-Average

The agency:

- 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.

F - Unsatisfactory

The agency has not:

- Implemented the recommendation; nor
- Provided sufficient information to determine whether the recommendation was adequately implemented.

CRITERIA QUESTIONS SENT TO AGENCIES

- 1.** Does your agency empirically test new enforcement or compliance policies that may affect small businesses through cooperative pilot projects? Are these pilot projects structured to accept and implement small business recommendations?
- 2.** Does your agency provide feasible compliance guidance to small business, and avoid merely dictating compliance regimes?
- 3.** Does your agency have a program to provide business with prior notice of violations and allow time for remedial action when those violations pose neither a threat of death or serious injury?
- 4.** Does your agency have a program for voluntary, non-punitive compliance reviews?
- 5.** When your agency delegates enforcement actions to state agencies or other intermediaries does it ensure that Federal small business protections and cooperative compliance objectives, such as the SBREFA comment process, are passed down to the enforcing entity? Please explain how this delegation occurs and is monitored.
- 6.** Does your agency use, or attempt to use, voluntary industry standards developed in conjunction with affected industry (particularly small business) before considering or implementing new mandatory regulations? Please detail these efforts?
- 7.** Does your agency have internal offices and procedures that enable your agency to work with small businesses and inform them of their rights to fair regulatory treatment?
(This should include dissemination of Regulatory Fairness materials and other outreach efforts)
- 8.** Does your agency regularly conduct objective reviews of its implementation of SBREFA, and is a senior manager tasked with SBREFA compliance? Please provide that officer's name and status.
- 9.** What efforts has your agency made to reduce and consolidate data collections from small business? Does your agency perform periodic reviews of the actual time required for small business compliance? Please provide some documentation of these efforts.
- 10.** What training do you provide to your inspection and compliance personnel regarding the small businesses they inspect? Are they well versed in the actual industry practices, the applicable law and regulations, and have a focus on compliance assistance rather than sanctions?

Agency Ratings

RECOMMENDATIONS

- Rec. 1-Increased Voluntary Compliance Reviews
- Rec. 2-Delegated Enforcement Authority Fairly
- Rec. 3-Disseminated RegFair Information
- Rec. 4- Reduced Small Business Data Collection
- Rec. 5-Provided Alternative Compliance Arrangements

	1	2	3	4	5	Overall Rating
Consumer Product Safety Commission	A	X	A	A	B	A-
Department of Agriculture	B	A	B	B	A	B+
Department of Commerce	B	X	B+	C	A	B
Department of Health & Human Services						
Food and Drug Administration	A	A	A	B	A	A-
Center for Medicare & Medicaid (CMS)	B	X	B	C+	C	C+
Department of Housing & Urban Dev	B	X	A	X	X	NR
Department of the Interior	A	B	B	B	A	B+
Department of Justice						
Immigration & Naturalization Service	A	X	A	B	A	A-
Civil Rights Division	A	X	B	X	A	A-
Department of Labor	A	X	A	A	A	A
Occupational Safety & Health Admin.	A	X	A	B	A	A-
Department of State	C	X	A	B	B	B
Department of Transportation	A	A	A	B	A	A
Department of Treasury						
Customs Service	A	X	A	A	A	A
Internal Revenue Service	A	X	A	A	A	A
Environmental Protection Agency	A	C	A	B	A	B+
Equal Employment Opportunity Comm.	A	X	A	B	A	A-
Federal Communications Commission	B	B	A	A	B	B+
Federal Deposit Insurance Corporation	C	X	C	A	B	C+
Federal Energy Regulatory Commission	B	X	A	X	A	A-
Federal Trade Commission	A	X	A	X	A	A
National Aeronautics and Space Admin.	C	X	A	X	A	B+
National Labor Relations Board	A	X	B	X	B	B+
Pension Benefit Guarantee Corporation	B+	X	A	B	B	B+
Securities and Exchange Commission	B	X	A	A	B	B+
Small Business Administration	A	X	A	A	A	A

A = Excellent; B = Good; C = Average; F = Unsatisfactory; X = Does not apply

Note: Agencies selected for rating were also rated in the 2000 report. The ONO will be meeting with representatives from each regulatory agency to discuss the rating criteria that will be used in future reports.

V. Agency Best Practices

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.

Department of Agriculture - Animal and Plant Health Inspection Service

Innovative Penalty Agreements

APHIS uses innovative agreements to encourage compliance rather than assess strict penalties. In many animal care cases, the penalty may be returned to the small business to spend on improving facilities. Other innovative compliance agreements may include refunding fines for employee training or research into improved methods.

Department of Labor - Mine Safety and Health Administration

Compliance Guide to Assist Mine Operators with Subcontractor Safety Training Programs

Mine operators are now provided with compliance guides and assistance to avoid penalties for subcontractor violations. This program came about as a direct response to a SBREFA comment. MSHA responded with the development and rollout of a compliance program in only a few months. The program will result in improved safety and more cooperative workplace safety environment.

Equal Employment Opportunity Commission

EEOC's New FivePoint Plan

EEOC has initiated a new five point plan under Chairwoman Cari Dominguez. The SBREFA benefits inherent in this plan include an emphasis on non-traditional outreach activities and information sharing forums. In addition, as part of its implementation of President Bush's "New Freedom" initiative to increase access to the workplace for persons with disabilities, EEOC has initiated a new series of workshops specially designed to aid small businesses in designing their compliance programs. This effort builds on the EEOC's efforts of the past several years, which included plain English compliance assistance and a new website.

U.S. Customs Service

Automated Commercial Environment

The Customs Service, in conjunction with several other agencies, is significantly streamlining its data collection system. Statutes, and an increased emphasis on security, require the Customs Service to keep data concerning every shipment to the United States. Working with other agencies, the Customs Service is developing a new Automated Commercial Environment (ACE) computer system that will sharply reduce duplication of this data collection, thereby easing the collection burden on small business and improving information sharing between law enforcement and regulatory agencies.

Environmental Protection Agency

National Compliance Assistance Clearinghouse

Last year, EPA launched an Agency Internet “Clearinghouse” where entities, including small businesses, can obtain documents and data links to a variety of Federal, state and local environmental compliance resources. It provides quick access to compliance tools, contacts, and planned activities from across EPA, as well as other compliance assistance providers. The Clearinghouse currently links to over 4,700 documents and is expanding to include compliance assistance materials from non-governmental assistance providers.

Compliance Assistance Centers

EPA is developing three more Compliance Assistance Centers, in partnership with industry and other groups and agencies, to address real world issues and options for addressing environmental compliance. These centers will focus on the small business community, including the areas of Auto Salvage yards, the construction sector and US/Mexican border issues with respect to the imports and hauling of hazardous waste. The centers provide a valuable resource for small businesses to learn how to comply with environmental regulations and learn about upcoming rules and policy changes. The centers consolidate all the compliance information related to a particular industry allowing one-stop shopping for the information necessary to comply with the law, and providing access to the information by phone, fax, mail and e-mail. The Centers are an example of a successful small business-agency partnership that benefits everyone involved.

VI. Agency Comments

ONO provided a draft of this report to all rated agencies as required under Section 30(b) (2) (E) of the Small Business Act (15 USC 657). Several agencies offered recommendations and requests for changes to some ratings.

- The Federal Energy Regulatory Commission and the Federal Trade Commission pointed out that Recommendation 4 - “*Reduced small business data collection*” is inapplicable as they do not collect any data. This change was accepted.
- The Customs Service disputed their “B” rating under Recommendation 4. Customs argued that their data collection is mandated by law, and by law must be reviewed regularly, and is as unobtrusive as possible. In addition, as noted in the “Best Practices” section above Customs is implementing a new multi-agency data system, the Automated Commercial Environment (ACE). ACE will reduce the data collection burden for several agencies, as well as allow small business to file required report on-line. Customs also pointed out that it meets all of the four criteria for an “A” rating under Recommendation. In fact, their Trade Support Network (TSN) exceeds the criteria for review of data collection by including business representatives in the data collection review process as well as providing a feedback mechanism for small business. Consequently, ONO agreed to improve the rating from a “B” to an “A”.

- The Environmental Protection Agency offered several comments regarding their new compliance assistance activities. These programs were reviewed and included in the “Best Practices” section above. EPA also commented on the rating it received under Recommendation #1 – “*Delegated enforcement fairly*”. The full text of those comments is included below.

EPA COMMENTS

The following is an excerpt from the comments received from the Environmental Protection Agency:

“Generally, EPA agrees with the Recommendations made in the Report and the ten criteria/questions that were used by SBA to evaluate and rate Agencies’ performances for FY 2001. However, we believe that one of the recommendations (Recommendation No. 2) exceeds the scope of the SBA’s authority under Section 222 of SBREFA and the EPA’s authority under its statutes and therefore we suggest that EPA’s rating be changed from a “C” to an “X” for “Not Applicable,” as discussed below.

Recommendation No. 2: When Federal Agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum Federal regulatory fairness standards are met. This includes a flowdown 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.

EPA Comment: As we have explained in past responses, EPA cannot require States to adopt SBREFA because that exceeds the scope of our authority under the current law. The requirements for authorization of State environmental programs are set forth in each of the statutes EPA administers and the regulations promulgated pursuant to those statutes. In fact, there are “State Authorization” processes to ensure that the laws and regulations enacted and implemented by the State are as - or more - stringent than the federal laws and regulations and to ensure that the State program meets all of the other requirements for authorization. These laws and regulations do not contain requirements for States to have a “SBREFA” program. Moreover, Congress did not include a provision in SBREFA requiring adoption of SBREFA by States nor has it set forth requirements for such State authorization. Therefore, EPA cannot require States to adopt SBREFA or to implement “SBREFA” programs as a condition of authorization nor can we withdraw a State program for lack of a SBREFA program. Rather, this is an issue best addressed by Congress as it would require a change in the law for federal agencies to mandate States to adopt SBREFA. We therefore request that EPA’s rating on this element be changed from a “C” to an “X” for it is not applicable. We continue our dialogue with SBA to resolve this issue.

We will also continue to work with our State counterparts through associations such as the Environmental Council of States (ECOS) to encourage States to have small business programs; however, these programs cannot be conditions of State authorization because, as explained, that exceeds the scope of EPA’s authority under the current law.”

Appendix A - Regulatory Fairness Board Members

Region 1

Roxanna D. Adams, Chair

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

Doris Ballard

Ballard Novelty and Party Shop
Concord, NH 03304
(603) 225-5667

Vinh Cam

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Greenwich, CT 06831
(203) 532-1252

Ronald V. Williams, V-Chair

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Hartford, CT 06120
(860) 727-1181

Region 2

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Pasteleria Los Cidrines
Guaynabo, PR 00965
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Sandra K. Lee

Harold L. Lee Insurance
New York, NY 10013
(212) 962-6656

Region 3

Pamela J. Mazza, V-Chair

Piliero, Mazza, & Pargament
Washington, DC 20006
(202) 857-1000

Wilkins McNair, Chair

Accounting Firm of Wilkins McNair, Jr.
Baltimore, MD 21201
(410) 962-5252

Kenneth B. Rodriguez

Rodriguez & Offspring Enterprises, Inc.
Sewickley, PA 15143
(412) 749-7810

Region 4

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Regional Investment Bankers Association
Knoxville, TN 37902
(865) 525-3133

Robert Clark

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Lexington, KY 40502
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Livia L. Whisenhunt, Chair

PS Energy Group, Inc.
Atlanta, GA 30359
(404) 321-5711

Martin L. Shaffer

American Vending
Clarksburg, WV 26301
(304) 623-5791

Region 5

Hardie Blake, Chair

Bethel Business Machines, Inc.
Mishawaka, IN 46544
(219) 259-1572

Lyle J. Clemenson

Clemenson Enterprises, Inc. dba CEI
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Donald Magett

Magic P.I. & Security, Inc.
Kalamazoo, MI 49006
(616) 381-7772

Region 6

David Martinez

D&D Machinery & Sales, Inc.
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Elise E. McCullough, V-Chair

Staffing Solution, LLC
New Orleans, LA 70118
(504) 864-9900

Frederick A. Peralta

Lilac Shoppe/Tows of Taos
Taos, NM 87571
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Burwell, NE 68823
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Clark D. Stewart, Chair

Butler National Corporation
Olathe, KS 66062
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Region 8

Donna M. Davis, Chair

Eagle Butte, SD 57625
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Scott A. Flores

Die Cut Technologies
Denver, CO
(303) 297-9327

Region 8 (cont'd)

Mary E. Thoman, V-Chair

Thoman Ranch
Kemmerer, WY
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Thomas Gutherie, Chair

Southern Nevada Certified Development Corp.
Las Vegas, NV 89104
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Portland, OR 97211
(907) 561-5144

Milford E. Terrell

DeBest Plumbing & Mechanical, Inc.
Boise, ID 83713
(208) 322-4844

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.

Appendix B - Sample Forms

Regulatory Fairness Questions Sent to 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?

Appendix B

ONO COMMENT FORM (Superceded)

Small Business and Agriculture Regulatory Enforcement

NATIONAL OMBUDSMAN

Comment 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?

**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/

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)

Agency Action:

Rec'd: _____

First Action: _____

Closed: _____

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.

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

Fax: (202) 481 2673

www.sba.gov/regfair/