

The ONO Mission

The Office of the National Ombudsman (ONO) in the U.S. Small Business Administration (SBA) seeks to foster a more small-business-friendly Federal regulatory environment and help save small businesses time, money, and jobs, thereby improving the economy overall. It does this by evaluating how Federal agencies treat small businesses during enforcement or compliance actions; increasing compliance assistance activities; decreasing the number of excessive and otherwise unfair enforcement actions by Federal regulatory agencies; and, most importantly, increasing the number of small businesses helped by SBA's ONO, which seeks to ensure that particular concerns or complaints are heard and addressed by high-level Federal agency officials. ONO is given this authority through the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which directs the Ombudsman to:

- ▶ Work with each Federal agency having regulatory authority over small businesses to ensure that the latter have a means to comment when they receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement-related communication or contact by agency personnel.
- ▶ Establish a means to receive comments confidentially, if requested, from small businesses regarding action by agency employees conducting compliance or enforcement activities, and a way to submit comments confidentially, if requested, to the affected agency.
- ▶ Report annually to Congress and affected agencies, evaluating agencies' enforcement activities and rating their responsiveness to small business.
- ▶ Coordinate the activities of 10 Regulatory Fairness (RegFair) Boards.

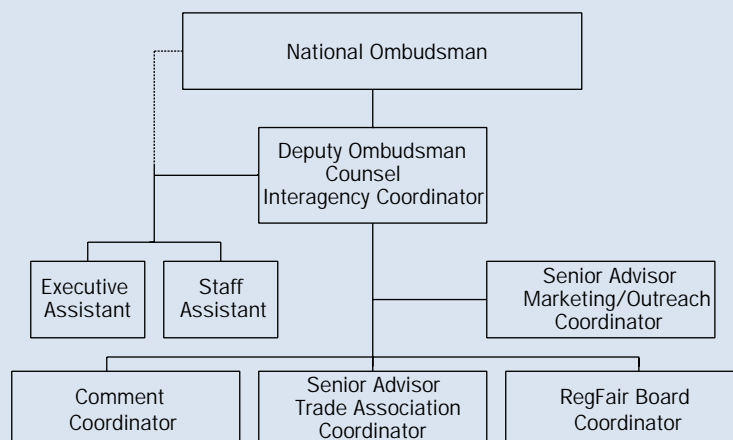
To fulfill its mission, ONO relies on the efforts of 10 Regional RegFair Boards across the United States. These Boards, with the National Ombudsman at the helm, have been established by SBREFA as the structure for hearing and reviewing small business comments and concerns about regulatory enforcement actions. The hearings provide a forum for public testimony about specific regulatory enforcement actions by Federal agencies.

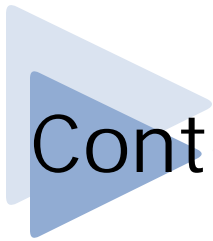
In addition to hearings, ONO also holds trade association roundtables and Emerging Markets meetings in diverse communities across the country. The reason for the roundtables is twofold: (1) roundtables are held with trade associations to educate participants about ONO's role and mission and to inform small entities of their right to comment on excessive Federal regulatory enforcement or compliance actions; (2) roundtables provide trade associations an opportunity to comment on Federal regulatory enforcement actions that affect their particular constituency. Emerging Markets meetings, which target women, minorities, and veterans, seek to inform underserved small business communities of helpful ONO services and SBA programs.

Small business and government agency representatives attend hearings, meetings, and roundtables, along with ONO RegFair Board members, SBA field personnel, other SBA partners, and community leaders. Hearings and roundtables are recorded and transcribed for the public record, with excerpts incorporated into this report to Congress. Transcripts of RegFair hearing comments can be accessed on the National Ombudsman website, www.sba.gov/ombudsman.

Office of the National Ombudsman

Organizational Chart – October 30, 2002





Contents

Message from the SBA Administrator ▶ vii

Introduction by National Ombudsman Michael Barrera ▶ ix

Executive Summary ▶ xi

I. ONO Results in Brief ▶ 1

II. Rating Federal Agency Response to Small Business ▶ 3

The Comment Process	3
Federal Agency Rating Criteria for 2002	4
Rating the Agencies	6
Examining Federal Agency Response	8
Timeliness of Response	9
Quality of Response	10
Agency Non-Retaliation Policies	10
Agency Regulatory Enforcement Compliance Assistance	12
Hearings and Roundtables Enhanced	15
Informing Small Business of the Right to Comment	17
Additional Special Initiatives and Best Practices of Federal Regulatory Agencies ...	18

III. What They Said: Comments Filed by Small Business ▶ 23

Common Small Business Concerns	23
A Paper Jungle	24
The Fear Factor	25

**IV. Pursuing Change in the Small Business Regulatory Culture:
The 2002 RegFair Board ▶ 27**

Approach: Citizen-Centered, Market-Based, Results-Oriented	27
Regional RegFair Boards: The Voice of Small Business	27
Hearings and Roundtables: Opening up the Discussion	28
On-Line Improvements: Making ONO Resources Even More Accessible	29
Proactive Outreach and Follow-up Efforts	30
Grassroots Approach: Tapping the Trades	30

ONO Outreach to Agencies: Bridging the Understanding Gap	31
Agencies: Searching out New Ways to Engage with Small Businesses	31
Emerging Markets: Reaching out to the Underserved	33

V. Looking Ahead... Plans for the Future ► 35

Paperwork Reduction Act 2002: Reinventing Government and Reducing Regulation	35
Reporting Requirements and Their Deadlines	36
Raising Expectations	36
Building Partnerships	37
Increasing Technology	37
E-Government	37
Conference Call Roundtables	38
Website	38
Continuing to Reach Out	39
Finally... ..	40

Appendix. Select Media and Marketing Materials ► 41

Figures and Tables

Figure 1. Average Response Time of Federal Agencies to Comments Received	9
Figure 2. Hearings and Roundtables Held in FY 2002	28
Figure 3. Number of Hearings by Fiscal Year	29
Figure 4. ONO Web Hits	29
Table 1. Rating of Agencies According to FY 2002 Criteria	7
Table 2. Breakdown of Agency Attendance at ONO RegFair Hearings, 2002	16
Table 3. Small Business Associations Contacted in FY 2002	32



Message from the SBA Administrator

The SBA Office of the National Ombudsman embraces my vision of innovation, simplification, and dedication, providing more timely, cost-effective, and responsive assistance to small business. This past fiscal year, ONO made laudable progress in pursuing change in small business regulatory enforcement culture and in how small businesses and the Federal agencies that regulate them interact. In essence, this change favors clarity over complexity, collaboration over confrontation, education over prosecution, and responsiveness over retaliation.

One of the things we wanted to do very quickly was to change the perception of government, especially our agency. SBA is committed to being a strong partner, a passionate advocate, and an agency responsive to small business. In FY 2002, ONO traveled around the country to meet with small businesses in their communities, to hear their stories, and to spread the word that the “gotcha” approach has lost favor with an Administration that recognizes the importance of small businesses and helps them comply with necessary laws and regulations.

Small businesses are beginning to feel empowered to speak out and be heard by their government, whose activities sometimes can make or break their success. In FY 2002, ONO received a record 319 comments—more than 14

SMALL BUSINESSES DRIVE OUR ECONOMY

Small business—anyone employing fewer than 500 employees*—is responsible for about 80 percent of new jobs in the United States and virtually *all* new jobs during times of economic downturn. Numbering 25 million in the United States, small businesses represent over 50 percent of our gross domestic product. They also:

- ▶ Employ 53 percent of private sector workers.
- ▶ Employ about 40 percent of private sector workers in high-tech occupations (according to the Census Bureau).
- ▶ Provide 55 percent of innovations.
- ▶ Account for 51 percent of private sector output.
- ▶ Hire a larger proportion of workers who are younger, older, women, or who choose part-time status.
- ▶ Provide 67 percent of workers with their first jobs and initial on-the-job training in basic skills.

*Only 2 percent of U.S. businesses have more than 500 employees.

Source: SBA Office of Advocacy

times the number received last year. Many of these comments were from trade associations representing thousands of businesses.

ONO champions the concerns of small businesses by promoting collaboration and cooperation between small business and government and between ONO and other Federal agencies. It is an interdependent relationship: not only does small business depend on fair treatment from government for its success, the health of our economy is driven by small business. Ultimately, ONO's activities and the collective efforts of SBA and other Federal partners not only help small businesses, they create more revenue, jobs, and spending that advance economic growth.

We will continue to improve SBA programs that help small businesses with capital access, training, and procurement, and to support ONO as it provides help with another core business need: redress from excessive and unfair regulatory enforcement practices. ONO's mission to ensure regulatory enforcement fairness supports the core function of the SBA because mitigating the effects of enforcement activities has a positive effect on small business survival rates. These measures clearly help small businesses weather economic downturns and expand during growth cycles. By helping small businesses continue to grow, SBA and ONO also help small businesses provide more opportunities to the workforce in their communities with a ripple effect for society at large.

A handwritten signature in black ink that reads "Hector V. Barreto". The signature is written in a cursive style with a large, stylized initial 'H'.



Introduction

by National Ombudsman Michael Barrera

ONO is a sounding board for small business. Throughout this past fiscal year, we met with the people in small businesses and heard their stories. I personally visited 25 states this past year, traveling from Florida to Washington, Rhode Island to Southern California, and from Wichita to West Virginia to Wyoming to hear what small businesses had to say and to see first-hand how unfair enforcement actions directly affect their lives and, in many cases, their communities. By and large, small business owners are conscientious and hard-working leaders of their local communities, often investing their life savings in their businesses and involving their families and friends in running it. They want to protect their investment and play by the rules—and they want and need to be treated fairly.

Fair enforcement of Federal regulations is a major concern for small businesses. When the enforcement of a Federal regulation is excessive or unfair to a small business concern, much time and money is unnecessarily diverted from more productive ends, such as employee training, customer service, facility improvements, or healthcare benefits—not to mention time with family and other lost opportunities.

Regulatory enforcement fairness is important to President Bush and to entrepreneurs in this economy, and ONO's mission bears witness to the President's top-down commitment to small business. Recognizing small business as the “backbone of the American economy,” the President's Small Business Agenda calls for removing the regulatory barriers to job creation for small businesses and giving them a voice in a complex and confusing regulatory process. Because President Bush knows that in an overly burdensome regulatory enforcement environment, entrepreneurs spend more time with their lawyers and accountants and less time with customers, he offered the following proposals to clear the regulatory air:

One of the things I strongly believe is that the role of government is not to create wealth, but to create an environment where entrepreneurs can flourish. The role of government is to create an environment that encourages risk-taking, an environment that facilitates the flow of capital, and an environment in which people can realize their dreams. That's the role of government.

►PRESIDENT GEORGE W. BUSH

- ▶ *Strengthen the Office of Advocacy with an Executive Order.* The President's Executive Order empowers the Office of Advocacy to compel agencies to provide a written explanation—available in the public domain—when they fail to study the impact of a new regulation on small business.
- ▶ *Seek comments from small businesses on ways to improve regulation.* The President has instructed the Director of the Office of Management and Budget (OMB) to seek feedback from small businesses on existing Federal Government regulations, paperwork reduction, and guidance documents.
- ▶ *Strengthen enforcement of the Regulatory Flexibility Act.* The responsibility of OMB and the Office of Advocacy, this act requires OMB to send back to agencies all proposed rules where the impact on small businesses has not been seriously considered.
- ▶ *Sign the Paperwork Relief Act of 2002.* The act requires Federal agencies to appoint a small business contact and report compliance actions to the National Ombudsman.

Small businesses need to feel comfortable telling their government both the good and the bad. Small businesses are our customers. I believe that for the most

Regulations can be good—there is a reason for them. We just want to be sure they are being enforced fairly. We're looking for a fair small-business environment, where Federal agencies try to help small businesses comply, rather than go straight to the penalty phase.

▶ MICHAEL BARRERA, SBA NATIONAL OMBUDSMAN

part, Federal agencies are against measures resembling retaliation; however, some small businesses do not want to tell us their concerns because of a fear of retaliation by Federal employees. No small business should be afraid to tell us how their government is treating them. To that end, we need to keep working diligently to continue changing the enforcement environment from a “gotcha” climate to a “help you” climate.

This report is also an evaluation of the relationship between Federal regulatory agencies and small businesses. SBREFA requires ONO to evaluate and rate Federal agencies annually on their regulatory enforcement activities. One purpose of SBREFA is for the RegFair Boards, ONO, and the affected agencies to receive quality feedback from small businesses on the regulatory enforcement environment they find themselves in; this report also summarizes small businesses' experiences with various Federal agencies, and evaluates and rates agencies' responsiveness to their concerns. Information gathered at regional regulatory hearings is included in this context, along with findings and recommendations about the regulatory enforcement environment and its effect on small business. The purpose of this report is not to rate individual agency personnel, but to assess the performance of each agency as a whole.





Executive Summary

Serving an Important Mission

Regulatory enforcement fairness is a major concern of small business. The burden on small companies, already disproportionately affected by the cost of compliance with Federal regulations, is greatly magnified when a Federal regulatory enforcement action unfairly affects them. Small companies, more than large ones, can ill afford the outlay of time and money to contest such actions—time and money that otherwise could be put back into the business for more productive ends.

President George W. Bush understands the importance of small businesses and recognizes their collective contribution as the “engine driving our economy.” His Small Business Agenda calls for tax cuts, unbundling of Federal contracts, and health insurance plans that work for small businesses. The President’s agenda also makes it easier for small businesses to immediately expense new investment, and eliminates the death tax so a small business can remain “in the family.” Finally, the President recognizes the burden of regulation on small business and is committed to tearing down regulatory barriers and giving small businesses a greater voice in the complex and confusing world of Federal regulatory processes. ONO’s mission directly targets this goal by giving small businesses an opportunity to express their concerns about unfair or excessive Federal enforcement of regulations and helping them avoid unnecessary and burdensome proceedings that cost them precious resources.

The National Ombudsman, one of the first appointments made by SBA Administrator Hector Barreto, sent the message that fair enforcement of Federal regulations is important to President Bush, SBA, and the economy as a whole. Small businesses play a vital role in the U.S. economy, and, through ONO, SBA works directly with more than 40 regulatory agencies to encourage a more small-business-friendly enforcement environment and an improved economy for all.

Throughout the past fiscal year, ONO has heard from hundreds of small business people and trade associations around the country. In general, the major concerns

of small businesses with regard to regulation deal with lack of agency personnel training, inconsistent enforcement practices, fear of retaliation, and confusion caused by conflicting messages from different agencies.

Growing Agency Involvement

ONO's goal is to change the environment and culture of regulatory enforcement with regard to small business. Federal agencies appreciate how much more difficult it is for small businesses to come into compliance, and several agencies are taking meaningful steps to improve their interactions with small business concerns. For instance, the Internal Revenue Service (IRS) established Small Business Forums in 2002 to provide a forum for small business taxpayers to air IRS-related issues. The Federal Trade Commission (FTC) holds workshops to obtain small business input on problems and agency activities, and to help businesses identify and implement best practices for compliance.

Regulatory enforcement fairness for the small business community requires this kind of collaboration. By holding individual meetings with Federal agency leadership early on, ONO set the stage for this spirit of collaboration, which characterized FY 2002 and is set to continue. Federal agencies will be relied upon to conduct more outreach whenever they issue new rules and when enforcement actions are taken. In addition, they will need to direct small businesses to resources that can help them understand what they need to know and how to comply with regulations. Other forms of small business relief should come through the Small Business Paperwork Relief Act of 2002, which requires, among other measures, that agencies identify a "point person" so small businesses can more easily access information about regulations that affect them. Federal agencies will also need to provide a way for businesses to learn how to comply with their regulations, particularly when new or modified ones are issued. Additionally, agencies need to constantly train their personnel on the importance of small business, as well as raise awareness about the challenges small businesses face compared to large businesses.

Increasing Program Exposure

ONO is increasing its outreach to small businesses, focusing more on trade associations and on training RegFair Board members to effectively communicate regulatory enforcement fairness at the local level. Board members will assist in arranging hearings and roundtables, and solicit the involvement of area trade associations and other small business concerns. Outreach will increase even more as RegFair Board members become more proactive, especially with certain key groups such as Emerging Markets. Emerging Markets (e.g., women, minority, and veteran small business owners) are one of the fastest growing segments of the

small business community. Their regular attendance at hearings and meetings is critical to raising their awareness of regulatory enforcement fairness and of other SBA programs beneficial to them. ONO intervention can be important in helping to strengthen this business sector.

Gaining Support from Within

ONO has received tremendous support from SBA Headquarters and from local SBA District Offices, which help plan, execute, and promote hearings and roundtables, as well as secure testimony from small businesses. District Directors' heightened enthusiasm is partly attributable to the commitment of this Administration and to recognition of the importance of fair regulatory enforcement to small business. ONO is helping SBA District Offices support the regulatory enforcement fairness mission by providing them with tools to conduct and publicize hearings, including talking points, local media contacts, press advisories, and a host of other templates to help lead and publicize ONO events.

ONO is also working closely with SBA's Office of Advocacy to provide a stronger support net for small businesses. A Memorandum of Understanding (MOU) between the Office of Advocacy and ONO enhances the relationship between the two offices by establishing protocols for sharing information and resources in support of each office's mission. The MOU also helps to avoid conflicts of interest and duplicative efforts. ONO is starting to see the fruits of this strengthened relationship, which helps small businesses by referring them to the proper place to register their concerns and complaints about burdensome Federal regulations and unfair regulatory enforcement actions.

Focusing on the Future

ONO's main goals are simple: increasing its outreach and obtaining more feedback from small businesses on Federal regulatory enforcement activity. ONO will achieve these goals by invigorating its RegFair Board members even more and by supporting their proactive outreach efforts around the country. Additionally, ONO will continue to conduct significant outreach to trade associations, work on readying a database of state and local ombudsmen, enhance its popular Internet service, and go forward with plans for bilingual hearings and development of outreach materials. It also will continue to make Emerging Markets a key focus for regulatory enforcement fairness outreach.



ONO Results in Brief

The following is a summary of notable ONO accomplishments during FY 2002:

- ▶ ONO made presentations regarding its services to approximately 45 trade associations representing over 360,000 small businesses. Many of these trade associations attended hearings and roundtables and filed comments.
- ▶ The number of hearings and roundtables increased from 2 in 2001 to 22 in 2002. SBA National Ombudsman Michael Barrera visited 25 states, participating on site at all ONO hearings, roundtables, and meetings; these heard the testimony of 124 small businesses and trade association representatives.
- ▶ Fifteen SBA District Offices received regulatory enforcement fairness orientation and training, which helped them better understand—and increased their cooperation and assistance in—marketing and promoting ONO’s mission of regulatory enforcement fairness to local small businesses, trade associations, and government entities. ONO used SBA’s established media channels and assisted district publicity efforts by providing standardized templates for various media materials.
- ▶ Twelve Emerging Markets meetings were held to introduce ONO services and SBA programs to women, minority, and veteran small business owners. These emerging small business communities may be in special need of regulatory enforcement fairness services, which is why ONO is working with leadership from diverse small business groups traditionally underserved in the marketplace. More emphasis on this program is planned for the future.
- ▶ ONO eliminated its backlog of filed comments and met with Federal agencies to encourage a more small-business-friendly regulatory enforcement environment.
- ▶ ONO received 319 small business comments, compared to 22 in 2001. Several of the filed comments were from trade associations representing thousands of small businesses and several thousand jobs (e.g., the National Meat Association represents 1,800 businesses). The number of comments, while not a definitive measure of ONO’s success, does reflect a new feeling of empowerment among small businesses inclined to seek help and relief from unfair Federal regulatory enforcement activities.

- ▶ The newly designed, interactive Ombudsman website had more than a million hits. The website provides users with a host of interactive forms and forums to obtain immediate answers to their questions or to talk anonymously with other small businesses in similar situations.
- ▶ ONO hosted two interagency meetings with congressional offices participating for the first time. These meetings increased understanding between ONO and Federal agencies and raised awareness of small business regulatory challenges through open, interactive discussions.
- ▶ A national RegFair Board meeting was held September 4–6 to train Board members, set outreach goals for FY 2003, and obtain feedback on ONO's and regulatory enforcement activities nationwide.
- ▶ A joint agreement was implemented between ONO and SBA's Office of Advocacy to work together to improve the regulatory environment for small business owners. ONO works with the Office of Advocacy to refer callers to the proper resource for their particular needs. The Office of Advocacy also uses its regional presence to assist ONO in carrying out regulatory enforcement fairness initiatives.
- ▶ ONO began developing a database of state and local regulatory ombudsmen to serve as a referral resource.
- ▶ Congress passed and President Bush signed the Paperwork Relief Act of 2002, which requires Federal agencies to begin reporting to ONO the number and dollar amount of regulatory enforcement actions against small businesses and the penalty reductions taken. This legislation helps monitor agency efforts to reduce regulatory burdens on small businesses and establishes specific measures designed to make it easier for small businesses to comply with Federal regulations.
- ▶ Several agencies reviewed and reconsidered regulatory enforcement decisions in favor of small business owners. For example, U.S. Customs returned fine money; the Department of Labor's Wage and Hour Division, on considering additional information provided by a small business, changed its initial determination regarding the applicability of an exemption, saving the employer overtime and possible penalties; and the Department of Agriculture's Food and Nutrition Service reauthorized ethnic stores in Seattle to take food stamps.
- ▶ Expanded media efforts heightened small business owner awareness of ONO and regulatory enforcement fairness. Approximately 100 print media outlets carried stories related to ONO hearings, roundtables, or other efforts, along with approximately 25 radio and TV stations around the country.
- ▶ Several agencies established new offices to help small businesses comply with their regulations. Others instituted or strengthened non-retaliation policies (see Additional Special Initiatives and Best Practices of Federal Regulatory Agencies in section II).



Rating Federal Agency Response to Small Business

The Comment Process

The process for receiving small business comments has three goals designed to support small businesses: (1) simplicity, (2) easy access to RegFair Boards and the National Ombudsman, and (3) quality feedback from Federal agencies.

ONO has several methods for receiving comments from small business concerns, including through RegFair Board members, the Ombudsman's website at www.sba.gov/ombudsman, e-mail at the ombudsman@sba.gov address, fax, regular mail, and toll-free at 1-888-REG-FAIR (734-3247). Comments are also collected at hearings and roundtables. Small businesses that fear retaliation may file their complaints confidentially.

All comments received are reviewed for completeness and to ensure that they are within the jurisdiction of the Ombudsman's office (see sidebar). If jurisdiction exists, a letter is sent to the commenter indicating that the comment has been forwarded to the appropriate Federal agency.

A letter is also sent when a particular situation (e.g., a state regulatory concern) does not fall within ONO's jurisdiction.

In FY 2002, ONO addressed 319 comments, many of which were filed by trade associations representing half a million small businesses. Of the total submitted, 103 comments directly related to regulatory enforcement fairness issues. The remaining comments were directed to other departments outside and within SBA, thereby fulfilling another major ONO goal: "If we are unable to help you, we will try to find you someone who can."

Once a comment is reviewed and jurisdiction determined, the small business is asked for substantiating documentation of its

If a small entity can answer "yes" to these three questions, then the Ombudsman has jurisdiction:

1. Are you a small business owner, small government entity (i.e., one serving a population below 50,000), or small nonprofit organization?
2. Is your comment about a *Federal* Government agency?
3. Have you been the subject of unfair or excessive regulatory enforcement action by a Federal agency?

STREAMLINED LIST OF QUESTIONS ASKED OF FEDERAL AGENCIES RECEIVING COMMENTS

Federal agencies are asked the following questions when a comment is forwarded:

- ▶ Why and how did you take the enforcement or compliance action?
- ▶ Did you notify the small business about the enforcement or compliance action? If so, did your agency provide the business an opportunity to come into compliance?
- ▶ Did you review the action of the investigator, auditor, inspector, or individual to ensure compliance with your agency's policies and procedures?
- ▶ Were your agency's regional and program offices responsive to the small business?
- ▶ Was the small business informed of its right to contact the Office of the National Ombudsman?
- ▶ Did your agency consider alternatives such as waiving penalties or reducing fines before seeking an enforcement action against the small business?
- ▶ As a result of the issues raised by this small business concern, has your agency implemented any changes to address this situation in the future? If so, please describe the changes implemented.

concern. This information includes dates, locations of the business, and an explanation of why the small business believes it was treated unfairly. The completed packet is then forwarded to the appropriate Federal agency, with a letter from ONO containing a list of questions for the agency to answer. Generally, ONO works with a designated contact within an agency, which helps to expedite the response. (If the commenter alleges retaliation or any grossly unprofessional type of activity, ONO will refer the comment to the Inspector General within the particular agency.)

In years past, the agency received a letter with an attachment listing 12 to 15 questions needing to be addressed. This past year, in response to agency requests, ONO redrafted the letter and reduced the number of questions it asked by half, making it easier for agencies and small businesses alike. By simplifying and streamlining this process in FY 2002, ONO helped improve the timeliness, clarity, and focus of Federal agency responses to small business concerns (see sidebar for the revised list of questions).

By asking these questions, ONO can assess the degree to which an agency considered the effects of its enforcement action on small business and the kinds of quality controls and follow-up activities that took place, such as conversations with field personnel about a particular case. Once an agency response letter is received, ONO passes it on to the small business. If an agency foresees a delay in responding, it is asked to send a detailed letter to ONO stating the reason(s) why. For the most part, ONO received quality responses (see table 1) in FY 2002 to its Federal agency rating criteria, included below.

Federal Agency Rating Criteria for 2002

ONO used the following five criteria to rate Federal agency responsiveness to small business concerns in 2002.

1. Timeliness in responding to small entity comments.
 - ▶ 30 to 60 days.
 - ▶ Over 60 days.
 - ▶ Over 90 days.
 - ▶ Over 120 days.
2. Quality of response to small entity comments.

- ▶ The agency addressed the questions posed in ONO's letter to it forwarding the comment.
 - ▶ The agency response came from a high-level representative (i.e., someone from that agency's SBREFA office or from the program office directly related to the comment).
 - ▶ The agency provided detailed information showing that it looked into the facts of the specific comment and the actions of the agency personnel involved in the enforcement activity.
 - ▶ The agency responded to the specific comment made by the small entity.
3. Agency non-retaliation policy.
- ▶ The agency has adopted a written non-retaliation policy.
 - ▶ The agency ensures that its employees are aware of its non-retaliation policy.
 - ▶ The agency ensures that small entities are aware of its non-retaliation policy.
 - ▶ Agency employees are aware of the consequences of not adhering to the agency non-retaliation policy.
4. The agency establishes a baseline and provides measurable regulatory enforcement compliance assistance, with increased assistance expressed as a percentage over baseline.
- ▶ The agency provides small entities with a compliance assistance telephone number.
 - ▶ The agency provides a compliance assistance website.
 - ▶ The agency makes a compliance assistance employee available to small entities.
 - ▶ The agency provides compliance assistance education.
5. The agency participates in RegFair hearings and meetings when issues related to its mission are presented in testimony.¹
- ▶ More than 90 percent of the time.
 - ▶ More than 80 percent of the time.
 - ▶ More than 70 percent of the time.
 - ▶ More than 60 percent of the time.

The following rating criterion will be added in FY 2003:

¹If no issues related to the agency's mission are presented during the fiscal year, this criterion will be rated as not applicable.

6. The agency provides written and verbal notice to small entities when each citation or notice of regulatory violation is issued. The agency provides written notification of SBREFA rights to small business concerns.
 - ▶ The agency informs small business concerns about their right to comment on the enforcement/compliance process to the National Ombudsman's office.
 - ▶ The agency verbally informs small entities of their right to comment on the enforcement/compliance process to the National Ombudsman's office.
 - ▶ The agency provides in writing the National Ombudsman's Internet address, www.sba.gov/ombudsman, to small entities.

Rating the Agencies

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

ment compliance assistance is also an important objective and therefore an evaluative criterion. Table 1 shows an evaluation and rating of agency responsiveness to the FY 2002 rating criteria.

An important component of ONO's approach is to work directly with the leadership of Federal agencies to catalyze change and raise awareness of small business concerns throughout an organization. Federal agency leadership needs to understand and appreciate the importance of regulatory enforcement fairness and communicate it down the line to bureaus, sub-agencies, and their employees. An effective example of the top-down approach at work in FY 2002 was the leadership of the U.S. Department of Agriculture (USDA) in reversing an important decision regulating the Food Stamp Program for a Seattle-area small business (see sidebar).

USDA'S FOOD AND NUTRITION SERVICE REVERSES DECISION, GIVES RELIEF TO SOMALI GROCERS

On April 3, 2002, at a RegFair hearing in Seattle, Washington, several people testified about the USDA's Food and Nutrition Service (FNS) disqualifying three Seattle-area Somali grocers from participating in the Food Stamp Program because of alleged fraud. These grocers testified that FNS did not fully consider all the guidelines or the economic repercussions of its decision on the grocers and their clientele. FNS alleged that the storeowners were exchanging food stamps for cash, thereby disqualifying the grocers from selling products to customers paying with food stamps. It was estimated that 80 percent of Seattle's Somali population shopped at the three stores, and that almost 90 percent used food stamps. After meeting with National Ombudsman Michael Barrera, who requested additional review, USDA and FNS leadership reversed their decision and allowed the grocers to accept food stamps. Taking into account the importance of the stores to the mostly Muslim customer base and this customer base to the small business owners' survival, USDA's review and subsequent reversal of this decision demonstrates a fair and enlightened approach to Federal regulatory enforcement.

TABLE 1
RATING OF AGENCIES ACCORDING TO FY 2002 CRITERIA

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

n/a = not applicable; nr = not rated

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

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

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

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

Examining Federal Agency Response

ONO rated the performance of more than 30 Federal regulatory agencies and their divisions in resolving complaints about excessive enforcement of Federal regulations and helping ensure fair application of Federal enforcement and compliance actions so as not to overburden small business owners. ONO's evaluation

of Federal agency response is thus really more an evaluation of the quality of the relationship between Federal agencies and small business—and the rating somewhat like a “customer satisfaction” rating for the different agencies.

RESPONSIVE FOOD AND DRUG ADMINISTRATION APPLAUDED

“When we started Oregon Chai, I relied heavily on the support and advice of several public agencies, including the Food and Drug Administration. The contact person there was extremely helpful and supplied me with information and answered my many questions. I was always surprised that when I called him, he would return my calls very quickly. He would also fax or send me information right away. I was very impressed with his assistance and thankful for his help. Without such support, I'm not sure if Oregon Chai would have been so successful.”

Source: Tedde McMillen, co-founder, Oregon Chai, Inc., written testimony, Portland RegFair Roundtable, April 4, 2002

In FY 2002, ONO drew on agencies' experience and expertise and with them tried to devise the best approach to channeling and resolving issues and problems. Practicing what it preaches about flexibility, ONO has chosen to work individually with agencies, the Ombudsman having held personal meetings with a host of high-level agency officials in FY 2002 to enlist Federal executive leadership in addressing small business comments. The relationship between Federal agencies and small businesses is improving, though some RegFair Board members believe that enforcement continues to be directed toward the “easy marks” that small businesses often are. Still, in FY 2002, agencies were credited with responding more quickly and comprehensively to the comments and inquiries of small business people than in years past (see sidebar for example). This impact will grow as more and more agencies begin to adopt a more small-business-friendly approach, not only in Washington, D.C., but also in the field, recognizing ONO as a bona fide participant in the small business regulatory enforcement arena.

The goal of SBREFA is not to obstruct or thwart Federal enforcement regulations, but rather to balance the process so that both business and public interest (health, safety, and the environment) benefit. In FY 2002, ONO and Federal agencies

worked together to transform the interaction to a less adversarial, more cooperative one between Federal Government agencies and small business. For example, the Department of Commerce's National Institute of Standards and Technology has allowed businesses to adopt voluntary standards that achieve their regulatory purpose without undue burden. The Department of Housing and Urban Development, FTC, the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and others are leveraging outreach efforts to educate small business on their rights

Small business is the place where a lot of our new innovation and technology comes from. So we can't afford to *not* let small businesses be as successful as possible. But we can't do it alone. We have to do it in partnership—and we're really looking forward to the partnership we have with you.

► SBA ADMINISTRATOR HECTOR BARRETO,
*at an Interagency Meeting on
Regulatory Enforcement Fairness*

to regulatory fairness. The Department of Labor (DOL) and the U.S. Customs Service are granting regulatory and monetary exemptions when small businesses are unfairly affected by their regulations. Said one RegFair Board member at the FY 2002 annual meeting: “We must let small businesses know that we—SBA, ONO, RegFair Boards, small business, and Federal agencies—are a team working to improve the regulatory enforcement process for small business.”

Timeliness of Response

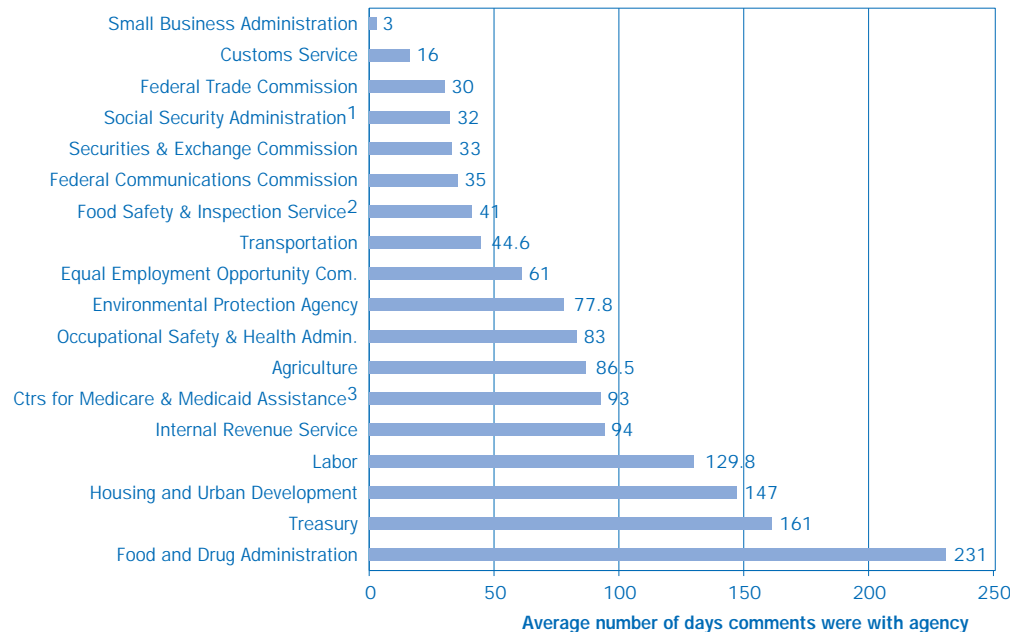
Timeliness of response is a key evaluative factor. One of ONO’s goals is to improve Federal agency response time when a small business files a comment or raises a concern regarding a compliance violation. Sometimes all small businesses want is an answer. ONO believes Federal agencies should respond within 30 days from the time they receive a comment and the substantiating documentation from a small business. Generally, a response should take no more than 60 days. In FY 2002, response times varied widely (see figure 1), which presents the average number of days that agencies took to address comments. Still, more than 40 percent of comments received responses within 60 days.

Our small businesses, all they really want is an answer. While they prefer a “yes” and don’t like to hear “no,” they cannot stand the constant “I’ll get back to you’s.” Many times while they’re waiting for an answer, they are tying up capital, tying up licensing, and tying up some of their staff. Let’s at least give them an answer.

► NATIONAL OMBUDSMAN MICHAEL BARRERA,
*at an Interagency Meeting on
Regulatory Enforcement Fairness*

FIGURE 1

AVERAGE RESPONSE TIME OF FEDERAL AGENCIES TO COMMENTS RECEIVED (DAYS)



¹ONO received one comment involving the Social Security Administration, regarding a small business that had mistakenly cashed a supplemental security income check. While the administration is not traditionally a small business regulatory agency, it nevertheless promptly and clearly responded to ONO’s inquiry.

²Part of the Department of Agriculture.

³Part of the Department of Health and Human Services.

Quality of Response

ONO recognizes the need for government to work creatively through collaboration to produce a more small-business–friendly environment, and solicits the input and advice of Federal agencies for ways to improve responses to small business concerns. ONO recommends that agencies establish flexible policies allowing small businesses to make a good faith effort to comply with rules and regulations, including reducing and, in some cases, waiving civil penalties for a small business violation of a statutory or regulatory requirement. Under SBREFA §223, agencies are expected to have a policy or program to provide for the reduction and, under appropriate circumstances, waiver of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, agencies may consider ability to pay in determining penalty assessments on small entities.

LABOR REVERSES DECISION ON COMPLEX EXEMPTION ISSUE

When Libertyville Brewing Company, otherwise known as Mickey Finns Brewery, received a visit from an Investigator from the Department of Labor's Wage and Hour Division, it was told that the brewer and assistant brewer were not exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act. The inspector informed the company that it was in violation of the U.S. Labor Wage Laws and that he would put that opinion in the company's file. However, based on a comment filed with ONO and additional information obtained, DOL decided that an "administrative employee exemption could be applicable to the brewers under the circumstances in this case." Upon ONO's request, DOL reconsidered the inspector's initial conclusions. However, this was after the brewpub's owner spent several months contesting the alleged violation and \$7,000 in legal fees, an outlay of time and money he could ill afford. The owner contacted ONO, which he discovered through his congressman. The matter then took less than a month to resolve.

Also needed is a more helpful attitude among some inspectors who, as one RegFair Board member put it, tend to "come to find something wrong" as opposed to verify continued compliance. Another RegFair Board member called for an approach by agencies that seeks to determine the spirit of the regulation and how best to help the small business comply without causing it harm financially or operationally. By promoting a more customer-service–oriented environment as required by the President's Management Agenda, ONO encouraged agencies to resist a "one-size-fits-all" approach with small businesses and exercise flexibility with rules and regulations because of the unequal effect they may have (see sidebar).

Agency Non-Retaliation Policies

Non-retaliation policies are also important to small businesses and to ONO. For non-retaliation policies to be effective, ONO recommends that guidance come from the top down, with written policies put in place that carry strong penalties for engaging in retaliatory behavior against a small business. Some agencies are drafting new policies; others, whose non-retaliation policies are already on the books, are being urged to reinforce them to their employees through internal bulletins, e-mail, and even pay statements.

Fear of retaliation is one of the biggest concerns expressed by small businesses, and ONO believes adoption of non-retaliation policies should be a priority with Federal agencies. The U.S. Customs Service provides a good example in this regard. Customs places clear consequences on field agents who engage in retaliatory acts against small businesses expressing concerns about unfair enforcement actions.

Other agencies are stepping up efforts to enact or reinforce their non-retaliation policies, which are designed to prevent repetitive audits or investigations, punitive fines or penalties, threats, retaliations, or other unfair enforcement actions. Non-retaliation measures adopted by Federal regulatory agencies are generally aimed at fostering a more cordial, professional relationship with small business establishments. For example, in FY 2002, the Consumer Product Safety Commission (CPSC) issued a written non-retaliation policy that went to all field operations and compliance staff stating that “staff must make every effort to continue to avoid even the *appearance* of unfairness or retaliatory action” and are “required to immediately report any allegation” to CPSC’s Executive Director and Ombudsman; field staff have reporting authority only. Other specific examples include:

- ▶ FDA has a written non-retaliation policy that reflects zero tolerance for retaliation. The notice reminds each inspected firm that it has a “right to disagree with any FDA decision, action, or operation without fear of retaliation.”
- ▶ The Federal Trade Commission has a formal non-retaliation policy statement with respect to small businesses that comment on agency compliance and enforcement activities. According to the agency, the statement served to remind staff of “their unfailing duty to properly treat subjects of compliance and enforcement activities.” The policy further directs staff to furnish small businesses with written notice of their right to comment to the National Ombudsman without fear of reprisal. FTC has a longstanding written policy prohibiting individual staff members from taking enforcement action against any business, as only the commission has this authority.
- ▶ The Federal Communications Commission (FCC) put out an FCC news release stating that a small entity requesting the Ombudsman’s assistance on a matter would not be subject to retaliation in response. The news release has reached approximately 3,000 small businesses, entrepreneurs, and other interested entities. It is also regularly available at ONO hearings and other events.
- ▶ As stated previously, Customs has a written non-retaliation policy that imposes punitive measures for violations by personnel. Customs’ employees also received an information notice and videotape on SBREFA, which stated in part that “It is the responsibility of the agency to ensure that small businesses are provided a non-retaliatory environment in which to exercise their right to comment on [regulatory enforcement] actions.”

- ▶ The Equal Employment Opportunity Commission (EEOC) posted its written non-retaliation policy on the small business page of its website and also developed a letter to accompany every charge filed against a small business. The letter advises small businesses of the availability of small business liaisons and assures them that any inquiry or request for assistance will not adversely affect the investigation of the charge filed.
- ▶ SBA's non-retaliation policy was adopted in March 2003.
- ▶ The Commodity Futures Trading Commission is also implementing a new written notice for its policy adopted in 2002.
- ▶ Programs in the Department of the Interior's Minerals Management Service (MMS) have incorporated non-retaliation policies and consequences for violating them into agency guidebooks and handbooks used by enforcement inspectors.

Agency Regulatory Enforcement Compliance Assistance

In rating Federal agencies, ONO also looks at what types of regulatory enforcement compliance options are made available to small businesses and whether agencies have complied with SBREFA requirements to provide compliance assistance education for small businesses. Compliance assistance should enlarge understanding and not be a mechanical exercise to fulfill a requirement—with no understanding achieved. Fair enforcement also needs to extend to the state level when Federal agencies delegate enforcement responsibilities to states. States

should adopt small business policies to waive or reduce penalties under appropriate circumstances. Some agencies have already established successful compliance assistance programs. The IRS, the Securities Exchange Commission, and Customs issue private letter rulings that apply laws to a particular set of facts. OSHA offers free consultation services to small employers; these are available to businesses prior to any enforcement action. ONO encourages more of these efforts, particularly those using less formal ways to provide small entities with compliance guidance.

When agencies give small businesses the chance to participate in compliance assistance programs, they can save them money, improve their environmental performance, and increase their competitiveness. But most importantly, they help small businesses avoid potentially costly regulatory citations and adjudications. Comments from small businesses and the RegFair Board strongly supported the need for more technical assistance pro-

Federal agencies must use targeted outreach to *inform* small businesses about available compliance assistance. Merely having assistance available and relying on small businesses to go to the *Federal Register* to find it falls short of the letter and spirit of true compliance assistance. It also reflects a lack of understanding of small businesses and fails to recognize the constraints on them. Federal agencies and agency personnel need to keep in mind that, in many instances, small businesses “don’t know what they don’t know” when it comes to Federal regulations. It is not uncommon for a small business that can’t afford to employ a staff of lawyers or accountants to be responsible for complying with several sets of regulations from multiple agencies. This further highlights the importance of Federal agency outreach to small businesses.

grams, and more Federal agencies are responding to this need (see sidebar).

In FY 2002, several agencies provided business education and compliance assistance by various means, including brochures, fact sheets, compliance guides, CD-ROMs, seminars, workshops, speeches, letters, e-mail, and telephone calls. Many offered extensive information on agency websites for small businesses seeking to comply with Federal regulations. FTC, EEOC, USDA agencies, FCC, DOL, and the Department of the Interior publish compliance assistance information on their websites and provide links to relevant websites. Specific examples of helpful measures being taken by agencies to provide compliance assistance to small businesses follow:

- ▶ The Department of Veterans Affairs (DVA) Office of Small and Disadvantaged Business Utilization posts on its website relevant regulatory notices and enforcement policy statements and abstracts from the *Federal Register*. DVA also notifies its contracting offices of RegFair meetings in their areas and requests them to attend to gain insight into the problems encountered by small businesses.
- ▶ The FCC Office of Communications Business Opportunities—the agency’s point of contact for small business concerns—sent out a mailing in August 2002 that included the Ombudsman pamphlet “How the National Ombudsman Can Help Your Small Business.”
- ▶ EEOC provides no-cost outreach and education programs and for-fee training and technical assistance. In FY 2002, EEOC increased the number of outreach, education, and technical assistance activities targeted to the small business community by 59 percent, conducting a total of 438 events reaching 16,775 small business representatives and their employees.
- ▶ FDA’s regional small business representatives provide, on request, compliance assistance or an appropriate referral.
- ▶ The Pesticide Records Branch, part of USDA’s Agricultural Marketing Service, provides multicultural educational information using brochures in three languages, videotapes in two languages, refrigerator magnets in two languages, peel-and-stick labels, and wallet-sized data cards.

EEOC’S DIRECT CONTACT PROGRAM REACHES OUT TO SMALL BUSINESSES

Recognizing that a substantial percentage of businesses in its jurisdiction have fewer than 100 employees, the EEOC St. Louis District Office initiated a Small Business Direct Contact Program to provide on-site compliance assistance to small businesses. The office began the program to enhance contact with small business owners and managers, whom EEOC staff personally visited. The office regularly conducts community forums throughout Missouri and Kansas to provide information and compliance assistance to small businesses.

Help those people who need your help. Don’t let them have to go out and spend great sums of money when a simple dialogue and discussion across the conference table or over a cup of coffee could have resolved the problem.

▶ FORMER CONGRESSMAN FELIX J. GRUCCI, JR. (R-NY),
*at an Interagency Meeting on
Regulatory Enforcement Fairness*

- ▶ USDA's Food and Nutrition Service provides one-on-one compliance assistance, education, and training to all retailers that apply to participate in the Food Stamp Program. Any participating retail food store can phone local field offices to receive compliance assistance. A Food Stamp Program website is also available to participating retail food stores; it details what can and cannot be purchased with food stamp benefits.
- ▶ DOL provides a link on its Web homepage to compliance assistance tools and resources developed to help prevent violations of employment laws, particularly among small and new businesses. These include additional links to:
 - *E-law Advisors*: Web-based, interactive systems provide easy-to-understand, tailored information about a number of Federal employment laws and safety and health standards in a question-and-answer format.
 - *National Call Center*: This toll-free, universal access point provides callers with general information and promptly relays detailed inquiries to the proper DOL office.
 - *Small Business Compliance Assistance Information Inventory*: Users can browse this list of compliance assistance documents, publications, and printed information published by the various DOL agencies by agency or topic, or search by term, agency, and/or title.
 - *Employment Law Guide*: The guide provides hands-on information for businesses in general industry to develop wage, benefit, safety and health, and nondiscrimination policies.
 - *Rulemakings*: This links to information about plans for DOL rulemakings under way.
- ▶ For its National Marine Fisheries Service, the National Oceanic and Atmospheric Administration (NOAA) often prepares "plain English" summaries of new regulations and distributes them by fax to the regulated communities and the press. For complex regulations, a FAQ (frequently asked questions) sheet is sometimes prepared and published in fishery trade journals. Additionally, NOAA's Community Oriented Policing and Problem Solving Program provides compliance guidance on various regulatory issues affecting small entities. The program includes town hall meetings throughout the year to hear regulated industries' concerns and answer questions regarding regulatory requirements.
- ▶ Compliance assistance specifically designed for small businesses by DOL's Wage and Hour Division steadily increased during FY 2002, from 59 workshops in the first half to 200 in the second.

Small businesses are facing significant economic and regulatory burdens. Agencies need to provide compliance assistance before penalizing businesses.

▶ REGFAIR BOARD MEMBER

- ▶ The Mine Safety and Health Administration held more than 100 HazCom compliance assistance meetings throughout the country in 2002 to help small mine operators comply with new regulations.
- ▶ An OSHA area office in Colorado developed a compliance assistance CD-ROM with modules for general industry, construction, doctor/dentist offices, etc. Each module is a series of steps and questions to help employers comply with OSHA standards pertaining to their businesses.
- ▶ The Fish and Wildlife Service of the Department of the Interior redesigned and reorganized its law enforcement program's Web homepage in FY 2002 to make it easier for small businesses to find relevant compliance information. The agency also keeps small businesses up to date on regulatory requirements by issuing public bulletins via the Internet.

Hearings and Roundtables Enhanced

In an effort to facilitate on-site resolution of issues at RegFair hearings, ONO began working closely in FY 2002 with SBA field offices to determine the issues to be presented by small businesses and communicate them to the affected Federal agencies in advance of scheduled hearings and roundtables. With advance notice, agencies were able to send the most appropriate representative to respond to particular concerns. Additionally, the advance notice prevented agencies from feeling ambushed at these hearings and fostered a collaborative effort between the small businesses and Federal agencies. This approach worked well in FY 2002, and ONO plans to do even more advanced planning and notification to ensure continued good attendance at its hearings and roundtables.

SBA has also taken the lead on a new website, www.businesslaw.gov, which further informs the public on a variety of small-business–related issues, including regulatory compliance. The website is designed to help small businesses reduce the burden of complying with laws and regulations by providing searchable information, interactive “business wizards,” and answers to frequently asked questions for every stage of the regulatory cycle.

Increasingly, Federal regulatory agencies view ONO's RegFair hearings and roundtables as a means not only to hear small business concerns but to establish a relationship for further communication. For instance, the IRS said that attending the hearings gives it an opportunity to market and promote its taxpayer education and communication products and services and inform small businesses of their rights to fair enforcement treatment. Customs sends its managers to hearings as a learning tool about SBREFA and as an opportunity to establish regional points of contact with trade associations.

In FY 2002, more than 34 agencies attended ONO RegFair meetings around the country (see table 2 for breakdown).

Informing Small Business of the Right to Comment

One of ONO's challenges is that many small business concerns do not know that they have an opportunity to file a comment with ONO. ONO plans to rate agencies in FY 2003 on the extent to which they inform small businesses of their right to file comments. ONO also recommends that agencies include information about ONO in correspondence to small businesses. Federal agencies are increasingly aware that they must be accountable for their enforcement actions and increasingly appreciate the importance of small businesses having information up front on how to comply with laws and regulations. As of this writing, the following agencies are regularly integrating information about regulatory enforcement fairness as part of their interactions with small businesses.

- ▶ *Department of Labor.* DOL provides a compliance assistance link off its home page that describes SBREFA and apprises small businesses of their right to comment on enforcement actions to the SBA Ombudsman or to any DOL agency, listing numbers for the agency's Office of Small Programs and for local DOL regional offices. DOL's Wage and Hour Division, in its *Handy Reference Guide to the Fair Standards Act*, informs small entities of their right to comment and how to contact the Ombudsman. This publication is made widely available to employers.
- ▶ *Food and Drug Administration.* The notice given at the start of an inspection tells the small business about the role of the National Ombudsman and about its SBREFA right to comment on an enforcement action. It also describes the resources available to resolve disputes and complaints and provides ONO contact information.
- ▶ *Equal Employment Opportunity Commission.* Every charge EEOC files against a small business is accompanied by a letter advising it of small business liaisons who can answer questions about laws, mediation, and the charge process. The letters also invite visits to the EEOC website where small businesses can find out more about EEO laws and the EEOC charge process.
- ▶ *Agricultural Marketing Service.* This USDA agency advises companies of their right to present counter viewpoints in writing or in person before criminal prosecution or civil penalties are proposed.
- ▶ *Food and Nutrition Service.* This USDA agency includes an assessment of the applicability of and compliance with SBREFA standards as part of every rulemaking it proposes.
- ▶ *Department of Veterans Affairs.* DVA covers SBREFA as a topic in the small business program classes it presents to contracting employees.
- ▶ *National Oceanic and Atmospheric Administration.* NOAA effectively uses internal offices that work with small businesses to inform them of their rights to fair enforcement. NOAA posted information regarding the availability and

function of the National Ombudsman and RegFair Boards on its website and in its national headquarters and regional offices.

- ▶ *Internal Revenue Service.* When the IRS sends notices to small businesses, it also sends along a copy of its Publication 1, a section of which states: "Small Business Ombudsman: If you are a small business entity, you can participate in the regulatory process and comment on enforcement actions of the IRS by calling 1-888-REG-FAIR."
- ▶ *Minerals Management Service.* The Department of the Interior's MMS includes information about the role and function of the Ombudsman and RegFair Boards in the preambles to all its regulations, civil penalty letters, and Incident of Noncompliance forms used by offshore inspectors. MMS also provides a toll-free comment number and specifies its non-retaliation policy.

Additional Special Initiatives and Best Practices of Federal Regulatory Agencies

As ONO's visibility grows, so will agency initiatives designed to improve fair enforcement for the "little guy." By engaging Federal agencies in fully considering the impact and implications of regulatory enforcement actions, ONO can help foster an overall environment of success for small businesses in this country. The following agency initiatives illustrate various ways Federal agencies are addressing their SBREFA responsibilities and how they are changing their approaches to working with small businesses. These initiatives represent some of the positive changes occurring in the Federal regulatory environment.

Dealing with the SBA's Office of the National Ombudsman was a wonderful experience. Having my concern addressed and followed through on really proves that the system does work. There is a voice out there for the little guy.

▶ ROBERT HERB, PRESIDENT, TERMINAL SHIPPING COMPANY

- ▶ To reduce the resource burden associated with premium audits for small businesses, the Pension Benefit Guaranty Corporation (PBGC) initiated a pilot audit program that dispenses with a complicated reconciliation worksheet in favor of a more flexible approach to derive the needed information. PBGC has also structured its regulatory program to give small businesses the chance to come into compliance without being penalized. It recognizes the special needs and problems of small businesses through several means: exempting them from certain requirements, assessing penalties in proportion to plan size and sponsor, holding small businesses to an adjusted standard in determining reasonable cause to waive a penalty, using alternative dispute resolution and settlement to ease the burdens on small business, and providing extensive information to and maintaining an ongoing dialogue with the small business community about PBGC's regulations and policies.

- ▶ PBGC's Customer Service Center and RegFair representative continuously receive and react to small business feedback. Regular focus groups help the agency determine how it can better serve its small business customers, whose ideas often lead directly to changes in how PBGC does business. PBGC's dynamic customer service policy known as "One Call Does It All" pledges to small business customers that if they call PBGC, they will find out what can be done immediately, what will take longer, when it will be done, and who will handle the request. Messages are returned within 1 workday and letters acknowledged within 1 week of receipt.
- ▶ EEOC has several important initiatives to assist small businesses. Its small business liaisons work in field offices to explain the agency's charge process and enforcement scheme to small businesses. Typically, the employer is offered an opportunity to mediate the charge rather than go through an investigation. When they do investigate, staff are careful to focus the investigation so it does not unduly burden the employer. EEOC also offers many low- and no-cost outreach and education events, reaching thousands of small business representatives, owners, and employers every year.
- ▶ The policy of USDA's Grain Inspection, Packers and Stockyards Administration is to respond within 7 days to comments received over its toll-free hotline available to those wishing to report possible violations. Most informal comments—those received verbally or through e-mail—are responded to within 24 hours; in some cases, the initial response gives an estimate for a more complete response to follow.
- ▶ USDA's Food Safety and Inspection Service designated a Hazard Analysis and Critical Control Point Compliance Assistance Officer as part of its meat inspection education program, and has begun to assign Consumer Safety Officers in each of its field operations districts. One of their duties is serving as the agency's field-level contact on SBREFA matters.
- ▶ OSHA is creating an Office of Small Business Assistance as part of a reorganization that expands efforts to help employers comply with OSHA regulations. This is the first time OSHA will have a separate organization and single point of contact for small businesses. The office will develop nonregulatory approaches to workplace issues, provide information on reducing workplace injuries and illnesses, and solicit comments from small businesses on how the agency should address their concerns.
- ▶ The Treasury Department will enact new rules to allow service-oriented businesses with less than \$10 million in gross receipts to use cash accounting rather than accrual accounting. This change will significantly reduce the paperwork burden for hundreds of thousands of small businesses and allow them to immediately deduct the cost of supplies and to defer paying taxes until income is actually received. Treasury is also finalizing proposed rules on

capitalization of intangible assets, which have caused much uncertainty and wasted time among small businesses. As a result, small businesses can focus their resources on their customers—and not on the IRS. Finally, President Bush has instructed the Treasury Department to conduct a study on more ways to simplify taxes for small businesses.

- ▶ EPA sponsored partnerships with industry, including small businesses and other groups, to launch 10 sector-specific Compliance Assistance Centers, which address real-world issues and include telephone assistance, fax-back systems, and e-mail discussion groups. In FY 2002, EPA began developing three new centers specifically to address issues related to auto salvage yards, the construction sector, and hazardous waste import on the U.S.-Mexico border.
- ▶ The Department of Commerce has effectively used internal offices to work with small businesses and inform them of the right to regulatory enforcement fairness. Both NOAA and the Bureau of Industry and Security have conducted vigorous outreach efforts aimed at educating small businesses about available services and programs, and both have made SBREFA and information about ONO an integral part of an employee's training. Additionally, NOAA has a Fix-It Notice program whereby dozens of minor first-time technical violations receive a "fix-it notice" instead of a penalty. The notice allows the violator a specified time frame in which to correct the violation. Currently, more than 140 violations are included in the program. NOAA also issues written warnings rather than penalties for many minor violations.
- ▶ The IRS created Small Business Forums in 2002 in conjunction with the National Federation of Independent Businesses (NFIB), the Small Business Legislative Council, and the U.S. Chamber of Commerce. This collaboration provided an open forum for small business taxpayers to discuss IRS issues with agency representatives by means of their memberships in professional, trade, service, small business, and financial organizations.
- ▶ Continuing efforts to make compliance more comprehensible and efficient, the Consumer Product Safety Commission has recently developed brief guides for its 25 most compliance-intensive regulations to help businesses quickly and easily understand what to do. CPSC does not enact its enforcement authority unless a business is reported for violations.
- ▶ To better inform the public about the availability of existing loan programs and to assist small businesses with specific concerns, including regulatory compliance, SBA has developed a new website designed to help small businesses reduce the burden of complying with laws and regulations. The website, www.businesslaw.gov, helps entrepreneurs identify and solve questions at every stage of the regulatory cycle through searchable information related to frequently asked questions and through interactive digital guides called

“business wizards.” The site is also helpful to business managers, counselors, teachers, and legal professionals as an educational guide.

- ▶ The FTC website provides a wealth of compliance advice, including up-to-date advisory opinions by staff on issues that may affect small businesses. The website also includes business guidance pages organized by subject area to allow easy access to all of the most relevant guidance, opinions, agency discussions, rules, and laws on particular subjects, along with an expanding library of materials geared to small businesses.
- ▶ DOL is creating a new, permanent senior position—Director of Compliance Assistance—to ensure that all DOL agencies do everything they can to help employers comply with their regulations. DOL also has a new toll-free information line to provide clear answers to questions about laws dealing with pay and leave, workplace safety, health and position benefits, and veterans’ re-employment rights.
- ▶ The Mine Safety and Health Administration has established a new Small Mine Office to address the specialized needs of the nearly 6,500 small mines around the country.



What They Said: Comments Filed by Small Business

Comments received in testimony at RegFair hearings, through interactions with RegFair Board members, and through other avenues reveal several recurring concerns, themes, and perceptions of small businesses. This section explores these common themes, which include confusion about regulations, fear of the government, lack of agency personnel training, agency disregard for the economic consequences of their actions on small businesses, and rules that are changed “in the middle of the game.” Improved regulatory enforcement fairness reflects the results of cooperative efforts between both sides as they participate as partners in enforcement activity discussions.

Common Small Business Concerns

At the annual meeting of the RegFair Board held September 4–6, 2002, Board members expressed their desire to present a united front as far as commitment to the program and show agency representatives that they are serious about regulatory enforcement fairness. They consider it one of the most important things they can do for our country. To surface the issues and facilitate their resolution, members identified what they saw as the top regulatory enforcement concerns or problems facing small businesses today; these include:

- ▶ Burdensome and overly complex IRS/tax and paperwork issues.
- ▶ Compliance requests, regulations, and notices that do not apply to the firm’s core business.
- ▶ Expected compliance with numerous and often conflicting regulations and reporting requirements.

Our company has always conscientiously paid our tax liabilities on time, whether monthly or weekly, and it was quite unfair that we should have been penalized for inadvertent 941 deposit violations. The penalty was not only in the dollar amounts, but in the many wasted hours and undue anxiety this problem has caused. The Office of the National Ombudsman is certainly a necessary liaison, and we are extremely grateful for the assistance they give in support of small businesses like ours.

▶ *BRENDA STUMP, SECRETARY-TREASURER,
SUBURBAN WATER TESTING LABS, INC.,
in written testimony to RegFair hearing*

- ▶ Meaningless and superfluous regulation.
- ▶ Lack of knowledge about requirements and lack of uniform enforcement within agencies.
- ▶ Lack of small business knowledge of recourse for obtaining regulatory enforcement fairness.
- ▶ Lack of widespread agency understanding of the problems faced by startup and new businesses.
- ▶ Unfair penalties relative to size and scope of infraction.
- ▶ Unavailability of SBREFA protection when Federal agencies delegate their enforcement authority to the states.
- ▶ Unhelpful field personnel.

SUPERFLUOUS TRAINING REQUIREMENTS IRK SMALL BUSINESSMAN

When Neil Hise of Cemco, Inc., a manufacturer of rock crushers, enters mines, he has to be certified by the Mine Safety and Health Administration. "Up until 2001, it wasn't a big deal. You'd go to the office and they'd give you some basic training: 'Stay away from the big trucks, they'll squash you,'" he says. But this year, it all changed. "Now anybody entering a mine must have completed a 24-hour training course administered by the Mine Safety and Health Administration. I have to be trained in CPR, mining, and all, just to be a salesman," he complains. "Where did the common sense go?"

Source: Dan Mayfield, "Feds to Hear Business Complaints about Rules," Albuquerque Tribune, February 11, 2002

- ▶ Inconsistent enforcement of regulations.
- ▶ Fear of retaliation.

Examples of specific issues that small businesses raised this past year include difficulties in complying with EPA storm water regulations and those governing removal of hazardous waste, Medicare/Medicaid paperwork burdens for small home health care providers, negative economic impacts of Federal land use decisions, and recurring computer-generated letters and notices (see sidebar for a superfluous requirements example).

A Paper Jungle

ONO wants to help those small businesses that feel overwhelmed by complex and burdensome regulations which hinder their success and make them feel helpless. Many small businesses feel that keeping up with the flow of regulation is too daunting a task. Others are not even aware of the laws on the books that govern their businesses—some of which could dramatically alter the way they conduct business.

There are more words in the *Federal Register* describing OSHA regulations than there are words in the Bible. They're a lot less inspiring to read...and a lot harder to understand! This is not fair.

▶ SECRETARY OF LABOR ELAINE CHAO,
to NFIB National Small Business Summit

As part of its efforts to mitigate the strain of its paperwork requirements on small businesses, the IRS established the Office of Burden Reductions in January 2002. The purpose of this office is to inform and educate customers about their tax responsibilities, simplify forms

and publications, streamline internal processes, and promote less burdensome regulations.

The Fear Factor

Fear of regulation and retaliation is common among small businesses faced with an inspection, audit, or other actions by Federal agency enforcement officials. Small businesses can experience general anxiety that something is inherently wrong, something that they did not know or realize but will cost them significant fines or legal fees before it is all over. Although the situation is improving, fear of retaliation is another recurring theme among small businesses, many of which say they are afraid to comment or complain about a particular agency's or agent's enforcement activity. Businesses fear that if they complain, the agency, agent, and possibly other Federal agencies will retaliate against them for their complaints. ONO recommends that more agencies institute non-retaliation policies that ensure that agents do not continually return to the same business for the purpose of harassment. Moreover, as with other compliance assistance, both agency personnel and small businesses need to be made aware of these policies.

Enforcement issues have a confrontational aspect to them that we business folks fear and often do not know how to handle. Once the enforcement procedure starts, we see it as fighting a pit bulldog that seldom lets go until it has beaten its victim. We feel powerless and abused.

► SMALL BUSINESS OWNER AND REGFAIR MEMBER



Pursuing Change in the Small Business Regulatory Culture: The 2002 RegFair Board

In FY 2002, ONO traveled around the country hosting hearings and roundtables to hear first-hand from small businesses about their experiences with enforcement of Federal regulations as required by Congress. Regulatory hearings stayed focused on enforcement issues in order to produce positive changes in the small business regulatory enforcement environment and the lives of small business owners. ONO is using creative strategies to increase its outreach, target situations before compliance activity is necessary, and encourage communication between small businesses and Federal agencies.

Approach: Citizen-Centered, Market-Based, Results-Oriented

Regional RegFair Boards: The Voice of Small Business

Fifty volunteer RegFair Board members around the country (5 people on 10 boards) serve as an ear for the National Ombudsman and a voice for small businesses in their regions and communities. Viewed as the grassroots link to small businesses, RegFair Board members establish a bond with small business people and a level of mutual trust because they are themselves small business owners, operators, or officers. The Board members report to the National Ombudsman on matters regarding “substantiated instances of excessive enforcement actions” by agencies against small business concerns. They also recommend regulatory enforcement improvements to the SBA Administrator and the affected agencies, provide input for this annual report to Congress and the Administration, and participate in regulatory enforcement hearings and roundtables.

As Board members in each region, we have a vital role to play serving as the “eyes and ears” for small businesses affected by unfair regulatory enforcement actions. While we may not be able to stop the actions, we can certainly report them to Congress—as we are charged to do.

► MARY THOMAN, REGFAIR BOARD MEMBER

Making use of this valuable team of volunteers, ONO has enrolled members with renewed commitment to the regulatory fairness process. They are helping raise awareness for regulatory enforcement fairness and ONO in the business community and among congressional representatives. Board members received training that clearly communicated expectations and empowered them to fulfill the mission for FY 2003. They also received media “toolkits” for marketing the program in the

field with SBA District Offices, trade associations, and other small business advocates, enabling them to be prepared and help ensure better attendance at scheduled hearings and roundtables. Board members frequently commented over the past year about the need for more awareness among small businesses regarding the regulations that affect them, and urged Federal agencies to adopt the principles of consumer education when dealing with small business regulations and enforcement.

At the annual RegFair Board Meeting held in September 2002 to advise the National Ombudsman of small business regulatory enforcement concerns and to hear about new outreach methods, members proactively brainstormed ways to improve their work with Federal agencies and small businesses alike. Comments received from RegFair Board members requested Federal agencies to be more understanding—or, as one member put it, to be “more of a teacher and guide instead of a policeman, judge, jury, and executioner.”

Hearings and Roundtables: Opening up the Discussion

Regulatory enforcement hearings and roundtables are important forums for giving a voice to small business. Hearings also fulfill the President’s mandate that government needs to be more customer-oriented. As such, ONO uses these forums to

bring government services to SBA’s customers—small businesses. By meeting face to face with people in different parts of the country, ONO is able to create a synergistic climate for problem resolution, bringing the sides together. Hearings allow regulatory agencies to convey some of the issues and challenges they also face, such as requirements imposed by statute and mandatory audits and inspections.

In FY 2002, ONO held 12 regional RegFair hearings and 10 roundtables across the country (see figure 2), exceed-

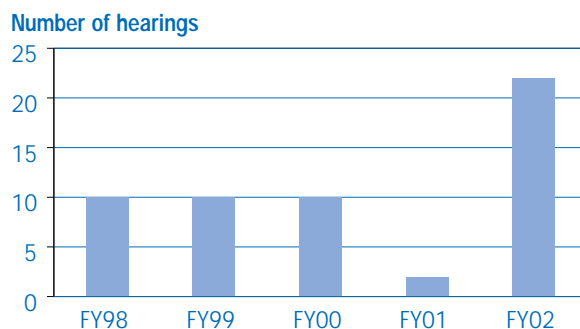
FIGURE 2
HEARINGS AND ROUNDTABLES HELD IN FY 2002



ing the legislative requirement of one hearing per Federal region and ONO’s goal of holding at least one hearing and one roundtable in each of the 10 SBA regions.

The 22 hearings and roundtables in FY 2002 represent a dramatic increase over the 2 hearings held in FY 2001 (see figure 3 for previous years). Attendance at the hearings and roundtables also increased dramatically from the previous year, drawing crowds as large as 88 in Albuquerque and 64 in Seattle. SBA and ONO increase attendance by encouraging trade association members and through SBA District Office efforts that attracted excellent news coverage for the hearings (see the appendix for sample media and marketing materials). Over 1,000 people, including small business owners, public officials, media representatives, and others attended,¹ and 124 people testified at ONO regulatory enforcement fairness hearings around the country during FY 2002.

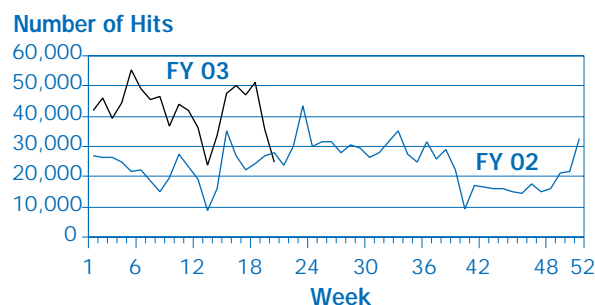
FIGURE 3
NUMBER OF HEARINGS BY FISCAL YEAR



On-Line Improvements: Making ONO Resources Even More Accessible

ONO continued in FY 2002 to make the comment process even more accessible to the small business owner, largely through improvements to its website, www.sba.gov/ombudsman. To help put businesses directly in touch with agencies, ONO has included links to approximately 40 Federal agencies, allowing users to easily phone, e-mail, or visit the websites of specific agencies. Figure 4 shows the number of “hits” ONO’s website received each week during FY 2002. With more than 1 million hits registered, preliminary FY 2003 tallies show a trend toward even greater usage.

FIGURE 4
ONO WEB HITS



In FY 2002, ONO created an on-line filing capability for comments, which led to a quicker turnaround for agency responses. ONO also established Web-based initiatives to make information more readily available and useful for agencies and small businesses. In fact, the ONO website is useful for much more than just conveying information—it is an interactive tool that provides a faster, more efficient way for ONO and its constituents to communicate and obtain the information they need (see sidebar on next page). Comments filed on-line receive an acknowledgment within 7 days, compared to 30 days using the traditional mail-in method. On-line real-time forums allow participants to learn about and anonymously weigh in on a variety of topics, including confidential comments, excessive Federal fines and penalties, retaliation by Federal agencies,

¹This number is based on an average of 50 attendees at meetings hosted by the National Ombudsman.

and success stories. Other interactive Web-based services offered by ONO include the following:

U.S. CUSTOMS RETURNS FINES TO SMALL SHIPPING COMPANY

The Terminal Shipping Company, a small business operating in Baltimore, was fined \$1,000 by Customs for failing to notify it in a timely manner of the presence of un-entered merchandise eligible for general order. The owner, Robert Herb, appealed the fine, which he paid, contending that small shipping agencies should not be responsible for following and tracking cargo after discharging from a vessel. After discovering ONO on the Web, he contacted it for assistance, receiving a reply within a day. Subsequently, he heard from the Director of U.S. Customs, informing him that the agency had reviewed the case and reconsidered its previous decision, saying, "This issue appears to be more a case of miscommunication between Customs and Terminal Shipping as opposed to noncompliance with the regulations." Herb then received a refund of the fine money and commented, "It was undoubtedly the most pleasant surprise of the year."

- ▶ A comment form questionnaire that allows users to determine whether their comments are within ONO's jurisdiction.
- ▶ An on-line event report that RegFair Board members can file with ONO to report on their outreach activities.
- ▶ A mailing list (E-blast) through which subscribers can receive updates, special notices, and other information on Federal regulatory enforcement fairness issues.
- ▶ A means to receive status reports on comments already filed with ONO.
- ▶ An on-line "press room" where users can register to receive e-mail notices

of Federal regulatory enforcement activities and actions taken by ONO or request an interview with the National Ombudsman.

- ▶ An on-line form with which users can request a regulatory enforcement fairness meeting in their hometown.

Proactive Outreach and Follow-up Efforts

In FY 2002, ONO advanced innovative efforts at the grassroots, small-business-friendly level, involving SBA field offices, volunteers, and Federal personnel in promoting the ONO mission and programs to small businesses, trade associations, and similar groups in their areas. ONO plans to capture and formalize compliance discussions and agreements between agencies and businesses as part of a needed effort to "standardize" successful compliance solutions that other small businesses have used to satisfy agency requirements. Technology improvements will continue to simplify information sharing among small businesses and allow them to comment more easily on Federal enforcement activities. Also, Federal agencies can take greater advantage of the Web as a practical vehicle for disseminating their compliance education information.

Grassroots Approach: Tapping the Trades

Trade associations are critical to increasing ONO's visibility nationwide among the small business community. In FY 2002, ONO reached out to the trades using

publications, hearings, roundtables, Emerging Markets sessions, and speaking forums to let them know that small businesses have somewhere to turn. ONO promotes better and more frequent communications with trade associations, chambers of commerce, and small governmental entities to increase its exposure and efficiency in soliciting comments from particular industries. In FY 2002, a total of 45 small business and professional organizations attended roundtables or hearings, representing a combined total of over 360,000 small businesses (see table 3).

ONO Outreach to Agencies: Bridging the Understanding Gap

ONO held two interagency meetings in FY 2002 with representation from more than 35 Federal agencies. This level of outreach enriches the stream of ideas flowing from small businesses to ONO, Congress, and Federal enforcement agencies. The first meeting, on October 4, 2001, introduced the newly appointed National Ombudsman to Federal agency representatives and allowed the Ombudsman to communicate the vision, goals, and challenges of regulatory enforcement fairness, as well as discuss the FY 2002 Annual Report to Congress. This meeting allowed Federal agencies to share their concerns and ideas with ONO about reciprocal roles and responsibilities in improving the regulatory fairness environment for small business. Both meetings engendered greater support for and awareness by Federal agencies of the plight of small businesses, and garnered an impressive showing of support by Federal committee chairs and ranking members of Congress. These productive meetings allowed Federal agency representatives to develop a better understanding of the need to train field agents and to review their current regulatory policies and methods of interacting with small business, particularly in the field. The meetings also helped clarify the intent of SBREFA.

AGENCIES IDENTIFY STRATEGIES TO HELP SMALL BUSINESSES

At the October 4, 2001, Interagency Meeting, several agencies identified actions they could take in the near future to provide immediate and direct help to small businesses. The following are illustrative examples:

- ▶ Have greater patience with our small business customers on regulatory issues.
- ▶ Ensure that agency investigations of businesses are focused and not burdensome.
- ▶ Review current and impending regulations to identify those that most negatively affect small businesses and work to revise or repeal legislation that mandated the regulation.
- ▶ Provide field contact points for rapid response to compliance and enforcement issues. Currently, FDA and the Department of Health and Human Services in New York are following this approach. Financial institutions, too, could communicate and work with small business borrowers to facilitate resolution of issues at the local level.
- ▶ “Fast track” the payment process for small businesses in contractual agreements. Expedite waiver requests that might assist small entities.
- ▶ Ensure that access is provided through responsive toll-free numbers.
- ▶ Participate in town hall meetings to educate small businesses on services provided by OSHA. Many small employers do not know about services they can receive for free to help them provide a safe place of employment.

TABLE 3
SMALL BUSINESS ASSOCIATIONS CONTACTED IN FY 2002

Location	Small Business Association	Membership
Little Rock, AR	National Federation of Independent Business	5,000
	Arkansas Farm Bureau	223,268
	Arkansas Timber Producers	387
	Arkansas Green Industry Association	350
	Arkansas Dental Group	250
	Arkansas Association of Builders and Contractors	24,000
San Diego, CA	San Ysidro Business Association	600
	Hilcrest Business Association	1,200
McHenry County, IL	National Association of Women Business Owners	200
	National Federation of Independent Business	1,450
	Chicagoland Chamber of Commerce	4,000
	Tooling and Manufacturing Association	1,500
	Woodstock Chamber of Commerce	276
Indianapolis, IN	Auto Dealers Association of Indiana	615
	Indiana National Federation of Independent Business	16,000
	Associated Builders and Contractors of Indiana	1,100
	Restaurant and Hospitality Association of Indiana	2,000
Overland Park, KS	National Association of Women in Construction	6,000
	National Meat Association	650
Wichita, KS	Kansas Home Care Association	133
	Wichita Area Association of Realtors	1,500
Frankfurt, KY	Kentucky League of Cities	422
Las Vegas, NV	Las Vegas Chamber of Commerce	7,000
	Las Vegas Small Business Representative	522
Brooklyn, NY	Caribbean American Chamber of Commerce and Industry, Inc.	1,700
	Greater New York Chamber of Commerce	1,000
Portland, OR	Oregon Independent Auto Dealers Association	850
	Oregon Restaurant Association (3,000 small businesses)	2,100
	Oregon Building Industry Association	4,100
Harrisburg, PA	American Association of Meat Processors	1,800
	Pennsylvania Funeral Directors Association	1,200
	Pennsylvania Automotive Association	1,500
	Pennsylvania Food Merchants Association	1,600
Seattle, WA	Auto Recyclers of Washington	75
	Washington Farm Bureau	25,000
	Washington Business and Industry Association	4,840
	Environmental Coalition of Seattle	12,000
Milwaukee, WI	International Sign Association	1,547
	Wisconsin Funeral Directors (481 funeral homes)	1,400
	Wisconsin Cast Metals Association (110 foundries)	150
Charleston, WV	West Virginia Health Care Association	125
	West Virginia Gasoline Dealers/Auto Repair Association	158
	West Virginia Poultry Association	425
Evanston, WY	Wyoming Stock Growers Association	1,400
	Wyoming Association of Conservation Districts	34
Total small businesses reached		361,427

Agencies: Searching out New Ways to Engage with Small Businesses

Federal agencies agree that they, too, need to increase their outreach efforts to small businesses and are looking at various ways to accomplish this goal (see sidebar). Keeping messages short and simple and providing information on websites help agencies reach small businesses, as does the opening of offices specifically created to assist them with regulatory compliance. ONO would like to see agencies conduct more outreach and compliance assistance whenever they issue new rules and provide direction to resources that help small businesses understand what they need to know. Other efforts—as mandated by the Paperwork Relief Act of 2002—include establishing a “point person” or contact within the agency for small businesses to find out about a regulation.

Emerging Markets: Reaching out to the Underserved

Because of their unique communication needs, emerging small business communities may be among the first to experience Federal regulatory enforcement challenges and the last to learn of the resources available to them. ONO is responding to this challenge by holding meetings with these small business owners to hear their concerns.

Through Emerging Markets meetings, ONO is targeting leadership from diverse small business groups, to include women, Asian Americans, African Americans, Hispanic Americans, Native Americans, veterans, and other underserved groups. These meetings are designed to introduce the types of assistance SBA and ONO can provide and to listen to the concerns of this leadership.

The format is flexible and informal, lending itself to open discussion with lenders, chamber of commerce and SBA representatives, banking representatives, and others. In FY 2002, 12 Emerging Markets meetings were held in the following cities:


- ▶ Indianapolis, Indiana (December 4, 2001).
- ▶ Little Rock, Arkansas (February 20, 2002).
- ▶ Albuquerque, New Mexico (February 25, 2002).
- ▶ Los Angeles, California (March 13, 2002).
- ▶ Las Vegas, Nevada (March 15, 2002).
- ▶ Delaware County, Pennsylvania (April 25, 2002).
- ▶ Wichita, Kansas (April 29, 2002).
- ▶ Brooklyn, New York (May 20, 2002).
- ▶ Richmond, Virginia (June 10, 2002).

Our National Ombudsman has raised public awareness of ONO to a new level of service for this organization. In our efforts to promote public awareness, we must remember that our mission is to promote regulatory enforcement fairness at all levels of business.

▶ CLARK D. STEWART, REGFAIR BOARD MEMBER

- ▶ Sioux Falls, South Dakota (June 25, 2002).
- ▶ Milwaukee, Wisconsin (July 8, 2002).
- ▶ Boston, Massachusetts (September 16, 2002).

More emphasis on this program area is planned for 2003.



Looking Ahead...

Plans for the Future

Results from FY 2002 indicate success in building on a solid foundation, which will expand in future years. ONO will press its agenda to ease enforcement and compliance burdens on small businesses and raise the profile of regulatory fairness in state and local government arenas, providing avenues for assisting their constituencies. Other strategies include fostering innovation in all approaches; spreading the word through better communications and heightened publicity and outreach; and seeking solutions for the mutual benefit of businesses, agencies, and the general public. RegFair Board members remain enthusiastic about the progress of the program and have pledged to help ONO raise expectations for the Board by fostering a positive approach with agencies and furthering multi-agency communications with the small business public.

Paperwork Reduction Act 2002: Reinventing Government and Reducing Regulation

ONO and Federal agencies are increasing efforts to help reform how government regulations are developed and enforced and to reduce government paperwork requirements. The Small Business Paperwork Reduction Act of 2002 helps small businesses by requiring agencies to review the impact of their regulations on small businesses and to consider less costly alternatives for accomplishing public policy objectives (see sidebar). This

LIGHTENING THE PAPER LOAD ON SMALL BUSINESSES

The Small Business Paperwork Relief Act of 2002 eases the burden on small businesses by:

- ▶ Requiring the Office of Management and Budget to publish an annual list of compliance assistance resources available to small businesses in the *Federal Register* and on the Internet.
- ▶ Requiring each Federal agency to establish a liaison for small businesses and to make efforts to further reduce paperwork requirements for businesses with fewer than 25 employees.
- ▶ Establishing an interagency task force to recommend improvements in information collection and dissemination.
- ▶ Requiring agencies to report their enforcement actions against small businesses and related penalty reductions to Congress and SBA's National Ombudsman so they can monitor how well agencies are reducing the regulatory burden.

The vision to decrease the burden of regulations related to businesses will only increase small business success and have an overall positive effect on our economy as well as the world.

► AGENCY FEEDBACK AT ONO ADVANCED STRATEGY
LAB SESSION

new law makes paperwork reduction a serious, concerted effort and introduces specific measures that make it easier for small businesses to comply with agency rules and regulations. ONO is also actively promoting the President's call for clear communications—the pursuit of plain language—from Federal agencies to the public.

Reporting Requirements and Their Deadlines

The Paperwork Reduction Act of 2002 requires agencies to provide an initial report that contains FY 2002 information on the (1) number of enforcement actions in which a civil penalty is assessed, (2) number of enforcement actions in which a civil penalty is assessed against a small entity, (3) number of enforcement actions where the civil penalty is waived (in both cases), and (4) total monetary amount of reductions or waivers related to such enforcement actions. The final report must include the same information as it applies to FY 2003.

The initial report must be submitted no later than December 31, 2003, to the chairpersons and ranking minority members of small business committees in the House and Senate and to the National Ombudsman. Agencies must submit a final report no later than December 31, 2004, to the same sources.

Raising Expectations

ONO will raise expectations among RegFair Board members and its ever-growing network by increasing communications and fostering a sense of urgency. ONO's self-improvement plans include ensuring that hearings and roundtables are better attended and more productive through better publicity and media campaigns; providing more advanced notice to small businesses and Federal agencies; ensuring prior sharing of meeting content, with reminders sent to *all* potential attendees; focusing more on small businesses, with less agency emphasis (to avoid the appearance of "another government forum"); including real-life, positive examples of resolved cases; and doing more upfront work to elicit attendance and sponsorship of congressional delegations. The RegFair Board is also committed to working together more efficiently, meeting and corresponding more frequently, and being more productive on behalf of small businesses.

ONO will continue to engage in efforts to change the Federal regulatory enforcement environment and to alter the sense of fear by small businesses of Federal agency enforcement activities. ONO will raise the bar on its own employees by adopting a new set of strategic goals included as part of a new performance management system developed to track SBA progress in achieving important e-technology and other objectives for improving the small business environment.

These strategic goals aim to achieve a specific outcome: to ensure that small businesses are treated fairly in the Federal regulatory enforcement process.

Building Partnerships

In recognizing the importance of regulatory fairness for small businesses, the President has unveiled his plan to help them flourish. Part of his plan calls for greater coordination among the agencies charged with oversight of small business matters, with the goal of achieving a less burdensome system of regulation. ONO shares this commitment and will continue to work with its partners, including internally with SBA and the Office of Advocacy, to provide a “united front” for small business assistance. To bolster its relationship with Federal regulatory agencies, ONO is evaluating the possibility of developing an effective set of guiding principles for Federal agencies on how to deal with fair enforcement of regulatory issues affecting small businesses. Another idea being considered by RegFair Board members is the development of an advisory group of agency SBREFA representatives to meet with the Board and engage in a mutual exchange of ideas.

I know that, as a small business, I have a friend in ONO and believe that if I ever need help in resolving a problem, I now know where to go. They truly are the Federal problem solvers, working to make all Federal agencies more business-friendly.

►FRANK BALLESTEROS, REGFAIR BOARD MEMBER AND
SMALL BUSINESS OWNER

ONO will expand its current communications network by focusing on more outreach to chambers of commerce, especially Emerging Markets groups, as well as all SBA offices and their banks and clients, and all trade associations related to small businesses. It will also continue translating ONO marketing and news materials into Spanish, as well as hold bilingual hearings. Efforts to make Emerging Markets a core ONO program are moving steadily forward.

Increasing Technology

E-Government

A Federal task force led by the President’s Management Council is identifying E-Government projects to increase productivity and performance across government. Specifically, the task force aims to:

- Create easy-to-find single points of access to government services for individuals.
- Reduce the reporting burden on businesses by taking greater advantage of electronic transaction protocols.
- Share information more quickly and conveniently between governments—Federal, state, local, tribal, foreign, and institutional.
- Automate internal processes to reduce costs within government by disseminating best practices across agencies.

While several Federal agencies provide information resources to small business, including the Departments of Labor and Commerce, SBA will lead government-wide efforts to create a business compliance one-stop website for small businesses. ONO will participate with SBA in this initiative to create an easy-to-use, quick-access website for small businesses, aimed at making it easier for small

businesses to comply with laws and regulations and saving them time and resources. Plans being considered include having the website display the top five regulatory issues confronting small business, providing a summary of each along with direct links to other agencies able to offer assistance. This idea is presently conceived as a supplementary page added to the SBA website, which small businesses already regularly access for training information.

ONO's steps to simplify the use of Web-based tools for small business users will contribute to the President's Management Agenda aimed at unifying information flows across business lines and making it easier for citizens to receive high-quality service from the Federal Government at reduced delivery costs (see sidebar for more expected E-Government results).

A crucial part of the President's E-Government initiative, this effort has cross-agency funding and support.

PRESIDENTIAL INITIATIVE TO EXPAND E-GOVERNMENT

By expanding and improving information technology efforts, agencies will:

- ▶ Provide high-quality customer service regardless of how the citizen contacts the agency—by phone, in person, or via the Web.
- ▶ Reduce the expense and difficulty of doing business with the Federal Government.
- ▶ Provide citizens with readier access to government services.
- ▶ Make government more transparent and accountable.

Conference Call Roundtables

ONO plans to further an initiative to host Conference Call Roundtables for geographically dispersed areas. Some SBA regions encompass several states with large rural populations, such as Region 8, which is made up of Montana, the Dakotas, Colorado, Utah, and Wyoming. Because attending a physical meeting is difficult for people dispersed in these regions, ONO is offering the opportunity for them to participate by calling in to a centralized toll-free number. ONO's interactive conferencing capability allows people to present and hear testimony while simultaneously following along with ONO's PowerPoint presentation on-line. Available on a 24/7 basis, ONO's remote conferencing capability can be accessed from anywhere in the United States and the U.S. territories.

Website

In addition to continuing to build on its flagship initiatives, ONO plans to make its website even more accessible and valuable to small businesses seeking information or contacts. ONO continues to add linkages to the growing number of agency compliance assistance sites and to otherwise establish linkages at the front end of compliance systems. Gaining in popularity, the ONO website has recently regis-

tered 1 million hits, with a steady increase also occurring in ONO E-Blast subscribers. ONO knows that, to be effective, its website must be useful, easy to navigate, and regularly updated. It will continue to simplify this interface for users, so that small businesses at any level can easily access the website and effectively use it for what they need. Increasing the efficiency of the ONO website will also help it become a working tool for each RegFair Board member—something members have requested, along with swifter follow-up on comments and an easier way to track them. To speed response, the website will provide an automated reply capability and instantly confirm receipt of a comment or other submitted form.

Continuing to Reach Out

One of ONO's goals for this past fiscal year was to have at least two hearings or roundtables per region—which it achieved. Heading into 2003, ONO RegFair Board members plan to create even more state and regional visibility using local influence. They will greatly expand the number of contacts made with trade associations and chambers of commerce and thereby increase exponentially the number of small businesses reached. ONO will enlarge its focus beyond the initially targeted Washington, D.C.-based trade organizations. To aid this effort, a variety of effective outreach tools and systems have been developed for use by RegFair Board members and SBA personnel in communities and field offices around the country. They will seek out media opportunities to publicize success stories, and will carry out other proactive forms of communications outreach.

ONO wants to increase the level of coordination with SBA District Offices and ensure that regulatory enforcement fairness resources are mentioned in all SBA brochures and websites and promoted through established channels, such as SBA Small Business Development Centers. Practical publicity efforts, such as supplying newsletter articles for trade publication, will be continued. Additionally, Board members recommend a multimedia publicity effort, including broadcast of public service announcements, with a strong message to inform the public, raise awareness, and greatly magnify the effects of individual efforts by reaching a larger slice of the population—including those holding political office. As one Board member put it, “we have to carry more weight in the public's eye in order to gain access to the right people.”

The message must get out that we are here, who we are, and what we do. That what we do helps America's small business concentrate on their businesses without interference from government.

►REGFAIR BOARD MEMBER

The ONO FY 2003 schedule includes many planned speaking engagements, such as those for Small Business Development Center advisory boards, governors' small business reform task forces, and joint events involving private businesses and SBA. The National Ombudsman has also stepped up efforts to reach out to underserved populations, or Emerging Markets, having met with 70 Hispanic

chamber of commerce presidents and attended events to raise awareness about ONO services among minority women entrepreneurs and delegations of business and political leaders. ONO will continue to expand upon these activities in the coming months.

Finally...

In the months and years to come, ONO will march steadily toward its goal of ensuring that small businesses are treated fairly in the Federal regulatory enforce-

ment process, continuing to fortify efforts to touch more of America's 25 million small businesses and to work in a results-oriented manner. ONO will help create a culture of innovation and entrepreneurship agency-wide that will re-establish a closer relationship with small business customers and increase the number of small businesses that know about ONO's services for obtaining regulatory enforcement fairness. Greater responsiveness to small business will be achieved through increased outreach and an approach aimed at "innovation, simplification, and

dedication," always bearing in mind that cooperative partnerships between government and small business are essential to the success of both.

ONO and SBA will strive to ensure the success of small business through initiatives that take advantage of cutting-edge technologies, such as e-commerce initiatives designed to make doing business with the government easier for small businesses. Promotion of a customer-friendly, service-oriented environment will influence small businesses to view government not as an adversary but as a strong partner and passionate advocate, responsive to small business. ONO will continue to stress interagency cooperation, public access, and education over prosecution, promoting the vitality of small businesses by saving them time and money—and, in the process, helping them to be as successful as they can be. At SBA and ONO, we know that their success is our success.

Over the years, we have seen a growing awareness by the Federal agencies and the small business community. Our biggest challenge ahead is to get the word out and make small businesses aware of ONO so that the process is clear.

► SANDRA K. LEE, REGFAIR BOARD MEMBER AND SMALL BUSINESS OWNER

Select Media and Marketing Materials

This appendix presents the results of ONO's media outreach efforts related to FY 2002 regulatory enforcement fairness hearings and roundtables held nationwide. Media vehicles included newspaper, radio, and television. Sample articles follow this listing; these articles are listed below in blue.

Hearing/Roundtable	Print Media Coverage	Radio/TV Coverage
Evanston, Wyoming October 29, 2001	<i>Uinta County Herald</i> (Nov. 2) <i>Casper Star Tribune</i> (Oct. 30) <i>Sublette Examiner</i> (Nov. 1) <i>Casper Star Tribune</i> (Oct. 18) <i>Casper Star Tribune</i> (Oct. 30)	
Overland Park, Kansas November 1, 2001	<i>Dos Mundos</i> (Nov. 20)	
Harrisburg, Pennsylvania November 13, 2001	<i>Harrisburg Patriot</i> (Nov. 14) <i>Central Penn Business Journal</i> (Nov. 16)	
Indianapolis, Indiana December 4, 2001	<i>SBA Connections</i> (Dec.) <i>Bedford Daily Times Mail</i> (Dec. 1) <i>Bluffton News Banner</i> (Dec. 1) <i>The Evening Star</i> (Dec. 2) <i>Greenfield Daily Reporter</i> (Dec. 3) <i>SBA Magazine</i> (Dec. 3 and 4) <i>Crains Chicago Business</i> <i>Chicago Tribune</i>	WCTY TV WFIU FM Sabor Radio WIBC AM WAV TV: <i>The Amos Brown Show</i>
Frankfort, Kentucky January 17, 2002	<i>Cynthiana Democrat</i> (Jan. 3) <i>Sentinel</i> (Jan. 3) <i>Dawson Springs Progress</i> (Jan. 10) <i>Louisville Courier-Journal</i> (Jan. 11) <i>Business First, Louisville</i> (Jan. 11) <i>SBA Newsletter</i> (March/April)	WKJK AM
Orlando, Florida January 28, 2002	<i>Orlando Sentinel</i> (Jan. 21)	WJOV AM
Little Rock, Arkansas February 20, 2002	<i>The Times Record</i> , Fort Smith (Feb. 21)	

Hearing/Roundtable	Print Media Coverage	Radio/TV Coverage
Albuquerque, New Mexico February 25, 2002	Albuquerque Tribune (Feb. 11) <i>Albuquerque Journal</i> (Feb. 14) <i>Albuquerque Journal</i> (Feb. 25) <i>Albuquerque Journal</i> (Feb. 26) <i>Albuquerque Tribune</i> (Feb. 30)	
Los Angeles, California March 13, 2002	<i>Journal for Philippine Americans</i> (Mar. 5–21) La Opinion (Mar. 19)	
Las Vegas, Nevada March 22, 2002	In Business Las Vegas (Mar. 22) <i>Las Vegas Business Press</i> (Mar. 25)	
Seattle, Washington April 2, 2002	<i>Eastside Journal</i> (Mar. 20) <i>South County Journal</i> (Mar. 20) <i>Seattle Daily Journal of Commerce</i> (Mar. 25) <i>NW Asian Weekly</i> (Mar. 30) <i>Tri-City Harold</i> (Apr. 3) <i>Seattle Post-Intelligencer</i> (July 17)	KNWX/KIRO Radio
Portland, Oregon April 4, 2002	<i>Business Journal of Portland</i> (Mar. 4) <i>Portland Tribune</i> (Mar. 29) <i>The Skanner News of Portland</i> <i>Statesman Journal</i> (Apr. 4)	Dream Builders
Charleston, West Virginia April 17, 2002	<i>State Journal</i> (April) <i>West Virginia Manufacturers Association Newsletter</i> (Apr. 6)	WQBE Radio
Wichita, Kansas April 29, 2002	<i>Wichita Area Chamber of Commerce Impact</i> (Apr. 2) <i>SBA Region VII Small Business News Bulletin</i> (Apr. 3) <i>Wichita Eagle</i> (Apr. 3) <i>Hutchinson News</i> (Apr. 7) <i>Dodge City Daily Globe</i> (Apr. 10) <i>The (Wichita) Community Voice</i> (Apr. 13) Wichita Business Journal (Apr. 19) <i>U.S. Chamber of Commerce Small Business News</i> (Apr. 19) <i>Wichita Eagle</i> (Apr. 30)	KDFI AM/FM
New York, New York May 20, 2002	<i>New Voice of (Flushing)</i> (May 9) <i>Brooklyn Daily Eagle</i> (May 10) <i>Brooklyn Heights Courier</i> (May 13) <i>Crain's New York Business (Calendar)</i> (May 13–16) <i>New York Daily News</i> (May 14) <i>Times Newsweek</i> (May 16) <i>Flatbush Life (Brooklyn)</i> (May 20) <i>Brooklyn Daily Eagle</i> (May 21)	Queens PATV Brooklyn CATV
Richmond, Virginia June 10, 2002	Richmond Business Journal (June 17)	
Sioux Falls, South Dakota June 25, 2002	<i>Argus Leader</i> (June 18) Mick Ringsak (RA) (June 24)	KELO AM/FM KSFY TV
Milwaukee, Wisconsin July 8, 2002	<i>Chicago Tribune</i> (May 29) <i>Business Journal</i> (June 14) <i>Milwaukee Journal Sentinel</i> (June 20) <i>Small Business Times</i> (June 21)	WCUB Radio: <i>The Breakfast Club</i> WLIP Radio WPR: <i>Ideas Network</i> WGLB Radio: Daily PSAs WHBY: <i>BIZ Talks</i>

Hearing/Roundtable	Print Media Coverage	Radio/TV Coverage
Milwaukee, Wisconsin		ABC Channel 12: <i>Leaders in a New Economy</i> WMLW TV: <i>Focus on Milwaukee</i>
McHenry County, Illinois July 15, 2002	<i>Chicago Tribune</i> (May 29)	Jim Blasingame, small business advocate, national radio syndication
Boston, Massachusetts September 16, 2002	<i>Boston Business Journal</i> (Sept. 20)	
	<p><i>Kansas City Star</i>: "SBA Names Kansas City Man to Ombudsman Post" (Aug. 18, 2001)</p> <p><i>Kansas City Hispanic News</i>: "Barrera Appointed to Ombudsman Post" (Aug. 23, 2001)</p> <p><i>The Phoenix</i>, University of Chicago Graduate School of Business (Sept. 2001)</p> <p>Hispanic Chamber of Commerce of Greater Kansas City: <i>Su Negocio</i> (Sept./Oct. 2001)</p> <p><i>American City Business Journals</i>: "New SBA Ombudsman Promises Close Look at Regulatory Actions" (Oct. 19, 2001)</p> <p><i>New York Times</i>: "Help for Small Business in Washington" (Mar. 5, 2002)</p> <p><i>Minorities in Business Insider</i>: "National Ombudsman Striving for Fair Regulatory Environment" (Mar. 28, 2002)</p> <p>SBA Office of Advocacy, <i>Small Business Advocate</i>: "SBA Coordinates Help for Small Business's Regulatory Burdens" (May 2002)</p> <p><i>Microsoft bCentral.com</i>: "Got a Complaint? Take It up with the SBA" (May 2002)</p>	

Casper Star Tribune, October 18, 2001

HEARING: *Complaints may be filed anonymously*

Public gets to air regulatory concerns

By **TOM MORTON**
Star-Tribune staff writer

The federal regulations intended to foster a cleaner environment or a safer workplace, and the agents who enforce them, sometimes cause more problems than they solve, an official of the U.S. Small Business Administration said last week.

Those problems range from harassment and emotional harm, to the financial ruin of small businesses, said Michael Barrera, the SBA's national ombudsman.

"Our mission is to be the primary negotiator on behalf of small businesses," Barrera said in an interview from Washington.

Barrera, U.S. Sen. Mike Enzi, R-Wyo, members of the SBA's regional fairness board, and representatives of federal agencies will receive comments from trade associations and individuals at a hearing in Evanston from 8:30 a.m. to 12:30 p.m. Monday at the Best Western Dunmar Inn, 1601 Harrison Drive.

Barrera has seen business, legal and regulatory issues from a variety of experiences including his family's restaurant business in Kansas City, Mo.; marketing with the Miller Brewing Co.; law, as an assistant prosecuting attorney for Jackson County, Mo.; and leadership of the Hispanic Chamber of Commerce of Greater Kansas City.

Barrera, who was appointed by President Bush, started work on Aug. 24 and has conducted similar hearings around the country.

The SBA fields 10 regulatory fairness boards nationwide, and conducts at least one roundtable a year in each region for people with small businesses or nonprofit organizations who have concerns about federal agencies, and who may be under investigation, he said.

The SBA asks trade associations in the region to invite their members to air their criticisms, concerns and compliments about the ways federal agencies enforce their regulations.

Individuals who are not members of these organizations are welcome, too.

Associations invited to the hearing Monday include the Wyoming Association of Conservation Districts, the Wyoming Business Council, the Wyoming Stock Growers Association and People for the USA.

Representatives of federal agencies such as the Department of Interior and the Department of Agriculture will attend, too, he said.

The ombudsman's office will receive the complaints, conduct its own investigation, forward them to the agencies and consider their replies, he said.

Some small businesses that fear a public complaint may trigger retaliation on the part of a federal agency may file their complaints anonymously, he said.

If a complaint is legitimate, the ombudsman's office will issue report cards to the agency and ask that it remedy the situ-

ation, Barrera said. "We report on positive comments, too."

About half the complaints received by his office are legitimate, Barrera said.

Neither the agencies in Washington nor the agents in the field want to harm small businesses, Barrera said. "I think for the most part, their intentions are good."

But communication sometimes breaks down between Washington and the rest of the country, and between the agents and the businesses they oversee. Problems and even harassment also can arise when agents receive pressure from their superiors, Barrera said.

The results are both economic and personal, he said, citing testimony from a hearing in Rhode Island.

A five-member family that owned a small service station had legally dumped waste oil at site that went out of business. That place later became an EPA Superfund Site, and regulators began sending letters to the family demanding compliance and payments. The family's responses, attorney's fees and other costs nearly drove the family out of business, Barrera said.

Nationally, federal regulatory compliance costs the U.S. economy nearly \$750 billion, he said.

That cost falls disproportionately on small businesses, which are those with fewer than 500 employees, he said.

Federal regulations will cost a small business \$7,000 a year, compared to mid-sized businesses that will spend \$3,500, Barrera said.

The regulatory system and its laws have brought Americans clean air and safe highways, but they're not perfect, he said. "We want to make sure they are enforced fairly."

Albuquerque Tribune, February 11, 2002

Feds to hear business complaints about rules

By Dan Mayfield

DMAYFIELD@ABQTRIB.COM / 823-3620

Small businesses tend to suffer in silence when it comes to federal regulations they believe are unfair.

When Neil Hise of Cemco Inc., a manufacturer of rock crushers, enters mines, he has to be certified by the Mine Safety and Health Administration.

"Up until 2001, it wasn't a big deal. You'd go to the office and they give you some basic training: Stay away from the big trucks, they'll squash you," he says.

But this year it all changed. Now, he says, anybody entering a mine must have taken a 24-hour training course administered by the mine safety administration.

"I have to be trained in CPR, mining and all, just to be a salesman," he says. "Where did the common sense go?"

Now, local small businesses with beefs that federal regulations don't make sense or are unfair can talk to the Small Business Administration's ombudsman, who is charged with figuring out where the regulations went wrong and fixing them.

On Feb. 25, the national small business and agriculture regulatory enforcement ombudsman will be in Albuquerque with key officials from various federal departments to hear concerns from small companies. Michael Barrera's job is to coordinate with federal agencies to solve small business and agricultural problems.

"It's meant to deal with regulatory issues, enforcement issues. His authority, which is quasi-judicial, is to hold hearings and listen to businesses," says Anthony McMahon, New Mexico Small Business Administration director.

It's a mechanism for the small business community to get all the acronyms — EPA, OSHA, IRS, IMSHA, DOL, FCC and more — in one room.

Small businesses can give oral or written testimony at the hearing that Barrera later compiles into a report for Congress. Some regulations need to be changed with a federal law while others can be worked out internally in specific agencies, McMahon says.

The SBA won't know there's a problem if it doesn't hear from the community, he says.

"The biggest complaint I hear about the FCC is that in New Mexico, we're so far from Washington. It seems like an overwhelming problem," says Marianne Granoff, chairwoman of the New Mexico Internet Professionals Association.

Granoff runs an e-mail list that local Internet professionals use to vent their concerns about the Federal Communications Commission.

"I've written to them, and I've sent letters on behalf of NMIPA and never heard anything back," she says.

Granoff says she's prepared to attend and give Barrera testimony about the problems local Internet providers have.

McMahon says the health care industry is another that he's heard complaints from. Small home-health-care providers have to follow the same Medicare and Medicaid rules large hospitals do. But they don't have the time or the staff to keep up with the mountains of paperwork.

The testimony, McMahon says, can be confidential if a business feels uncomfortable speaking out. Written testimony can also be presented at the hearing.

"Small businesses don't have a way to challenge laws. This ombudsman is here to give them a voice," McMahon says.

To sign up to give testimony, call the Albuquerque SBA office at 346-7909. The hearing will be at the Wells Fargo building at 200 Lomas Blvd. N.E. on Monday, Feb. 25, from 1 to 4 p.m.

La Opinion, March 19, 2002



JORGE MUJICA/La Opinion

Michael Barrera busca establecer contacto con los medios empresariales.

Defensor de los pequeños negocios

La carga regulatoria supone un costo de casi siete mil dólares por persona para las empresas con menos de 20 empleados

Yolanda Arenales
Reportera de Negocios

Cumplir con toda la normativa de las agencias federales es a menudo una tarea complicada para los pequeños empresarios modestos.

Eso es algo que Michael Barrera, defensor nacional (ombudsman) de la Administración de Pequeños Negocios (SBA) sabe muy bien, ya que sus funciones consisten precisamente —tal como las define el presidente de dicha institución, Héctor Barreto— en reducir la carga que las regulaciones federales suponen para los pequeños empresarios.

“Mi papel es tratar de acentuar los aspectos positivos y no los punitivos de las normas. Los empresarios no deben sentirse amenazados por las regulaciones federales. Trabajando con ellos y con las oficinas del gobierno hay que conseguir que la aplicación de las normas se haga de un modo más amistoso y de colaboración con los pequeños negocios que tanto aportan a la economía nacional”, dijo Barrera en su reciente visita en Los Angeles.

El ombudsman (vocablo de origen escandinavo que significa defensor) vino a esta ciudad como parte de su gira por distintas regiones del país con el objetivo de ponerse en contacto con representantes empresariales y poner a su disposición los servicios de su oficina.

“Todavía hay cierta falta de conocimiento y confianza en cuanto a las tareas del ombudsman, pero es muy importante que los empresarios entiendan que yo estoy para ayudarlos y defenderlos”, enfatizó Barrera.

Lea **DEFENSOR**, pág. 4D

La Opinion, March 19, 2002 (continued)

Defensor

viene de pág. 1D

La oficina nacional del defensor se creó en 1996 mediante la Ley de Cumplimiento y Justicia Regulatoria para los Pequeños Negocios (SBREFA). Desde entonces trata de ampliar sus servicios entre los pequeños empresarios de todo el país.

JUNTAS REGIONALES

La Oficina Nacional del Defensor recibe comentarios de los empresarios de todo el país y cuenta con 10 Juntas de Justicia Regulatoria correspondientes a diferentes regiones de la nación. California forma parte de la novena región, de cuya junta es presidente Joseph A. Cerbone, un empresario de Irvine.

Cerbone puede canalizar cualquier comentario, queja o duda que los propietarios de la región tengan sobre el cumplimiento de normas federales.

"Es muy importante destacar que los miembros de las juntas no trabajamos para el gobierno. Somos empresarios y conocemos los problemas de los empresarios. Nuestra labor como intermediarios de la oficina del defensor es voluntaria", explica Cerbone, enfatizando que los empresarios no tienen nada que temer al dirigirse a su junta.

Este empresario explica que sus funciones consisten principalmente en orientar a los propietarios de negocios sobre cómo y dónde deben canalizar su queja.

"Mucha gente recurre a nosotros para todo tipo de duda, a pesar de que la oficina del ombudsman sólo tiene competencia sobre normas federales. Pero generalmente tenemos información sobre dónde dirigirse a nivel estatal o local, y en ese sentido nuestra función es un poco de guardias de tráfico señalando a la gente hacia a dónde ir", dice el empresario.

Para Marlee Miller, vicepresidente de la Cámara de Comercio de Los Angeles, en la que Barrera mantuvo una audiencia la semana pasada con distintos representantes empresariales y gubernamentales, señaló que considera muy útil para sus miembros los servicios de la oficina del ombudsman.

"La mayoría de nuestros miembros son pequeños negocios que quieren cumplir con las normas federales, algo que no siempre resulta fácil. La labor de la oficina del defensor puede resultar muy beneficiosa para ellos y para la economía" señaló Miller.

Es que, tal como reconoció Bruce C. Thompson, administrador regional de la SBA, las normas federales suponen una gran carga para los empresarios.

"Las regulaciones son 'matadoras'. Yo como pequeño empresaria-

rio que fui, las odiaba, por más que sean necesarias, así que es muy bueno ofrecer medios de ayuda a los propietarios de negocios para que puedan cumplirlas".

Cerbone, por su parte, corroboró que debido a la complejidad de las normas y a que es difícil para muchos pequeños empresarios contar con la información y asesoría adecuada para cumplirlas, éstos se exponen a un mayor riesgo de multas.

"La verdad es que muchos empresarios que nos piden ayuda se encuentran en situación de incumplimiento de alguna norma, aunque sea involuntariamente. En ese sentido, nosotros podemos ser de gran ayuda para minimizar o a veces hasta evitar las sanciones, ya que les ayudamos a plantear su caso ante las dependencias y tratar de encontrar una solución razonable".

A continuación, parte de la entrevista que La Opinión sostuvo con Michael Barrera:

¿Qué impacto económico tiene el cumplimiento de las normas federales para los pequeños negocios?

Hay que partir de que el costo total de las regulaciones federales fue de \$43,000 millones de dólares, de los cuales casi 500 recaen en los negocios y el resto en los consumidores o entidades gubernamentales no federales.

En cuanto a los pequeños empresarios, se estima que la carga regulatoria supone un costo de casi siete mil dólares por empleado para las empresas con menos de 20.

¿Constituye la normativa federal una mayor carga relativa para los pequeños empresarios? Sin duda alguna. Las grandes firmas cuentan con departamentos legales y contables que se ocupan de ello. En las pequeñas, el propietario es el abogado, el contador, el gerente y el que trabaja en el producto o servicio. Pero además está comprobado que la incidencia económica aumenta en las empresas pequeñas. Así por ejemplo, el costo anual por trabajador es casi un 60% más elevado para las firmas con menos de 20 empleados que para las que tienen 500 o más.

¿Qué tipos de normas son las más difíciles o costosas de cumplir?

Depende del tipo de negocio de que se trate, pero en general las regulaciones medioambientales e impositivas son las que más burocracia requieren y las que mayor impacto económico causan, especialmente en los pequeños negocios, para los que suponen un 65% de los costos normativos.

¿Cómo puede ayudar el defensor de la SBA a hacer que el cumplimiento de las normas sea menos gravoso para el pequeño

En detalle

■ Incidencia de las regulaciones federales según el tamaño de la empresa

TIPO DE NORMA	COSTO POR EMPLEADO PARA EMPRESAS CON MENOS DE 20 TRABAJADORES	COSTO POR EMPLEADO PARA EMPRESAS CON MAS DE 500 TRABAJADORES
▶ Medioambiental	3,328	717
▶ Económica	1,616	2,485
▶ Laboral	829	698
▶ Impositiva	1,202	562
TOTAL DE NORMAS FEDERALES	6,975	4,463

PERFIL DEL IMPACTO FEDERAL

▶ El costo total de las regulaciones federales fue de

\$43,000 millones de dólares

\$497,000 millones de dólares recayeron en los negocios y

\$346,000 millones de dólares en los consumidores y los gobiernos no federales.

Fuente: Oficina de Defensa de la SBA

MAS INFORMACION

▶ Cómo ponerse en contacto con la Oficina Nacional del Defensor

Tel. gratuito: 1 (888) REGFAIR (734-3247)

Fax: (202) 481-5719

Correo electrónico
Ombudsman@sba.gov

Página electrónica

http://www.sba.gov/ombudsman

▶ También se puede escribir a:

Office of the National Ombudsman

U.S. Small Business Administration

409 3rd Street, SW, MC2120

Washington, DC 20416-0005

▶ Para ponerse en contacto con la Junta de la Novena Región (a la que pertenece California), llame a Joseph A. Cerbone, al (949) 261-2906.

empresario?

Para empezar, sabiendo que el puesto existe y lo que del mismo se puede y no se puede hacer. En este sentido, conviene dejar claro que mi ámbito de acción se limita a las normas federales, no a las de otro tipo.

También que la oficina del ombudsman no crea las normas ni favorece su incumplimiento. Sin embargo, para lo que sí estamos es para oír el impacto que las mismas tienen en el pequeño empresario, y para intentar que éstas se apliquen de la forma menos gravosa posible.

En este sentido, nosotros enviamos un informe al Congreso sobre la actuación de las agencias, y desde ahí sí que se pueden producir cambios legislativos.

¿Sienten los empresarios desconfianza en comunicar sus problemas con las oficinas federales a un defensor que trabaja para la SBA, al ser éste también un organismo gubernamental?

Sí, y eso es algo que tenemos que combatir. De hecho, lo que más temen los empresarios son las represalias que las oficinas sobre las que se quejan puedan tomar contra ellos.

¿Es fundado ese temor? ¿Se han dado casos de represalias?

Sí, pero eso no es algo que la ley permita y nosotros estamos para erradicarlo completamente.

Nuestro nivel de tolerancia es cero, y éste no es un país en el que uno

no pueda quejarse del gobierno.

Precisamente, uno de los aspectos que vamos a evaluar en las dependencias es la política y medidas contra represalias que tienen.

Cada oficina tiene un inspector general que se encarga de combatir estos casos. Además, nosotros informamos al Congreso del comportamiento de las entidades en este sentido, pero para ello necesitamos que los empresarios nos informen si se consideran víctimas de estas represalias.

¿Pueden hacerse estas quejas en su oficina anónimamente? Precisamente porque queremos evitar que los empresarios tengan miedo a hacer sus quejas públicamente, tenemos un sistema muy riguroso de confidencialidad.

El empresario puede elegir entre distintos niveles, desde que sus datos se conozcan sólo en mi oficina y no se puedan revelar a la oficina federal implicada, hasta que los mismos sean públicos.

El único aspecto negativo de la confidencialidad es que es más fácil actuar sobre un caso concreto que respecto a una queja a la que no podemos referirnos específicamente.

Sin embargo, lo que hay que dejar claro es que en ninguno de los casos debe haber temor a venganzas o represalias, ya que nosotros nos encargáramos de evitar que eso ocurra, pero para quienes lo prefieran, mantenemos sus datos confidenciales.

In Business Las Vegas, March 22, 2002

Level playing field sought for small business

SBA ombudsman tries to lighten bureaucratic load on struggling entrepreneurs

By Chris Jones / Staff Writer

A top official from the U.S. Small Business Administration said help is available for Nevada small-business owners struggling to keep up with numerous federal regulations.

Michael Barrera, national ombudsman for the SBA, was in Las Vegas last week to meet with about 20 representatives from various federal, state and local government agencies, trade associations and businesses. During a one-hour meeting, he outlined how his agency can assist small business owners to stay ahead of the process of following tax codes, worker safety laws and other federal requirements.

A study conducted last year by the SBA estimated adhering to federal regulations cost American businesses nearly \$500 billion in 2000. Those expenses were not divided equally among small and large businesses.

According to the survey, businesses with



Barrera

less than 20 employees paid nearly \$7,000 per employee in compliance-related costs. Large firms with more than 500 employees paid about \$4,500 for similar services.

"Small businesses really suffer under the heavy hand of government because they

typically don't have attorneys or accountants on staff," Barrera said. "(Their owners) have to figure things out themselves."

In recognition of that imbalance, Congress created the office of national ombudsman in 1996. Working alongside 10 regional fairness boards, Barrera tours the country to learn if federal regulations are unfair to small businesses while attempting to correct such problems on Capitol Hill.

In addition to conducting regular meetings with members of Congress, Barrera said his agency routinely grades federal agencies on how responsive they are to the needs of small business constituents.

"We don't change any regulations, but we want to make sure things are enforced fairly," Barrera said.

To support the plight of small-business owners, Barrera cited a family-owned service station that was fined \$250,000 by the Environmental Protection Agency. While some large corporations wouldn't worry about the prospect of paying such a fine, Barrera said it caused major problems for that small business.

"Imagine getting such a notice and feeling like you had to challenge the EPA on your own," Barrera said. "They spent five years trying to get a settlement before we got involved ... Regulations are important, but we need to be sure they're enforced fairly."

Barrera said fear of retribution also keeps many small-business owners from raising complaints.

"People think they'll be audited or scrutinized if they complain," Barrera said. "We're hoping to change that."

Frank Ballesteros, an Arizona-based regulatory fairness volunteer who attended the meeting, said he's pleased with what the national ombudsman office has accomplished so far.

"Anytime someone finds they're being treated unfairly, they've got somewhere to go," Ballesteros said. "(Business owners) don't have to be afraid of the IRS, Department of Labor or OSHA anymore."

Myron Jones attended the meeting on behalf of four self-insured groups that include more than 520 Nevada companies. He said the SBA's cost estimates were lower than the actual amounts businesses pay to comply with federal regulations, particularly those imposed by the Department of Labor.

"It would take three months of class time each year just to stay on top of the regulations required under OSHA (Occupational Safety and Health Administration) and MSHA (Mine Safety and Health Administration)," Jones said. "We had one company that was cited for not having a written safety plan for changing a light bulb ... There needs to be more common sense to the government's approach to dealing with businesses."

Barrera said his agency needs to hear comments such as Jones' in order to implement changes in Washington.

"Most of the agencies in D.C. want to help to make a better business environment," Barrera said. "That's why we want to hear from you."

Barrera said local small-business owners should direct any complaints on federal compliance problems to his office in Washington, D.C. The SBA will then work with federal and local representatives to address potential problems.

Wichita Business Journal, April 19, 2002

Wichita Business Journal wichita.bizjournals.com April 19, 2002

SBA hearing gives business owners chance to voice regulatory concerns

BY KEN ARNOLD

Do you have a complaint about federal regulations? Are they excessive? Inconsistent?

Small business owners are invited to a regulatory fairness hearing April 29 at the Wichita Area Chamber of Commerce. It is sponsored by the Wichita District office of the U.S. Small Business Administration.

Those attending the hearing can speak directly with SBA National Ombudsman



Barrera

Michael Barrera, who will take testimony from the hearing back to Washington, D.C.

"Our main goal is to get comments from small business owners to high-ranking officials in Washington, and to get an answer to their concerns within 30 to 60 days," Barrera says. "Often people can get an answer on the spot. It's important that we hear business owners' concerns so we can try to address them."

First in Wichita

The April 29 hearing will be the first held in Wichita. Barrera says he schedules 20 to 25 hearings each year at SBA district offices across the country.

Barrera says the most common complaints he hears are about inconsistent enforcement of regulations, excessive fines and penalties and fear of retaliation by federal regulators.

"Retaliation can take the form of companies getting audited or inspected again," Barrera says. "Many federal agencies including the SBA are now trying to work with small businesses to make the federal regulatory environment more small-business friendly."

Barrera says his office works with more than 35 federal regulatory agencies to resolve complaints. Barrera's office also grades government agencies according to how quickly and how well they respond to complaints. Barrera adds that hearing complaints from small business owners can help his office identify trends nationwide, or clear up misconceptions by small business owners.

Overbearing

Edgar Poindexter, SBA Wichita District assistant district director for business devel-

opment, says sometimes government regulators can be overbearing. For that reason, it is important that small business owners who have been treated unfairly testify at the hearing. He adds that he welcomes comments from small business owners who successfully challenged what they perceived as unfair treatment by government agencies.

"Unfortunately, we hear complaints all the time," Poindexter says. "Often they are based on an individual's perception. Hopefully some of these people will come to testify so we can see if their concerns are industry-wide."

Elton Parsons, a local developer and builder, says he thinks some federal regulations place an unfair burden on small businesses. As an example, he points to rules that require builders to keep dirt out of storm sewers.

"It rains," Parsons says, "and dirt gets into the sewers. Simply putting up plastic or hay bales to hold water back doesn't work. There are a lot of regulations that are only a regulator's interpretation of the law. Many times in the building business, these regulations are not meaningful and sometimes are impossible to comply with."

SBA Wichita District Director Elizabeth Auer says several business owners in the SBA Wichita District — serving 77 counties in central and western Kansas — have signed up to testify. Auer urges others interested in attending or testifying at the hearing to contact the district office. Business owners who are unable or unwilling to testify may also lodge their complaints through an anonymous form, Auer says.

REACH KEN ARNOLD at 266-6172 or on the Web at karnold@bizjournals.com.

U.S. Small Business Administration Regulatory Fairness Board Hearing

What: Forum for small business owners to voice concerns about excessive enforcement of federal regulations.

When: 12:30 to 4 p.m., April 29.

Where: Wichita Area Chamber of Commerce, 350 W. Douglas.

To testify: Contact Edgar Poindexter, (316) 269-6631, or e-mail edgar.poindexter@sba.gov.

For more information: Visit www.sba.gov/ombudsman.

Richmond Business Journal, June 17, 2002

INSIDER NEWS

Insider News

Small-business advocate tries to cut through red tape of bureaucracy

Garland Pollard

Inside Business

Monday June 17, 2002

It's true – there is a person that is with the government. He's here to help you.

That person is Michael L. Barrera, director of the Office of National Ombudsman at the Small Business Administration. The office is a little known result of the Small Business Regulatory Enforcement Fairness Act of 1996; the agency's purpose and charge is helping any small business that is having difficulty dealing with federal regulations.

Barrera came to Richmond last week to conduct a hearing on small-business regulation at J. Sargeant Reynolds Community College. He also met with local administration officials. A Kansas City, Mo., lawyer, Barrera has extensive experience with small business issues, not only as an attorney and leader of a Hispanic business association, but also from working and managing a family-owned restaurant.

INSIDE BUSINESS caught up with Barrera last Monday at the administration's office at the Federal Building on Marshall Street downtown.

IB: Tell me a little bit about how you came to the job?

Barrera: I was an attorney in Kansas City and I actually had worked with some small businesses that were trying to get a liquor license. To see what they had to go through just to get a liquor license, the thing I remembered was it took them a year to tell us no.

I have known the SBA administrator [Hector V. Barreto] for many years. While he was president of the Latin Business Association in Los Angeles, I was president of the Hispanic Chamber of Commerce in Kansas City. And we also used to work together at the Miller Brewing Co. about 20 years ago. So we've always kept in contact.

He knew that I was always complaining about how regulations really affect small business because a lot of times they don't know what they don't know.

IB: I read in your biography that you grew up working in a family-run Mexican restaurant. What was the thing that drove you and your dad crazy?

Barrera: Well, we drove each other crazy. But there were always different

Richmond Business Journal, June 17, 2002 (continued)

rules – he had to deal with ATF, he had to deal with state regulations, city regulations, county regulations, taxes, EEOC things. So many things that you feel like you are spending 30 or 40 percent of your time just dealing with paperwork.

IB: When you got into this, is it what you expected? Is it worse? Is it better? I was just thinking about the bureaucracy, the stories that you are hearing.

Barrera: What I have been real pleased about is that I have found that a lot of federal agencies really do want to do the right thing. They do want to help small businesses. But I think anything run by humans will never be perfect. With all the different federal agent representatives throughout the country, they individually may not be getting the message “let’s treat small businesses fairly.”

For the most part, small businesses are conscientious people and want to do the right thing. But you do have some agencies and some federal employees who think it is incumbent upon the small businessman to read the Federal Register every day to find out what new regulations are coming down and affecting them. And that’s just not workable.

IB: Do you find these people – are they angry, or are they sort of half angry and befuddled when they get to your office?

Barrera: A lot of them are frustrated. Most are frustrated. Frustrated is probably the biggest word. Some are angry. Some are afraid. I can understand someone being frustrated. But no one should be afraid of telling us their story of how the federal government is treating them.

IB: Coming from Kansas City into Washington, do you feel that the bureaucracy is just so big that you can make just a little dent? Or do you feel like you can make some real progress?

Barrera: You have to have a belief in what you are doing. And you have to have the backing of those above you. The president, this is on his agenda. He wants to make regulatory fairness one of the hallmarks of his presidency. It’s made it a lot easier for me to do my job, because I do have the backing of the president.

IB: Do you find that the minority businesses that come to you have different issues than your typical small business.

Barrera: I think a lot it is just experience is the best teacher. And small businesses that have been at it for awhile, they had their fathers, they’ve been through it and they know people who have been through it. But you have a lot of first-generation Hispanic businesses are still learning as they go along. They are very entrepreneurial – the same with African-Americans – and so they are starting to build their institutional knowledge on these things.

For information about the Ombudsman Office, it is on the Web at www.sba.gov/ombudsman or at 1-888-RegFair.

Boston Business Journal, September 20, 2002

Small businesses bristle at federal regs

BY MARK MICHELI
JOURNAL STAFF

Auto-repair shop owner Bob O'Keefe worries that a federal agency may try to attach his checking account or put a lien on his home. Yet he remains defiant.

The owner of McKenna & O'Keefe Auto Repair in Lowell said he won't pay \$12,000, an amount the U.S. Environmental Protection Agency claims is his share of the costs to clean up the Beede waste oil dump in Plaistow, N.H.

"They're putting the burden on small businesses. I'm going to fight them," he told Michael Barrera, the U.S. Small Business Administration's national ombudsman at a hearing in Boston this week.

About 2,700 other business owners who paid licensed handlers to take their waste oil to the same dump, not knowing it wasn't being disposed of properly, are also being assessed cleanup costs, according to J. Richard Poulin, executive director of the New England Service Station & Automotive Repair Association (NESSARA).

O'Keefe said one of those business owners
Please see **OMBUDSMAN**, Page 60



ANGELA ROWLINGS / BUSINESS JOURNAL

Auto-repair shop owner Bob O'Keefe (left) was one of several small-business owners who testified before the Small Business Regulatory Fairness Board of New England. O'Keefe claims the Environmental Protection Agency is unfairly assessing his business \$12,000 in site-cleanup costs.

Continued from Page 3

— an auto dealer in Haverhill — is expecting to be charged about \$500,000.

Poulin and O'Keefe were two of 15 businesspeople who testified before the Small Business Regulatory Fairness Board of New England about problems they are facing from federal regulators. Barrera said the Boston hearing was the last of 23 he held across the country this fiscal year, and it generated the largest turnout of any of them.

Other complainants at the hearing included:

- A Newton businessman who claimed the IRS had assessed him more than

sometimes are able to resolve problems immediately, but nothing appeared to be worked out at the end of this hearing.

"In my mind, the Superfund Law wasn't designed to come after people who tried to do the right thing," O'Keefe said, referring to the law that makes him and other small businesses liable for the dump's cleanup. He explained that the only way he and other business owners were identified for the cleanup was that they used a licensed waste handler who kept records.

"We didn't dump oil into the sewer or into a brook," he said. "I agree those (types of) people should be held out to dry. ... It (the dump) should be cleaned, but we're not responsible."

O'Keefe said his bill for the cleanup is based on waste oil he sent there from 1982 to 1988. But he said he later dis-

covered the dump should have been shut down in 1983 when the New Hampshire Department of Environmental Protection found that a 140,000-gallon underground tank was leaking. He said the site was found to still have problems in 1991, but the EPA didn't shut it down until 1994.

"How were we supposed to know there was a problem with this site when they didn't do anything?" O'Keefe asked.

Michael Ferrante, president of the Mass. Oilheat Council, and Bill Vernon, state director of the National Federation of Independent Business, also testified that assessing these small-business owners is unfair.

O'Keefe said he and others who are fighting the assessments are planning a rally in front of the JFK Federal Building in Boston on Oct. 22.

covered the dump should have been shut down in 1983 when the New Hampshire Department of Environmental Protection found that a 140,000-gallon underground tank was leaking. He said the site was found to still have problems in 1991, but the EPA didn't shut it down until 1994.

"How were we supposed to know there was a problem with this site when they didn't do anything?" O'Keefe asked.

Michael Ferrante, president of the Mass. Oilheat Council, and Bill Vernon, state director of the National Federation of Independent Business, also testified that assessing these small-business owners is unfair.

O'Keefe said he and others who are fighting the assessments are planning a rally in front of the JFK Federal Building in Boston on Oct. 22.

Microsoft bCentral.com, May 2002

Capital Buzz / Philipp Harper

Got a complaint? Take it up with the SBA

When the owners of an Illinois brew pub recently found themselves at odds with the U.S. Department of Labor over whether their brew masters should be classified as hourly or salaried employees, they did not throw up their hands and roll over.

Instead they called an influential friend in Washington, D.C., and asked him to see what he could do. The friend, in turn, called the right person at Labor and asked that the field agents involved in the matter be contacted and urged to resolve the dispute.

They were, and it was — to the satisfaction of both parties.

No, Don Corleone has not set up shop on the banks of the Potomac, dispensing offers that can't be refused. But Michael Barrera has.

Barrera is the Small Business Administration's national ombudsman, a position that makes him potentially one of the best friends a small-business owner can have. Barrera is a kind of human interface between America's entrepreneurs and the federal agencies that regulate them. In other words, he's the guy to tell when the government's treating your business unfairly.

If you haven't believed it before, believe it now: This is not your father's SBA.

In a minute I'll tell you how you, too, can enlist Barrera's help when you find yourself beset by a regulatory problem.

Small businesses hit hardest

First, though, about the bigger problem. It's indisputable that smaller firms bear a disproportionate share of the regulatory burden. When the SBA studied the issue a few years ago, it turned up these disturbing nuggets:

- The average annual cost of regulation, paperwork, and tax compliance for firms with fewer than 500 employees is about \$5,000 per employee; the cost falls to about \$3,400 per employee at firms with more than 500 employees.
- Per-employee costs for firms with fewer than 50 employees run seven to 10 times higher than costs for firms with 50 to 100 employees.
- Firms with 20 to 49 employees spend nearly 20 cents of every revenue dollar on regulatory costs.

Compliance is an expensive proposition even when regulations are applied fairly. Throw in cases where the rules are misapplied, or where entrepreneurs run into heavy-handed regulators, and the burden become truly onerous.

Barrera says his brief as ombudsman is to change the regulatory environment so it is more small-business friendly. That means changing the mentality within agencies "from

Microsoft bCentral.com, May 2002 (continued)

gotcha attitude to a help you attitude."

The SBA, which for years has been equated with little more than loan guarantees and occasionally disaster assistance has become proactive like never before on behalf of its small-business constituency. The new attitude, Barrera says, has flowed from the top down.

New SBA Director Hector Barreto has made advocacy on behalf of small business in its dealings with Washington "a core function of the SBA," Barrera says. "I don't think it's been that way in the past."

As ombudsman, Barrera patrols the frontlines, seeking input from small businesses on the treatment they receive during regulatory enforcement actions. The information he collects is grist for an annual report to Congress and basis for the interventions Barrera's office undertakes with federal regulators.

How to alert the ombudsman

There are three ways you can alert the SBA ombudsman when you think you're being treated unfairly by the feds:

- Click the ombudsman's homepage from the [SBA site](#) and click the comment link.
- Send an email directly to Barrera's office at ombudsman@sba.gov.
- Pick up the phone and dial (888) REG-FAIR. Be advised though that a call by itself does not do the trick. While you may receive helpful assistance, you'll also be told you need to put something in writing.

The format you should follow when filing a complaint is straightforward. Though not requiring "a legal brief of any kind," Barrera and his staffers do need to know:

- Who's bothering you.
- What has made you uncomfortable.
- How it's affecting you.
- Where it's taking place.
- What you would like to see change.

Additionally, any correspondence received from the agency should be copied to the SBA.

Although comments can be made confidentially, Barrera acknowledges that "a lot of businesses are really afraid to tell me their story. Government can be scary."

Those leery of direct contact with the SBA should contact their trade associations to determine whether a relationship with the ombudsman exists at that level. Barrera actively works with trade groups that make him aware of common complaints among the 200,000 small businesses they represent.

SBA has Regulatory Fairness Boards

The 10 Regulatory Fairness Boards that meet around the country are another conduit. Board members are small-business people themselves and, hopefully, non-threatening to even the most skittish complainant. Information about the boards can be found on the ombudsman's Web page.

However Barrera and his staff receive information about a complaint, it allows them at least to clarify the matter — and in some instances even to right a wrong.

"They may not always get the answer they want but we promise to get an answer," Barrera says.