

# SBA National Ombudsman's 2003 Report to Congress

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# The ONO Mission

The Office of the National Ombudsman (ONO) within the U.S. Small Business Administration seeks to **foster a more small-business-friendly Federal regulatory enforcement environment.**

## **The Small Business Regulatory Enforcement Fairness Act**

The Office of the National Ombudsman was created pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Specifically, SBREFA directs the Ombudsman to:

- ▶ Conduct hearings in each of the 10 Federal regions to solicit comments regarding Federal enforcement activities from small business concerns.
- ▶ Work with each Federal agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement-related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel.
- ▶ Establish a means to receive comments from small business concerns regarding actions by Federal agencies or agency employees conducting compliance or enforcement activities with respect to the small business concern. ONO also refers appropriate comments to the Inspector General of the affected agency whenever egregious behavior is alleged. If requested, ONO will maintain confidentiality with regard to the person and small business concern making such comments, to the same extent as employee

identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.).

- ▶ File an annual report with Congress and affected agencies whereby enforcement activities are evaluated based on substantiated comments received from small business concerns and input from the Regulatory Enforcement Fairness (RegFair) Boards.
- ▶ Provide affected agencies with an opportunity to comment on draft reports and include a section in the final report for those comments that the National Ombudsman chose not to consider before filing the final report.



# ONO Regional Regulatory Enforcement Fairness Board Members, FY 2003

The Small Business Regulatory Enforcement Fairness Act of 1996 authorized the National Ombudsman and the creation of 10 Regional Regulatory Enforcement Fairness (RegFair) Boards to help small businesses hold Federal regulators accountable for their unfair enforcement actions. Testimony gathered at RegFair hearings about Federal regulatory activity and comments, concerns, and complaints filed with the National Ombudsman are reported to Congress each year.

RegFair Board members are appointed by the Administrator of the Small Business Administration (SBA). Selection criteria include the degree of potential members' involvement as small business leaders within their communities. All RegFair Board members are volunteers and all are themselves small business owners, operators, or officers. Achieving diversity is a major goal in selecting RegFair Board members so that they reflect an accurate picture of the small business communities they represent. This diversity extends to profession, business goals, gender, geography, market size (e.g., small, medium, large, rural, and urban), ethnicity, and revenues.

There is a RegFair Board in each of 10 SBA regions; and in FY 2003, the following people served:

### **Region I**

Leo R. Blais  
Pawtuxet Valley Prescription Ctr.  
Coventry, RI

James M. Knott, Sr., Chair  
Riverdale Mills Corporation  
Whitinsville, MA

David A. Tibbetts, Esq.  
Smith, Segel & Sowalsky  
Boston, MA

Larry S. Schneider  
Coldwell Banker  
Newcastle, ME

Laura L. Monica  
High Point Communications Group  
Bow, NH

### **Region II**

W. Timothy Howes, Chair  
Howes & Howes  
Raritan, NJ

Jose M. Garcia-Ramis  
Action Service Corporation  
San Juan, PR

Eric Jenkusky  
Spark Management Resources  
Oneonta, NY

### **Region III**

Pamela Mazza, Chair  
Piliro, Mazza & Pargament  
Washington, DC

Martin Shaffer  
American Vending  
Clarksburg, WV

Frank A. Ursomarso, Sr.  
Union Park Automotive Group, Inc.  
Wilmington, DE

Felix J. Jackson  
DataProbe Technical Service  
Owings Mills, MD

### **Region IV**

R. Bruce McCrory, Chair  
Kiker Corporation  
Mobile, AL

Paul Hsu, Ph.D.  
Manufacturing Technology, Inc.  
Fort Walton Beach, FL

George Dobbins, Jr.  
Southern Communications Systems  
Memphis, TN

Douglas McFarland  
Radio Station 98.9 - Charleston  
Mt. Pleasant, SC

### **Region V**

Lyle J. Clemenson, Chair  
Clemenson Enterprises  
Brooklyn Park, MN

Lloyd E. Falconer  
Seward Screw Products, Inc.  
Seward, IL

Doug Hilbert  
Professional Technical Development  
East Lansing, MI

### **Region VI**

A. Joseph Shepard, Chair  
Archway Capital, LLC  
Dallas, TX

Harold McAlpine  
Christmas Tree Farm  
Bismark, AR

Jose Cuevas, Jr.  
JumBurrito  
Midland, TX

Mary Ann Weems  
Weems Galleries and Framing  
Albuquerque, NM

### **Region VII**

Paul Kinyon, Chair  
Realty Advisors LLC  
Cedar Rapids, IA

Clark Stewart  
Butler National Corporation  
Olathe, KS

Jeanette Prenger  
ECCO Select  
Kansas City, MO

James J. Ziebarth  
Ziebarth Farms  
Wilcox, NE

Nikki Sells  
Express Personnel Services  
Springfield, MO

### **Region VIII**

James J. Larsen  
Sioux Steam Cleaner Corp.  
Beresford, SD

Salvador Gomez, Jr.  
Source One Management, Inc.  
Denver, CO

Mary Thoman  
Thoman Ranh  
Kemmerer, WY

Michael Stransky  
FAIA  
Salt Lake City, UT

### **Region IX**

Frank Ballesteros  
PPEP Microbusiness & Housing  
Tucson, AZ

Barry M. Gold, Chair  
Barry M. Gold & Co.  
Irvine, CA

Patricia Chevalier  
Blue Hawaiian Helicopters  
Kahului, HI

Robert L. Gore  
Becker Realty Corporation  
Las Vegas, NV

### **Region X**

Milford Terrell, Chair  
DeBest Plumbing & Mechanical, Inc.  
Boise, ID

Michael Dahmer  
Systems Associates, Inc.  
Jerome, ID

Carl Grossman  
Public Private Partnerships, Inc.  
Portland, OR

Shiao-Yen Wu  
9500 Roosevelt Way NE  
Seattle, WA





# Message from the SBA Administrator

When I became Administrator of the U.S. Small Business Administration (SBA), one of my goals was to make the agency more like the small businesses it serves every day. Those businesses are efficient, innovative, and responsive. If they can't adjust to reflect the demands of their customers, they will not stay in business for very long. Just as those small businesses must respond to their customers, so must the SBA. Our customers are those small businesses.



The SBA's Office of the National Ombudsman (ONO) provides an important service to America's small business community. ONO's mission and that of the SBA work hand in hand. The SBA is the Federal Government's primary resource for American entrepreneurs. It offers small businesses that crucial hand up, whether from a loan guaranty, a new contract, or professional advice and assistance.

In the same spirit, ONO serves as small business's "troubleshooter" within the Federal Government. When small business owners have concerns about Federal Government rules and regulations and how agencies enforce them, they know they can turn to ONO.

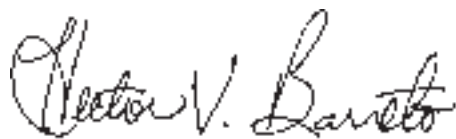
This Administration recognizes the importance of that function. The volume and complexity of Federal regulations has widened and deepened in recent decades. President George W. Bush's Small Business Agenda emphasizes regulatory relief as vitally important to our nation's continued economic well-being. The President knows how important it is for America's small businesses that

burdensome regulations be simplified or, in some cases, eliminated. Small companies spend far more per employee than larger companies complying with complex government regulations, and the very smallest of them—the ones that can least afford it—often end up spending the most. In fact, companies with fewer than 20 employees spend an average of \$7,000 a year per employee to comply with Federal regulations. That kind of expenditure, multiplied across the small business community, represents a major drain—not only on the individual businesses, but on our economy.

That is why I have made ONO's work at the SBA a major priority. Its efforts to help small businesses to understand and resolve these complex regulatory issues have a real, immediate impact. ONO helps our customers save two of their most important resources—time and money—and by doing so, also helps our economy.

ONO's work in 2003 was outstanding. It received comments from the small business community representing thousands of businesses. By addressing these concerns, ONO helped to keep those businesses on the right track of growth and prosperity. But this is not the time to rest on our laurels. I believe that every year at the SBA should be an improvement over the one before, and I know ONO shares this belief.

I commend Ombudsman Michael Barrera and his dedicated staff at ONO for a successful year, and I am proud to know that they share my goal to continue our important work in 2004.



Hector V. Barreto  
SBA Administrator

# Introduction

*by National Ombudsman Michael Barrera*

As the National Ombudsman, I, along with my senior staff, traveled to 21 states in 2003 to see and hear first-hand how Federal enforcement actions directly affect small businesses. We also had more than 100 media exposures reaching thousands of entrepreneurs via radio, television, and print, telling the ONO story about how we can assist them.



President George W. Bush is committed to creating an environment where small businesses are able to flourish and to devote more of their resources to developing products, growing their businesses, and hiring more people. 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. As a former small business owner, the President knows the burden created by regulations and is working to streamline regulations governing small businesses. As a measure of his commitment, President Bush signed an executive order requiring all Federal regulatory agencies to minimize these burdens on the nation's small businesses.

Small businesses are our customers. They need to feel comfortable telling their government both the good and the bad. ONO provides a means for them to provide that input without fear of retaliation. When I started as National Ombudsman, I found that small busi-

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Our agenda for jobs and growth must help small business owners and employees with relief from needless Federal regulation and protect them from junk and frivolous lawsuits.

►PRESIDENT GEORGE W. BUSH,  
*State of the Union Address, January 20, 2004*

ness owners were reluctant to step forward and tell us how government was treating them. We are succeeding in changing this enforcement environment through dedication to transforming it from a “gotcha” climate to a “help you” one—one step at a time.

This report to Congress evaluates the relationship between Federal regulatory agencies and small businesses. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires ONO to evaluate and rate Federal agencies annually on their regulatory enforcement activities. To that end, this report summarizes small businesses’ experiences with various Federal agencies and evaluates and rates agencies’ responsiveness to their concerns. Information gathered at regional RegFair hearings is included, along with findings and recommendations about the regulatory enforcement environment and its impact on small business.

In FY 2003, Federal agencies made great strides in improving the Federal enforcement environment. Response time improved, and there was a dramatic increase in the compliance assistance offered to small business. I look forward to continued partnership with Federal agencies as we implement the President’s and Administrator Barreto’s vision to create a regulatory environment that is fair and transparent for the “engine that drives our economy”—America’s entrepreneurs!

A handwritten signature in black ink, appearing to read "M. Barrera", with a long horizontal line extending to the right.

Michael L. Barrera  
National Ombudsman

A graphic consisting of a blue triangle pointing right, with a grey triangle pointing left, overlapping it. The text "Executive Summary" is written in a large, black, sans-serif font across the middle of the overlapping area.

# Executive Summary

In FY 2003, the Office of the National Ombudsman (ONO) concentrated on strengthening its staff and on increasing its outreach efforts to small business. Additionally, ONO trained 36 new Regulatory Enforcement Fairness (RegFair) Board members who played important roles in helping pass state Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) laws and in conducting a variety of outreach and marketing initiatives to raise awareness of ONO. Also, ONO staff continued to communicate with more than 200 key Federal agency decision-makers about Small Business Administration (SBA) and ONO activities, establishing new partnerships, holding agencies more accountable, and changing the relationship between government and industry to one of mutual collaboration and benefit. This approach paid off in FY 2003, as the agency response rate increased and quality responses were provided; in fact, all agencies received an “A” for their Quality of Response. Nationally, agencies significantly increased the amount of compliance assistance training, guidance, and encouragement they gave small businesses, engendering a more small-business-friendly relationship.

## Rating Federal Agency Response

The full set of criteria on which agencies were rated in FY 2003 follows:

1. Timeliness in responding to small entity comments.
2. Quality of response to small entity comments.
3. Agency non-retaliation policy.
4. The agency establishes a baseline and provides measurable regulatory enforcement compliance assistance with increase expressed in percent over baseline. (Note: In FY 2003, ONO joined with the Office of Management and Budget to establish baselines and measure Federal regulatory enforcement

and compliance assistance activities as required by the Small Business Paperwork Relief Act of 2002.

5. The agency participates in RegFair hearings and meetings when issues related to its mission are presented in testimony.
6. The agency provides small businesses with written and verbal notice of their SBREFA rights and their right to comment on the enforcement/compliance process to the National Ombudsman's Office, when each citation or notice of regulatory violation is issued.

Using these criteria, ONO rated nearly 50 regulatory agencies and their divisions in FY 2003. On criterion 1, timeliness, response times varied widely; still, more than one-third of comments received responses within 60 days. ONO wants to see agencies do better and will continue to strongly urge them to provide a more timely response so small businesses can better plan and focus on moving their businesses forward.

ONO continued to press agencies for formal, written non-retaliation policies that all employees know about. In FY 2003, eight more agencies joined the growing list of those that have policies in place—doubling the annual goal of four.

Also this year, more Federal agencies provided genuine compliance assistance efforts, going well beyond adhering to the letter of the law and lending hands-on assistance to small businesses seeking to do the right thing. Methods included seminars, workshops, e-mail and phone communication, and extensive information provided on websites.

In FY 2003, about 25 Federal agencies and sub-agencies attended RegFair hearings and roundtables around the country, particularly when issues relevant to their enforcement activities were to be raised. Working with SBA District Offices, ONO sought to provide advance notice to agencies when issues pertinent to them were on the agenda. This approach continues to garner greater agency participation, and ONO will perform even more advanced planning and notification in years to come.

Underscoring the importance of agencies communicating with small businesses, ONO for the first time in FY 2003 rated them on how well they informed small businesses of their right to comment on regulatory enforcement decisions. In response, many agencies are now regularly integrating information about SBREFA and how to contact ONO as part of their dealings with small business. To further assist with compliance efforts, several agencies have begun

to repeal or streamline some of their regulations, per the Regulatory Flexibility Act and Small Business Paperwork Relief Act of 2002.

To highlight the positive steps many agencies are taking to improve their relationships with the businesses they regulate, this ONO annual report to Congress features agency special initiatives or best practices for working with small businesses. For example, the doubling of consumer safety officers at the U.S. Department of Agriculture in 2003 greatly magnifies the amount of compliance assistance it can provide, and the Department of Labor's new Office of Compliance Assistance will raise awareness of agency regulations and help small businesses comply with them. As another example, the Fix-It-Notice program at the National Oceanic and Atmospheric Administration gives first-time violators a chance to fix problems before they are penalized.

## **Hearing the Voice of Small Business**

ONO conducted 22 Regulatory Enforcement Fairness hearings, a marked increase over the four held just two years ago, visiting 21 states and 10 regions to hold 11 RegFair hearings and 11 roundtables. More than 1,100 people attended, including small business owners, public officials, Federal agency personnel, and media and trade representatives. Two of the hearings were bilingual, in English and Spanish. A total of 13 Targeted Entrepreneur Area Market (TEAM) meetings—generally held in cities where hearings and roundtables took place—apprised underserved markets (e.g., women, minority, and veteran small business owners) of SBA and ONO services, compared to none held two years ago and only 10 held last year.

ONO heard testimony from 149 small businesses and trade associations in FY 2003—up nearly 20 percent from last year. Small business owners submitted 412 comments this year to ONO, compared to 22 in 2001 and 319 last year. Comments from small businesses and trade associations represented the concerns of 3 million small business owners. Testimony and comments reflected several major concerns small businesses have, including the high cost and unavailability of health care; overly burdensome taxes, safety, and insurance requirements; excessive and outmoded regulations that cost too much; inconsistent or inappropriate enforcement actions; and onerous and time-consuming paperwork. ONO wants to help small businesses that feel overwhelmed by complicated and overly exacting regulations that undermine their success. To this end, ONO worked closely with the Internal Revenue Service in FY 2003 to lighten the load and to funnel concerns straight to the people who can resolve them. Heavy-handed enforcement, such as excessive audits, takes precious

time from small businesses and impairs their growth potential. Sadly, excessive enforcement and overly restrictive regulations not only hurt small businesses but can often drive them *out* of business. And, although the situation is getting better, fear of retaliation on the part of small businesses that complain is still a concern ONO is actively addressing with Federal agencies.

## **ONO Outreach: Increased Use of SBA Field Offices, RegFair Boards, and Technology**

RegFair education and training was given to 18 SBA District Offices, versus none two years ago and only 10 last year. SBA District Offices were instrumental in helping publicize RegFair hearings, roundtables, and TEAM meetings in their regions. RegFair Board members undertook the full breadth of outreach initiatives, including speeches and presentations for trade associations, publicizing ONO success stories, and meeting with local public officials to garner support for regulatory fairness and state SBREFA laws. Articles about ONO appeared in dozens of publications and on radio and television stations in FY 2003. Additionally, ONO's decision to reactivate RegFair Board alumni further multiplied advocacy and publicity resources. ONO's combined use of creative outreach strategies in FY 2003 enabled it to reach many small businesses with its message.

In the technology arena, ONO provided a comment form on its website this year that allows businesses to fill out and send their comments entirely online without having to download the form. Also, the first-ever interactive RegFair videoconference hearing simultaneously engaged four states and 12 sites, a technology advantage ONO plans to use more often to get more "bang" for its resource "buck." ONO also premiered a regionwide telephone conference and Web-based RegFair hearing to encourage simultaneous participation from rural and remote locations in six states—another application it will continue to enlarge.

## **Looking Ahead... Plans for the Future**

ONO has an optimistic outlook for small business economic growth, enhanced by anticipated continued lightening of regulatory and administrative burdens. For its part, ONO will continue to reach out to the small businesses it serves, seeking more comments, holding regular planning sessions, enlisting SBA partners and other agencies and groups in marketing ONO's mission. ONO will also continue to make more creative use of technology, including increased use of the Internet to speed the comment process.





# ONO Results in Brief

The following is a summary of notable Office of National Ombudsman (ONO) accomplishments during FY 2003:

- ▶ ONO conducted 22 (versus four in FY 2001 and 22 in FY 2002) hearings in 21 states and 10 regions—two were bilingual, in English and Spanish.
- ▶ ONO led the first interactive RegFair videoconference hearing, simultaneously reaching four states and 12 sites.
- ▶ ONO hosted the first regionwide telephone conference and Web-based RegFair hearing to encourage simultaneous participation from rural and remote locations in six states.
- ▶ A total of 149 (compared with 124 in FY 2002) small businesses and trade associations gave public testimony regarding fair enforcement of Federal regulations.
- ▶ Eighteen (versus 0 in FY 2001 and 10 in FY 2002) SBA District Offices received Regulatory Enforcement Fairness orientation and training.
- ▶ Thirteen (versus 0 in FY 2001 and 10 in FY 2002) Targeted Entrepreneur Area Market (TEAM) meetings were held to introduce ONO services to women, minority, and veteran small business owners.
- ▶ Small business owners submitted 412 (versus 22 in FY 2001 and 319 in FY 2002) comments to ONO, representing the concerns of 3 million small business owners.
- ▶ The ONO website was visited approximately 2.1 million times this fiscal year, nearly double last year.
- ▶ ONO hosted two interagency meetings, increasing collaboration among agencies to make the Federal regulatory enforcement environment more small business friendly.

- ▶ ONO joined with the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs to establish baselines and measure Federal regulatory enforcement and compliance assistance activities as mandated by the Small Business Paperwork Relief Act of 2002.
- ▶ ONO was introduced to more than 7.8 million small business owners through radio, television, and print interviews.<sup>1</sup>
- ▶ RegFair Board members participated in 95 outreach activities—including media interviews, keynote speeches, and presentations to legislators and others. Board members contacted trade associations and chambers of commerce representing more than 1.3 million small business owners about their right to comment on unfair or excessive Federal regulatory enforcement activities.
- ▶ ONO hosted seven small business focus sessions around the country to gain small business owners' input, hear their needs, and take action through Small Business Administration (SBA) channels.
- ▶ More than 2,000 small business owners signed up for ONO eBlast messages to receive announcements about SBA and ONO events and activities.
- ▶ ONO continued to communicate regularly with more than 200 key decision-makers at Federal agencies, updating them on SBA and ONO activities.
- ▶ ONO regularly provided updates to more than 75 small business associations.
- ▶ ONO trained 36 Regional RegFair Board members in FY 2003 and also established a Regional RegFair Board alumni list.
- ▶ Federal agencies responding to small business comments in a timely manner increased from 58 to 79 percent, and, as a result of ONO's involvement, several agencies made regulatory enforcement changes that help small business owners.

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<sup>1</sup>This number is extrapolated from data contained in the appendix, Selected Media and Marketing Materials.



# Rating Federal Agency Response to Small Business

Agencies are increasingly taking small business comments more seriously, particularly as the National Ombudsman continues to heighten follow-up efforts to hold them accountable. Agencies were more responsive to small businesses in FY 2003 and provided more compliance assistance training, guidance, and encouragement to small businesses. Agencies also increased their efforts to educate Federal employees, often incorporating Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requirements into personnel training curricula, thereby encouraging a “friendlier” and more cooperative atmosphere with the businesses they regulate.

## The Comment Process

The process for receiving small business comments has three goals: (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 businesses. Small businesses can file comments through RegFair Board members, the ONO website ([www.sba.gov/ombudsman](http://www.sba.gov/ombudsman)), e-mail ([ombudsman@sba.gov](mailto:ombudsman@sba.gov)), regular mail, fax, and toll-free telephone (1-888-REG-FAIR or 1-888-734-3247). Comments are also collected at hearings and roundtables. To reduce filing time, the ONO comment form (see figure 1) can now be completed online, after which users simply hit the send key without having to download the form—part of ONO’s effort to simplify the comment process. Small businesses that fear retaliation may register their complaints confidentially.

FIGURE 1  
FEDERAL AGENCY COMMENT FORM

**Federal Agency Comment Form**  
Small Business Administration – Office of the National Ombudsman  
409 Third Street SW, Washington, DC 20416  
P: (202) 205-2417 – F: (202) 481-5719

OMB Control #3245-0113  
Exp. Date 3/31/2007

Case #: \_\_\_\_\_

**Instructions:**

1. Complete, sign and date this form. (Signature not required if completed at [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman)).
2. Provide a brief written statement regarding the specific enforcement or compliance action taken against your organization by the federal agency.
3. Submit copies of substantiating documentation, such as correspondence, citation, or notice.
4. If your comments concern the IRS, you must also include a completed IRS Tax Information Authorization Form 8821, available at <http://www.irs.gov/iforms>.
5. Fax, e-mail or send this form and requested information to:  
 Fax: (202) 481-5719  
 E-mail: [Ombudsman@sba.gov](mailto:Ombudsman@sba.gov)  
 Address: SBA Office of the National Ombudsman, 409 Third St., SW, Washington, DC 20416

**Please Print:**

Organization/Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Please indicate your organization type:  
 Small Business     Not-for-Profit, Representing \_\_\_\_\_ Members  
 Small Government (population of less than 50,000)

**List the federal agency with which you are having a problem:**

Federal Agency Name: \_\_\_\_\_

Agency Contact person: \_\_\_\_\_

Agency Office/Division: \_\_\_\_\_

Did the federal agency listed above inform you of your right to contact the SBA Office of the National Ombudsman?  
 Yes     No    If not, how did you learn about this office?  
 \_\_\_\_\_

**Confidentiality / Disclosure**

The law allows you to keep your identity and other information private, and limit its access only to the Office of the Ombudsman. However, by requesting confidentiality the federal agency may not have sufficient information to investigate your specific problem, possibly delaying or preventing any potential resolution of your situation.

I request that my information be kept confidential.  Yes     No    (If yes, results may be limited.)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Your signature authorizes the SBA Ombudsman to proceed on your behalf.

**Pursue all legal options you believe are in your company's best interest.  
This process is not a substitute for legal action.**

SBA FORM 1993 (2-04) Previous Editions Obsolete  
 Please Note: The estimated burden for completing this form is 45 minutes. You will not be required to respond to this information collection if a valid OMB approval number is not displayed. If you have any questions or comments concerning this estimate or other aspects of this information collection, please contact the U. S. Small Business Administration, Chief, Administrative Information Branch, Washington, D.C. 20416 and/or: Office of Management and Budget, Clearance Officer, Paperwork Reduction Project (3245-0113), Washington, D.C. 20503. PLEASE DO NOT SEND FORMS TO OMB.

All comments received are reviewed to ensure that they are within ONO's jurisdiction (see sidebar next page). 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 comment (e.g., a state regulatory concern) does not fall within ONO's jurisdiction.

In FY 2003, ONO addressed 412 comments, many of these filed by trade associations representing the concerns of 3 million small business owners. Of the

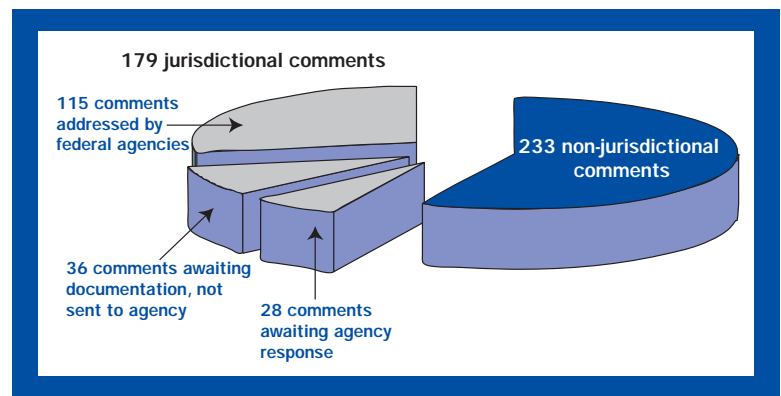
total submitted, 179 were “jurisdictional,” or were comments directly related to Federal regulatory enforcement fairness issues. The remaining comments were directed to other agencies and departments within SBA, thereby fulfilling another major ONO goal: “If we are unable to help you, we will try to find you someone who can.” Figure 2 shows the breakdown of comments filed.

Once a comment is reviewed and jurisdiction determined, the small business is asked for substantiating documentation. 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 seven questions for the agency to answer (see sidebar, below). Generally, ONO faxes the paperwork to agencies and works with a designated contact therein, 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.

If a small entity can answer “yes” to these three questions, then ONO 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?

FIGURE 2  
BREAKDOWN OF COMMENTS FILED



### LIST OF QUESTIONS ASKED OF FEDERAL AGENCIES RECEIVING COMMENTS

- ▶ 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.

## A KINDER, GENTLER IRS

The Internal Revenue Service (IRS), once feared by small businesses envisioning fines and penalties from the “tax man,” has today taken a more proactive and responsive approach to the interests and concerns of small business. The agency’s monthly Small Business Forums provide national small business and industry associations with an avenue for sharing feedback and concerns on behalf of their small business members. Additionally, the IRS Taxpayer Advocate Service and Taxpayer Education and Communication Offices testify to the agency’s desire to help small businesses resolve problems and understand what is required of them.

Moreover, on several occasions, the IRS waived or lowered penalties it had levied against small businesses. For example, in FY 2003, the IRS refunded \$1,200 to Mid-American Hearing Center in Mt. Vernon, Missouri, a fine levied after the small business changed from accrual to cash accounting. Additionally, the IRS reviewed and abated penalties against Suburban Water Testing Labs in Temple, Pennsylvania, and also corrected a systemic problem involving incorrect notices being sent to a particular small-business taxpayer.

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 along a copy to the small business. In some cases, fines have been lowered or eliminated and decisions changed in favor of the small business (see sidebar). 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 in FY 2003.

## 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-retalia-

tion policies and attendance at hearings and roundtables. Availability of regulatory enforcement compliance assistance is also an important objective and therefore an evaluative criterion, as is the provision of notice when citations are issued, including informing agencies of their right to comment to the National Ombudsman. Table 1 in this chapter presents an evaluation and rating of agency responsiveness to the FY 2003 rating criteria.

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A fair and common-sense approach to regulatory enforcement helps save small businesses their valuable resources, such as time, money, and jobs, thereby improving the economy overall. ONO plays a critical part in this process by evaluating how Federal agencies treat small businesses during regulatory enforcement or compliance actions.

► NATIONAL OMBUDSMAN MICHAEL BARRERA,  
*Statement to House Subcommittee on Regulatory  
Reform and Oversight, May 15, 2003*

## Federal Agency Rating Criteria for 2003

ONO used the following six criteria to rate Federal agency responsiveness to small business concerns in 2003.

1. Timeliness in responding to small entity comments.<sup>1</sup>
  - ▶ Under 30 days.
  - ▶ Over 30 calendar days.
  - ▶ Over 60 calendar days.
  - ▶ Over 90 calendar days.
  - ▶ Over 120 calendar 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 and small entities are aware of the consequences of not adhering to the agency non-retaliation policy.

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<sup>1</sup>Response time is calculated from the day the comment is forwarded to the agency until it is received back by ONO. Although ONO may accept requests for additional time to respond, the clock for rating purposes does not stop.

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.<sup>2</sup>
  - ▶ 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.
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](http://www.sba.gov/ombudsman), to small entities.

The following rating criterion will be added in FY 2004:

7. The agency complies with reporting requirements of the Paperwork Relief Act of 2002, P.C. 107–198 (H.R. 327), paragraphs 1, 2, 3, and 4, and presents a copy of these reports to ONO on or before the due date.

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<sup>2</sup>If no issues related to the agency's mission are presented during the fiscal year, this criterion will be rated as not applicable.



- ▶ The number of enforcement actions in which a civil penalty is assessed.
- ▶ The number of enforcement actions in which a civil penalty is assessed against a small entity.
- ▶ The number of enforcement actions in which the civil penalty is reduced or waived.
- ▶ The total monetary amount of reductions or waivers against small entities.

## Examining Federal Agency Response

ONO rated nearly 50 Federal regulatory agencies and their divisions in resolving complaints about excessive enforcement of Federal regulations, helping ensure fair application of Federal enforcement and compliance actions so as not to overburden small business owners. As such, ONO's evaluation of Federal agency response is really more an evaluation of the quality of the relationship between Federal agencies and small business, with the rating somewhat like a "customer satisfaction" rating for the different agencies.

In FY 2003, ONO drew on agencies' experience and expertise and, with them, tried to devise the best approach to channeling and resolving issues and problems. Following its own guidance favoring flexibility, ONO has chosen to work individually with agencies, the National Ombudsman having met personally with a host of high-level agency officials in FY 2003 to enlist Federal executive leadership in addressing small business comments. The relationship between Federal agencies and small businesses is improving, though more work still needs to be done to achieve mutual objectives aimed at small business success.

Agencies responded more quickly and comprehensively in FY 2003 to the comments and inquiries of small business. This should improve as more agencies begin to adopt a more small-business-friendly approach, both in Washington, D.C., and in the field.

### Agency Comments Regarding Ratings

After ONO completed an initial draft report, it was sent to the agencies and RegFair members for comment. Several agencies responded, and adjustments were made. The following agency comments did not, in ONO's determination, justify a rating change.

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I think that government agencies are really trying to march to the President's beat and become more business friendly.

▶ REGFAIR BOARD MEMBER,  
FY 2003 RegFair Board Meeting

**TABLE 1**  
**RATING OF AGENCIES ACCORDING TO FY 2003 CRITERIA**

| Agency                                  | Time-<br>liness | Quality of<br>Response | Non-<br>Retali-<br>ation | Compliance<br>Assistance | RegFair<br>Partici-<br>pation | Informs<br>Small<br>Business | Annual<br>Rating | No. of<br>Comments<br>Received |
|---|-----------------|------------------------|--------------------------|--------------------------|-------------------------------|------------------------------|------------------|--------------------------------|
| Agriculture                             | B-              | A                      | C                        | B                        | C                             | C+                           | B-               |                                |
| Agricultural Marketing Service          | B               | A                      | C                        | C                        | n/a                           | C                            | B-               | 4                              |
| Animal Plant Health Inspection Svc      | n/a             | n/a                    | C                        | A                        | n/a                           | C                            | B-               |                                |
| Food Safety Inspection Service          | D+              | A                      | C                        | A                        | A                             | A                            | B+               | 6                              |
| Rural Development                       | A               | A                      | F                        | C                        | n/a                           | C                            | C+               | 1                              |
| Commerce                                | C               | A                      | A                        | A                        | n/a                           | A                            | A-               | 4                              |
| Commodity Futures Trading Commission    | B+              | A                      | A                        | A                        | n/a                           | A                            | A-               | 1                              |
| Consumer Product Safety Commission      | n/a             | n/a                    | A                        | B                        | n/a                           | C                            | B                |                                |
| Defense                                 | B+              | A                      | F                        | F                        | n/a                           | F                            | C-               | 3                              |
| Army                                    | B+              | A                      | F                        | F                        | n/a                           | F                            | C-               | 3                              |
| Air Force                               | n/a             | n/a                    | F                        | F                        | n/a                           | F                            | F                |                                |
| Energy                                  | C               | A                      | F                        | C                        | n/a                           | A                            | C+               | 1                              |
| Environmental Protection Agency         | C               | A                      | B                        | A                        | C                             | A                            | B+               | 17                             |
| Equal Employment Opportunity Commission | n/a             | n/a                    | A                        | A                        | A                             | A                            | A                |                                |
| Federal Communications Commission       | n/a             | A                      | B                        | B                        | A                             | A                            | A-               | 3                              |
| Federal Deposit Insurance Corporation   | n/a             | n/a                    | A                        | A                        | n/a                           | A                            | B                | 1                              |
| Federal Reserve System                  | A-              | A                      | B                        | B+                       | n/a                           | A                            | A-               | 1                              |
| Federal Trade Commission                | A               | A                      | A                        | A                        | n/a                           | A                            | A                | 2                              |
| General Services Administration         | D-              | A                      | F                        | A                        | n/a                           | A                            | B-               | 1                              |
| Health and Human Services               | D               | A                      | D                        | B                        | F                             | A                            | C+               |                                |
| Ctrs for Medicare & Medicaid Services   | F               | A                      | F                        | C                        | A                             | A                            | C+               | 4                              |
| Food and Drug Administration            | C-              | A                      | A                        | A                        | A                             | A                            | A-               | 4                              |
| Homeland Security                       | B-              | A                      | C-                       | C+                       | A                             | A                            | B                |                                |
| Coast Guard                             | C               | A                      | C                        | C                        | n/a                           | A                            | B-               | 4                              |
| Customs Service                         | A-              | A                      | A                        | B                        | A                             | A                            | A-               | 4                              |

(continued)

1. The Centers for Medicare and Medicaid Services (CMS) questioned its “C” rating for compliance assistance, noting that all providers have easy access to their servicing contractors, and that the agency’s provider education program is “detailed and sophisticated.” In addition, CMS has an Open Door Forum program that continues to draw much interest and participation, as well as a number of listserv services to keep providers informed. CMS therefore requests that its rating be raised or further justified.
2. The Coast Guard commented that it lacks a formal non-retaliation policy because it anticipated participating in the Department of Transportation’s policy in FY 2003, an expectation unmet due to the agency’s transfer to the Department of Homeland Security. The Coast Guard expects to prepare a

**TABLE 1**  
**RATING OF AGENCIES ACCORDING TO FY 2003 CRITERIA (CONTINUED)**

| Agency                                      | Time-<br>liness | Quality of<br>Response | Non-<br>Retali-<br>ation | Compliance<br>Assistance | RegFair<br>Partici-<br>pation | Informs<br>Small<br>Business | Annual<br>Rating | No. of<br>Comments<br>Received |
|---|-----------------|------------------------|--------------------------|--------------------------|-------------------------------|------------------------------|------------------|--------------------------------|
| Housing and Urban Development               | B               | A                      | D                        | A                        | n/a                           | A                            | B+               | 3                              |
| Interior                                    | n/a             | n/a                    | A                        | B                        | B                             | F                            | B-               |                                |
| Internal Revenue Service                    | C               | A                      | A                        | A                        | A                             | A                            | A-               | 23                             |
| Justice                                     | n/a             | n/a                    | A                        | B                        | n/a                           | n/a                          | A-               |                                |
| Labor                                       | C               | A                      | A                        | A                        | A                             | B                            | B+               |                                |
| Employment Training Administration          | B-              | A                      | n/a                      | n/a                      | n/a                           | C                            | B                | 1                              |
| Occupational Safety & Health Admin.         | D+              | A                      | A                        | A                        | A                             | C+                           | B+               | 6                              |
| Mine Safety & Health Administration         | B               | A                      | A                        | A                        | A-                            | B                            | A-               | 4                              |
| Wage and Hour Division                      | C               | A                      | A                        | A                        | A                             | B                            | A-               | 6                              |
| National Aeronautics & Space Administration | n/a             | n/a                    | A                        | C                        | n/a                           | n/a                          | B                |                                |
| National Credit Union Administration        | n/a             | n/a                    | A                        | A                        | n/a                           | C                            | B+               |                                |
| National Labor Relations Board              | A               | A                      | n/a                      | A                        | n/a                           | A                            | A                | 2                              |
| Nuclear Regulatory Commission               | n/a             | n/a                    | B                        | B                        | n/a                           | C                            | B-               |                                |
| National Science Foundation                 | A-              | A                      | F                        | D                        | n/a                           | C                            | C+               | 1                              |
| Pension Benefit Guaranty Corporation        | n/a             | n/a                    | B+                       | A                        | n/a                           | C                            | B                |                                |
| Securities and Exchange Commission          | n/a             | n/a                    | A                        | A                        | n/a                           | A                            | A                |                                |
| Small Business Administration               | B               | A                      | A                        | A                        | A                             | A                            | A-               | 5                              |
| State                                       | D-              | A                      | C                        | C                        | n/a                           | A                            | B-               | 1                              |
| Transportation                              | B-              | A                      | A                        | A                        | n/a                           | A                            | A-               |                                |
| Bureau of Transportation Statistics         | B+              | A                      | A                        | B                        | n/a                           | C                            | B                | 1                              |
| Federal Aviation Administration             | C               | A                      | A                        | B                        | n/a                           | C                            | B-               | 3                              |
| Federal Motor Carrier Safety Admin.         | B               | A                      | A                        | B                        | n/a                           | C                            | B                | 2                              |
| National Highway Traffic Safety Admin.      | A-              | A                      | A                        | B                        | n/a                           | C                            | B+               | 1                              |
| Research and Special Programs               | B+              | A                      | A                        | B                        | n/a                           | C                            | B                | 3                              |
| Veterans Affairs                            | C               | A                      | C                        | D                        | n/a                           | C                            | C+               | 2                              |

n/a = not applicable

specific policy during FY 2004, and adds that the low rating overlooks the unusual factors that have affected past communication with ONO, and sends a misleading signal to Congress and the public “at the very moment that our two offices are building a new relationship, making rapid progress on non-retaliation, and setting the stage for the future.”

3. The IRS objects to the strict timeliness rating criteria, because it would like its National Taxpayer Advocate (NTA) to be able to review each case and determine how to resolve problems on an individual basis. The IRS comments: “The NTA is committed to a total review of taxpayer concerns rather than trying to give an immediate response that may not include detailed information.” The IRS further contends that it regularly sends interim reports on

the status of each case to the SBA, and believes this to be responsive and timely both to the SBA and the taxpayer.

### Timeliness of Response—Criterion 1

Small businesses are looking for a reasonable response in as short a time as possible; they are unable to afford to have their concerns languish in a bureaucratic holding area. Small businesses need an answer, which ONO strives to get them so they can move forward. Timeliness of response is therefore a key evaluative factor, and improving the turnaround time to a small business com-

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Small businesses love the answer “yes” to their questions. They don’t like the answer “no.” But what I’ve found is that they really don’t like the constant “I’ll get back to you” responses. What we’re trying to do at the ONO is to at least get them an answer.

► NATIONAL OMBUDSMAN MICHAEL BARRERA,  
*Response to testimony at the Nashville RegFair  
Roundtable, May 1, 2003*

ment or concern remains a top priority. ONO urges Federal agencies to 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.

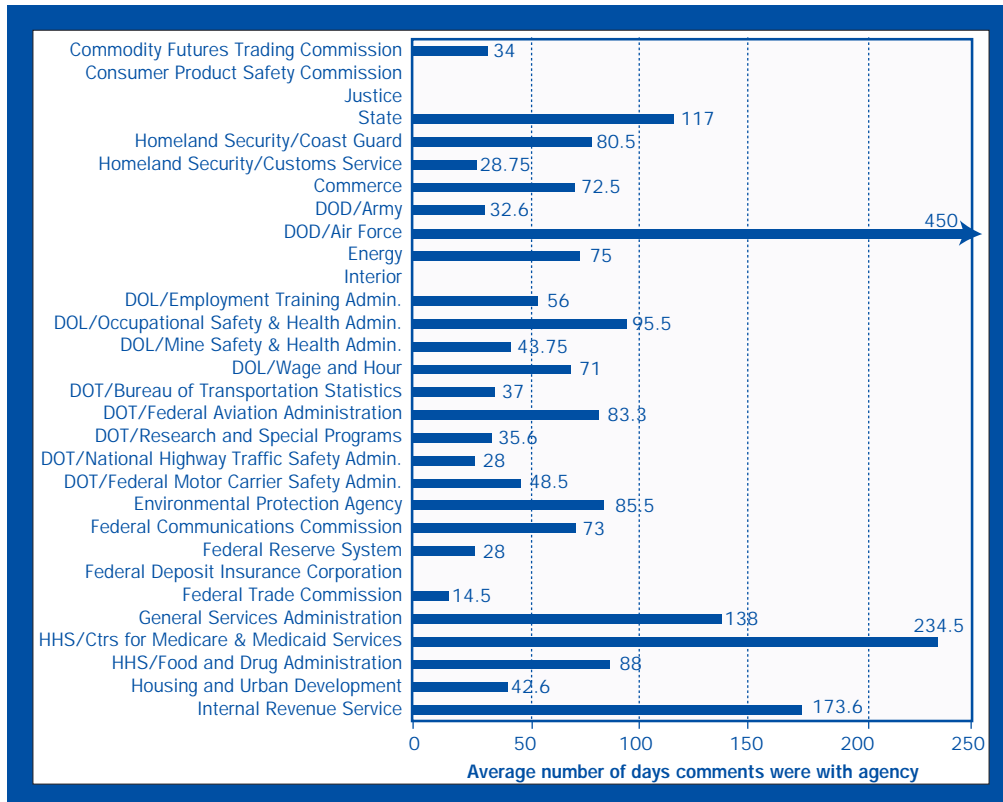
In FY 2003, response times varied widely (see figure 3), with more than one-third of comments receiving responses within 60 days. Still, some agencies took longer than expected to respond to small business comments, and ONO will continue to prod agencies to acknowledge business concerns and to take action in a timely manner, regardless of the answer. Some Federal agencies are focusing on timeliness. For example—

- A Consumer Product Safety Commission (CPSC) program provides firms with a single point of contact, which helps to expedite a clearly understandable response from technical staff. According to 2002 data, CPSC responded and offered guidance to 286 small businesses within three business days 99 percent of the time.
- It is the policy of the U.S. Department of Agriculture’s (USDA’s) Grain Inspection, Packers and Stockyards Administration to respond to public comments received on the hotline within seven days of receipt. Most informal comments (i.e., those received verbally or via e-mail) get a response within 24 hours. In some cases, the initial response provides an estimate for a more complete response to follow.

### Quality of Response—Criterion 2

Most Federal agencies worked in FY 2003 to make small business compliance a friendlier process that yields a high-quality response. For example, the U.S. Department of Justice’s (DOJ’s) Bureau of Alcohol, Tobacco, Firearms, and Explo-

**FIGURE 3**  
**RESPONSE OF FEDERAL AGENCIES TO COMMENTS—AVERAGE NUMBER OF DAYS**



sives (ATF) and Drug Enforcement Administration (DEA) appointed SBREFA representatives to address any small business comments forwarded by ONO. Each comment receives an in-depth investigation and a detailed response. And the Environmental Protection Agency (EPA) rewrote one of its form letters in plain English, in response to a small business commenter, thereby helping hundreds of other small business owners in the same industry.

By promoting a more customer service-oriented environment, as required by the President’s Small Business Agenda, ONO encourages agencies to resist a “one-size-fits-all” approach with small businesses and to exercise flexibility with rules and regulations because of the unequal effect they might have. It is noteworthy that all agencies rated in the Quality of Response category received an “A” in FY 2003.

### Agency Non-Retaliation Policies—Criterion 3

Fear of retaliation continues to be a major concern expressed by small businesses, and ONO believes adoption of non-retaliation policies designed to pre-

vent acts that punish a small business for complaining about an agency action should be a Federal agency priority. That is why ONO continues to press agencies for formal *written* policies that come from the top down and are widely communicated to employees. Agencies are listening. In FY 2003, eight agencies

### NON-RETALIATION—MAKING IT OBVIOUS

Customs and Border Protection gives the following statement to all employees in the form of an Information Notice and video, and also puts the statement on the agency's internal Intranet as well as on its Internet site under the SBREFA section:

**Your Rights to Enforcement Fairness.** *Our objective is to ensure a fair regulatory enforcement environment. If you feel you have been treated unfairly or unprofessionally, you may contact the Office of Trade Relations at 202-927-1440. You also have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR, or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) to file a confidential comment regarding the fairness of this enforcement action. This agency strictly forbids retaliatory acts by its employees. As such, you should feel confident you will not be penalized for expressing your concerns.*

joined the growing list of those with written policies, a great achievement (double the annual goal of four) and a welcome trend<sup>3</sup> (see table 2, next page).

Other agencies are stepping up efforts to enact or reinforce their non-retaliation policies through internal bulletins, e-mail, and even pay statements—whatever it takes to get the word out to employees. Customs provides a good example in this regard in that it describes its non-tolerance of retaliation in various formats for both internal and external audiences (see sidebar). Examples of other written non-retaliation policies used by Federal agencies are described below.

- ▶ The Equal Employment Opportunity Commission (EEOC) developed a letter to accompany each charge filed against a small business, advising small employers that any inquiry or request they make for assistance will not adversely affect investigation of the charge filed.
- ▶ The National Credit Union Administration (NCUA) has created an Interpretive Ruling and Policy Statement that requires it to ensure safeguards for protecting appellants from retaliation by agency examiners. The statement reads:

*Alleged acts of retaliation should be reported to NCUA's Inspector General, who is authorized by Congress, under the Inspector General Act, to receive and investigate complaints and other information regarding abuse in agency programs and operations. Any retaliation by NCUA staff against a credit union making any type of appeal will subject the employee to appropriate disciplinary or remedial action by the appropriate supervisor. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, suspension or separation from employment, change in assigned duties, or disqualification*

<sup>3</sup>ONO Execution Scorecard for FY 2003.

**TABLE 2**  
**AGENCIES ADOPTING WRITTEN NON-RETALIATION POLICIES**

| Agencies Adopting Written Non-Retaliation Policies in... |   |                               |
|--|---|-------------------------------|
| FY 02  | FY 03   | FY 04                         |
| Agriculture  | APHIS (sub-agency of Agriculture)             | Coast Guard                   |
| Consumer Product Safety Commission                       | Commodity Futures Trading Commission          | Commerce                      |
| Customs  |   |                               |
|  | Federal Trade Commission                      | Housing and Urban Development |
| Equal Employment Opportunity Commission                  | National Aeronautics and Space Administration | National Science Foundation   |
| Federal Communications Commission                        | Occupational Safety and Health Administration |                               |
| Federal Deposit Insurance Corporation                    | Small Business Administration                 |                               |
| Food and Drug Administration                             | State Department                              |                               |
| Interior   | Veterans Affairs                              |                               |
| Internal Revenue Service                                 |   |                               |
| Labor  |   |                               |
| National Credit Union Administration                     |   |                               |
| Pension Benefit Guaranty                                 |   |                               |
| Securities and Exchange Commission                       |   |                               |
| Transportation   |   |                               |

from a particular assignment, including prohibition from participating in any examination of the credit union that was the subject of the retaliation.

This statement is referenced on the cover page of every examination report given to a credit union as part of instructions for what to do if the credit union disagrees with the report. These documents are readily accessible to all credit unions and to all NCUA employees on the NCUA website at [www.ncua.gov/ref/IRPS/IRPS.html](http://www.ncua.gov/ref/IRPS/IRPS.html), and are a regular part of the extensive training program for credit union examiners.

- ▶ The Pension Benefit Guaranty Corporation (PBGC) has a Problem Resolution Officer available to receive and respond to retaliation allegations by small business entities, as well as any other concerns about PBGC matters raised by pension practitioners and other business representatives.
- ▶ Agency employees and small banks are both aware of the consequences of not adhering to the Federal Deposit Insurance Corporation's (FDIC's) non-retaliation policy. Employees are counseled that retaliation in any form will

not be tolerated and, if documented, will be appropriately punished. After each examination, banks receive an electronic survey through which they can confidentially submit comments about recent examinations. They also receive the FDIC Ombudsman's toll-free number.

- ▶ The U.S. Department of the Interior's (DOI's) Minerals Management Service (MMS) includes the following paragraph in the preambles of all regulations, in civil penalty letters, and on Incident Noncompliance forms used by off-shore inspectors:

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 regional fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the action of MMS, call 1-888-REG-FAIR (1-888-734-3247). You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

- ▶ DOI's Office of Surface Mining (OSM) has adopted a written non-retaliation policy and informed all employees of it by e-mail, as well as the consequences of non-compliance. OSM has also revised its training course on enforcement procedures to include instruction on SBREFA requirements and has posted the non-retaliation policy on the OSM website. OSM has likewise informed small businesses of the non-retaliation policy and the consequences to agency employees of not adhering to it.

#### Agency Regulatory Enforcement Compliance Assistance—Criterion 4

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. Also, ONO encourages flexible policies that allow small businesses to make a good faith effort to comply with rules and regulations, and re-

wards compliance assistance efforts that enlarge understanding and are not just a mechanical exercise to fulfill a requirement. For FY 2003, agencies were also asked to provide a baseline and indicate an increase in compliance assistance over baseline.

In FY 2003, more Federal agencies increased practical compliance assistance efforts, making their resources more available and lending hands-on assistance to

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Federal agencies cannot rely merely on posting a new regulation in the *Federal Register* and developing a brochure in order to educate small businesses about regulations. Federal agencies must provide assistance that is accessible, easy to read, and easy to understand.

▶ NATIONAL OMBUDSMAN MICHAEL BARRERA,  
*Statement to House Subcommittee on Regulatory  
Reform and Oversight, May 15, 2003*



small businesses. For example, the Department of Labor (DOL) and the IRS consistently attended all ONO hearings and roundtables, not only to hear small business concerns but to educate small businesses about available compliance assistance. The Occupational Safety and Health Administration's (OSHA's) Consultation Program used state occupational safety and health professionals to offer free services to small business employers requesting help for their workplaces (see sidebar). ONO encourages more of these efforts, particularly those using less formal means to provide small entities with compliance guidance. In this vein, EPA held a small business summit with state administrators, small businesses, and officials, at which then-EPA Administrator Christine Todd Whitman said, "When we reach enforcement time, we've failed in our job."

Several agencies provided business education and compliance assistance in FY 2003 through 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. CPSC's website, for example, contains a page just for small business information ([www.cpsc.gov/businfo/smbus.html](http://www.cpsc.gov/businfo/smbus.html)), providing users with "one-stop shopping" for plain language technical assistance and linking them to the CPSC Ombudsman and to the agency's non-retaliation policy. Specific examples of other helpful measures being taken by agencies to provide compliance assistance to small businesses follow:

- ▶ EPA's Compliance Assistance Centers, part of its Smart Enforcement Program, offer an innovative means of providing in-depth information for specific sectors—mainly small and mid-sized businesses—to help them understand Federal and state environmental requirements and to save them money through pollution prevention techniques. In FY 2003, 869,000 entities used the centers—more than double from just three years before—a trend expected to continue.

### OSHA'S ON-SITE CONSULTATION PROGRAM

Nine years ago, Laser Technologies, Inc., an Illinois company specializing in lasers used for precision metal cutting, was losing 60–70 workdays a year to workplace injuries. The company called the state OSHA On-Site Consultation Program for help. A consultant met with managers and conducted a full audit of the facility, identifying problems and suggesting solutions. Nine years later—having implemented many of the solutions—Laser Tech has grown fourfold, decreased lost workdays from 70 a year to 0, and dramatically reduced staff turnover. The company's safety program manager called the OSHA Consultation Program "a wonderful program with a lot to offer any small business."

Similarly, the Colorado On-Site Consultation Program helped a small company specializing in custom windows and doors reduce an extremely high injury and illness rate—from 51.1 per 100 employees to 1.69 per 100 employees—in just three years. OSHA consultants made over 27,000 visits to small businesses in FY 2003.

- ▶ The Federal Trade Commission (FTC) established a special telephone hotline and e-mail address to answer the thousands of questions businesses had concerning the National Do Not Call Registry. Most inquires received a response within 48–72 hours. FTC also redesigned many of its “microsites” dedicated to specific issues that particularly affect small businesses, such as Internet sales, unsolicited commercial e-mail, and information security. To help importers avoid penalties for failing to comply with import laws and regulations and to heighten their level of knowledge, Customs and Border Patrol developed a Reasonable Care Checklist that provides importers and their agents, including small businesses, with helpful guidance in meeting legal requirements.
- ▶ EEOC continued to increase the number of no-cost and fee-based outreach, education, and technical assistance activities targeted to the small business community, conducting a total of 450 events to reach 15,100 small business representatives and their employees. Another 850 small business representatives attended EEOC’s Technical Assistance and Training Seminars, which included presentations to employers by DOJ’s Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division to help guard against unlawful discrimination violations by businesses.
- ▶ Whenever a new regulation goes into effect or CPSC receives feedback indicating confusion or lack of awareness about specific regulations, staff routinely send written guidance to all the affected firms, often conducting seminars to explain requirements. CPSC also developed brief guides—available in plain language summaries—of the 25 most compliance assistance-heavy CPSC regulations.
- ▶ NCUA’s compliance assistance baseline is 100 percent coverage of all credit unions, large and small. Credit union examiners personally visit all Federal and Federally insured credit unions to conduct credit union exams at least every 18 months. Training and briefings also occur regularly at conferences and meetings sponsored by NCUA and by credit union associations and leagues. Further, NCUA established the Office of Credit Union Development at its headquarters to develop programs to assist small credit unions and to promote credit union development in underserved lower income communities.
- ▶ The Agricultural Marketing Service (AMS)—a sub-agency of USDA—provides small businesses with compliance assistance and other information through its various program websites, including information on regulations and customer service standards, contacts for regulatory assistance, and enforce-

ment compliance assistance by Internet, personal e-mail, or telephone. Rulemaking actions, as well as hearing transcripts and *Federal Register* links are also provided. The website of AMS's Science and Technology Programs Pesticide Records Branch (PRB) provides clients with an array of options (see sidebar).

- ▶ Fourteen universities across the country conducted 52 hazard analysis and critical control point (HACCP) and food training classes for USDA's Food Safety and Inspection Service (FSIS), 13 more than last year. FSIS offset the costs of these classes for small and very small plant owner/operators, basing course materials on the needs of these particular customers. Additionally, many of the technical guidance materials and HACCP documents were translated into Spanish to increase the dissemination of information to Spanish-speaking small and very small plant operators.
- ▶ DOJ provides a toll-free Americans with Disabilities Act (ADA) Information Line that operates 24 hours a day to aid small business owners and others in understanding ADA requirements. During business hours, callers can consult with staff for help in applying ADA requirements to their specific situations. DOJ employees research issues with staff architects, attorneys, or other specialists, and refer callers to pertinent agencies or organizations. In FY 2003, this Information Line received 120,000 calls. DOJ's ADA homepage also houses a large store of information and lets users locate copies of DOJ letters responding to specific ADA-related questions. In FY 2003, this website received more than 1 million visitors.
- ▶ DOI's Minerals Management Service has on its website extensive compliance guidance about regulations, Notices to Lessees, and Dear Payor letters. The website also includes detailed handbooks on reporting and paying royalties, along with guidance on what offshore inspectors look for in their inspections. MMS also offers reporter training courses at locations around the country to accommodate companies leasing on Federal or Indian lands. MMS assigns employees to work with each company and holds workshops to explain its more complex regulations.

### WEBSITE MORE CUSTOMER FRIENDLY TO SMALL BUSINESSES

USDA's Agricultural Marketing Service, Science and Technology Programs Pesticide Records Branch, has a useful website that provides compliance assistance information about Federal pesticide recordkeeping regulations, plus a variety of contact options including an e-mail address that goes directly to PRB for a response. Information is posted on the website in English, Spanish, Filipino, and Laotian, and includes actual printable, easy-to-follow examples of recordkeeping forms. PRB has also launched a new interactive CD providing complete information on the regulation and how to keep restricted-use pesticide records per requirements.

- ▶ DOI's Office of Surface Mining routinely offers compliance assistance to mine operators, as well as pre-application visits to potential coal-mining sites to assist applicant operators in complying with regulatory requirements. OSM also allows an applicant to request an on-site compliance conference to determine if a proposed practice or condition will comply with regulations. OSM compliance staff contact all new companies to offer information on recordkeeping and reporting. When OSM finds noncompliance, it offers the operator information on how to avoid similar problems in the future.
- ▶ For its compliance assistance baseline, National Aeronautics and Space Administration (NASA) uses the increase in dollars awarded to small businesses over time. Over the last 10 years, NASA had a 50 percent increase in small business involvement, a 200 percent increase in minority companies, and a 300 percent increase in women-owned businesses. Over the past 10 years, NASA increased dollar awards to minorities and women from 6 to 19 percent of total contract value. During the same period, small business awards have increased from 22 to 30 percent.
- ▶ DOL's FirstStep Employment Law Advisor ([www.dol.gov/elaws](http://www.dol.gov/elaws))—an online interactive tool—helps employers determine which DOL employment laws apply to their businesses and provides easy-to-access information about how to comply with each law's requirements. Further, DOL's newly revised *Employment Law Guide*, available in print and online versions in English and Spanish, provides plain-language information on DOL-administered laws and their relation to state, local, and other Federal laws. More than 3,000 copies have gone out free to the public.

### Agency Participation in RegFair Hearings—Criterion 5

To facilitate on-site resolution of issues at RegFair hearings, ONO directed SBA field offices to determine the issues to be presented by small businesses. ONO then communicated the issues to the affected Federal agencies in advance of scheduled hearings and roundtables, thereby allowing agencies to prepare. ONO also posted this information on its website. The purpose is to invoke change and improve the regulatory environment by encouraging Federal agency attendance, which is noted and rated. With advance notice, agencies are able to send the most appropriate representative(s) to respond to particular concerns and foster a spirit of collaboration with the small business. This approach worked well in FY 2003, and ONO plans to do even more advanced



### Agency Notice to Businesses of Violations and Right to Comment— Criterion 6

A continuing challenge faced by ONO is informing small business concerns about their right to file a comment. To emphasize the importance of improving this needed information exchange, ONO began rating agencies on the extent to which they informed small businesses of alleged violations and of their right to file comments. Agencies are expected to go beyond simply publishing a toll-free number or expecting small businesses to wade through the *Federal Register* to get needed information. Rather, they must be accountable for their enforcement actions and cognizant of the need for small businesses to have compliance information up front. Increasingly aware of this requirement, Federal agencies in FY 2003 regularly integrated information about regulatory enforcement fairness as part of their interactions with small businesses. For example—

- ▶ FTC policy instructs staff to give small businesses involved in enforcement actions written notice of the right to comment to the Ombudsman without fear of reprisal. ONO's website is included in the notice. A similar notice is included in most of FTC's compliance assistance and business education materials.
- ▶ OSHA has made it a part of its compliance officers' duties when inspecting a worksite to inform employers of their rights under SBREFA and that ONO RegFair Boards exist to hear their concerns about enforcement matters. OSHA's small business Web pages also include a link to information about the SBREFA process and associated rights for small businesses, including the right to comment at RegFair hearings.
- ▶ EEOC has developed a handout to accompany every charge filed against a small business. The handout advises businesses about SBREFA and the right to comment on Federal agency enforcement actions to the National Ombudsman. Customs and Border Protection similarly informs small businesses as part of its violations notice.
- ▶ CPSC's Executive Director and Ombudsman regularly advises all small businesses that contact his office with a complaint or concern of their SBREFA rights and their right to comment to ONO, providing them with the website for doing so.

### Responding to Federal Mandates: Small Business Paperwork Relief Act—New Criterion 7

Agency response, as mandated by the Small Business Paperwork Relief Act of 2002 (SBPRA), includes engaging in efforts to further reduce paperwork re-

quirements for businesses with fewer than 25 employees and to establish a point person or contact within the agency for finding out about a regulation. These efforts should help alleviate the approximately 8.2 billion hours and \$320 billion annually that it costs businesses and citizens to collect and submit data to the Federal Government.<sup>4</sup> A 2000 report done for the SBA's Office of Advocacy found that Americans spent \$843 billion, or 8 percent of the U.S. gross domestic product, to comply with Federal regulations. Had every household received a bill for an equal share, each would have owed \$8,164—above and beyond the \$19,613 share each already contributes directly or indirectly to Federal revenues.<sup>5</sup>

ONO is working with OMB and its Office of Information and Regulatory Affairs to help agencies comply with SBPRA, collecting from agencies a list of their compliance assistance activities and a general summary of their compliance assistance programs for publishing in the *Federal Register* and on the Internet.<sup>6</sup> According to the act, by December 31, 2003, each agency must report to the House Small Business Committee, the House Committee on Government Reform, the Senate Committee on Small Business and Entrepreneurship, the Senate Committee on Governmental Affairs, and the National Ombudsman the following, with a final report to be submitted no later than December 31, 2004:

- ▶ Number of enforcement actions in which a civil penalty is assessed.
- ▶ Number of enforcement actions in which a civil penalty is assessed against small entities.
- ▶ Number of enforcement actions in which the civil penalty is reduced or waived.<sup>7</sup>
- ▶ Total monetary amount of the reductions.

<sup>4</sup>Estimate from OMB, as stated in 7-1-03 *SBA News Release*, No. 03-45.

<sup>5</sup>W. Mark Crain and Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms* (RFP No. SBAHQ-00-R-0027) (Washington, DC: SBA, Office of Advocacy, 2000).

<sup>6</sup>This information is available on ONO's website at [www.sba.gov/ombudsman/compliance/complianceassist.html](http://www.sba.gov/ombudsman/compliance/complianceassist.html) and on OMB's website at [www.whitehouse.gov/omb/fedreg/062703\\_compliance\\_assistance.pdf](http://www.whitehouse.gov/omb/fedreg/062703_compliance_assistance.pdf). The final report of the SBPRA Task Force on ways to reduce the paperwork burden can be found at [www.whitehouse.gov/omb/inforeg/sbpr2003.pdf](http://www.whitehouse.gov/omb/inforeg/sbpr2003.pdf).

<sup>7</sup>Under SBREFA §223, agencies are expected to have a policy or program to provide for the reduction and, under appropriate circumstances, the waiver of civil penalties for violations of a statutory or regulatory requirement by a small entity. Agencies may also consider ability to pay in determining penalty assessments on small entities.

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The SBA, including the Office of Advocacy and the National Ombudsman, with the assistance of OMB, is breaking down more barriers to small business productivity.

▶ SBA ADMINISTRATOR HECTOR BARRETO

As mentioned, beginning in 2004, agencies will be rated on the extent to which they comply with the above requirements.

Agencies are also expected to establish a task force to study the feasibility of streamlining requirements and enabling electronic collection and dissemination of information. Agency Rule Reviews conducted under the Regulatory Flexibility Act prompt agencies to consider whether particular rules or industry guidance is still needed and whether changes should be made to simplify, reduce, or adjust requirements. In this vein, the following agencies have engaged in streamlining efforts:

- ▶ FTC has reviewed nearly all its rules and industry guides and has repealed over half of those that were in effect in 1992. It has also streamlined and simplified disclosure requirements, provided more flexible compliance options, and revised rules to promote international harmonization and facilitate trade—regulatory improvements that can be of particular importance to small businesses.
- ▶ Aware of the burden on industry with regard to required reporting information, DEA is developing e-commerce initiatives that provide options for businesses to submit and/or maintain information electronically, such as through its Automation of Reports and Consolidated Orders System (ARCOS) project implemented in January 2003. ARCOS is being tested with two businesses to provide for the electronic filing of ARCOS information.
- ▶ In July 2003, ATF implemented an eForm process that furnishes a streamlined, expedient, secure, and paperless means to file importation permit applications. The system was designed specifically for small businesses that are licensed, registered importers and file more than one permit a year. ATF's website gives detailed information and instructions for using the e-filing process.
- ▶ To reform and streamline its permits process, in FY 2003, the Fish and Wildlife Service developed and launched a "one-stop shopping" Internet-based permits portal. The site provides easy-to-use information on permits, ranging from application forms to an alphabetical listing by topic of commonly asked permit questions to a step-by-step guide on how to obtain a permit. The portal ensures more effective customer service and increased linkages to species conservation topics.
- ▶ As part of its efforts to mitigate the strain of its paperwork requirements on small businesses, the IRS gave family daycare providers the option of using



a standardized rate to claim meal deductions for children in their care, as opposed to keeping detailed records and food receipts. The standardized rate will save child care providers 10 million hours of recordkeeping burden annually. The IRS also expanded application of the standard mileage rate from one vehicle to up to four vehicles when used for business purposes. The change makes an additional 800,000 businesses eligible, for a savings of 8–10 million hours annually in recordkeeping burden.

The Regulatory Flexibility Act also requires agencies to prepare an analysis of the impact of new regulations on small businesses before they are put into place. Some agencies, such as OSHA, provide links to websites like [www.regulations.gov](http://www.regulations.gov), with an explanation of how to submit comments on the rulemaking process to any Federal Government entity. The Coast Guard's issuance of new rules in 2003 provided a positive example of empathizing with small businesses about the impact of new rules. Specifically, the agency issued six sets of maritime security rules designed to protect vital commercial assets. In issuing these rules, regulators also realized the extraordinary associated compliance costs for businesses—\$7.3 billion over 10 years. To help mitigate this effect, the Coast Guard, over an 18-month period, held multiple full-day public meetings and workshops around the country and responded to hundreds of comments from businesses about the impact of the new rules. Final rules were issued with concise compliance guidelines addressing small business needs.

## Special Initiatives and Best Practices of Federal Regulatory Agencies

By engaging Federal agencies in fully considering the impact and implications of regulatory enforcement actions, ONO helps foster an overall environment of success for small businesses. The following initiatives illustrate best practices by Federal agencies in addressing their SBREFA responsibilities and in changing their approaches to working with small businesses. These initiatives represent some of the positive changes occurring in the Federal regulatory environment.

- ▶ FTC provides compliance assistance by considering the particular circumstances of a case—for example, issuing a small business leniency policy describing factors that may result in reduced or waived penalties. Also, in FY 2003, FTC approved a special “second chance” policy for certain minor and inadvertent violations of textile and wool labeling rules, which can apply to small businesses.

- ▶ USDA's Food Safety Inspection Service estimates a more than 50 percent increase in compliance assistance efforts over last year—attributable to the hiring of additional consumer safety officers (CSOs), whose duties include assisting small plants with technical advice on improving their HACCP systems and expanding outreach to small and very small plants. In FY 2003, FSIS hired 64 CSOs and converted 26 compliance officers to the CSO job series, giving the agency 188 CSOs, nearly twice the 98 it had in FY 2002.
- ▶ The National Oceanic and Atmospheric Administration's (NOAA's) Office of General Counsel and the National Marine Fisheries Office for Law Enforcement worked together to implement a nationwide program to promote regulatory compliance. The NOAA Community Oriented Policing and Problem Solving Program achieves higher levels of voluntary compliance with regulations through increasing constructive communication, honing community problem-solving skills, and educating the regulated community. Another successful program is the Fix-It-Notice program, wherein businesses incurring a minor first-time violation receive a chance to fix it before receiving a penalty. Other approaches include regular town hall meetings to listen to the regulated industries' concerns and answer questions about regulatory requirements.
- ▶ DOJ's ADA Mediation Program—carried out through a partnership between the Federal Government and the private sector—successfully resolved 188 ADA complaints with businesses in FY 2003. More than 410 professional mediators are available nationwide to mediate ADA cases.
- ▶ In FY 2003, the Fish and Wildlife Service enhanced compliance assistance to the wildlife/export community—dominated by small businesses—by introducing an Internet-based filing system for declaring wildlife imports and exports. Service staff worked closely with the National Customs Brokers Association on developing this project and pilot testing the new eDecs system with small businesses at selected ports. The new eDecs filing option has received widespread use nationwide. It speeds the declaration and clearance process, reduces paperwork, and improves communication between Service inspection staff and import/export businesses. It also facilitates legitimate wildlife trade.
- ▶ The IRS launched a Small Business Tax Workshop program in 2003 that provides partner organizations with IRS course materials as a value-added service for clients. The courses are available either in a traditional classroom format or as on- and off-line self-directed learning options. The online interactive Small Business Tax Workshop includes all the materials used in the

classroom workshops taught by IRS partner organizations. Small businesses can link to the IRS online classroom at [www.irs.gov/smallbiz](http://www.irs.gov/smallbiz) and choose from text-based or interactive learning materials, streaming video with instructors, or ordering information for course CDs and publications.

- ▶ DOL has created a new Office of Compliance Assistance Policy charged with raising awareness of the laws and regulations that DOL enforces and helping people comply with them. The office began operations in December 2002 and has already made presentations at 35 conferences and distributed more than 50,000 copies of compliance assistance materials. Key resources have been translated into Spanish and other languages, including Vietnamese and Korean. Further, DOL's Mine Safety and Health Administration has established a Small Mines Safety and Health Office designed to make small mines aware of sources of assistance and how to use them to develop and maintain effective safety and health programs. Staff have already visited 500 mines around the country.
- ▶ DOL's Wage and Hour Division and partners have begun a new YouthRules! Initiative to promote positive and safe work experiences for young workers. A Web page ([www.youthrules.dol.gov](http://www.youthrules.dol.gov)) and associated activities seek to educate teens, parents, employers, and the public on Federal and state rules regarding young workers, such as the hours they can work and the jobs they can hold.
- ▶ The Coast Guard's Factory Visit Program has elicited letters of thanks from many small boat-builders for helping them comply with Federal safety regulations through education on the what and why of regulations and how to comply.





# Hearing the Voice of Small Business: Comments Filed

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 time-intensive paperwork, heavy-handed enforcement, overly complex and rigorous regulation, and a pervasive fear on the part of small businesses of doing the wrong thing. Improved regulatory enforcement fairness results from the cooperative efforts of both sides as they participate as partners in enforcement activity discussions.

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The burden placed on small business takes the entrepreneurship away from real business.

▶REGFAIR BOARD MEMBER,  
*RegFair Board Meeting, September 15, 2003*

At the FY 2003 RegFair Board Meeting, members identified what they saw as the top regulatory enforcement concerns or problems facing small businesses today. They include:

- ▶ High cost and unavailability of health care.
- ▶ Overly burdensome tax, safety, environmental, and insurance requirements.
- ▶ Too many and outmoded regulations.
- ▶ High cost of compliance.
- ▶ Inconsistent or inappropriate enforcement actions.
- ▶ Onerous, time-consuming, and unproductive paperwork.

Several of these concerns were reflected in testimony at ONO hearings and roundtables and in actual comments received from small businesses in FY

## SMALL BUSINESSES DRIVE OUR ECONOMY

Small businesses—those that are independently owned and operated with fewer than 500 employees—represent more than 99 percent of all employers, and are responsible for about 80 percent of new private sector jobs in the United States and virtually *all* new jobs during times of economic downturn. Numbering 25.5 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 61 percent of private sector workers on public assistance.
- ▶ 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.

Source: SBA Office of Advocacy.

2003. Small business owners also expressed concerns about being subject to excessive audits and inspections, spending too much time on tax compliance efforts, receiving substantial penalties for technicalities (e.g., fines for improper form completion), being subject to the same regulations as a large entity, paying fees that do not apply to the company's business, and experiencing long delays when trying to correct a problem.

## Too Many Requirements; Too Much Time, Money, and Paperwork

ONO wants to help those small businesses that feel overwhelmed by complex and burdensome regulations that hinder their success and make them feel

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This is dear to my heart. It's difficult today for small business operating and competing against the giants of this world like Wal\*Mart and others—they have to work doubly hard. So when the government creates a law, Congress may have good intent, but when the regulations come down, it really hurts small business and makes it tougher on us to compete.

▶ GLEN VINSON, SMALL SUPERMARKET OPERATOR,  
*Testimony at the Nashville RegFair Roundtable,  
May 1, 2003*

helpless. In addition to substantial administrative burdens, small and growing businesses have difficulty staying up to date with the various regulatory paperwork requirements. Unlike large companies that can afford to hire attorneys and staff to stay abreast of regulatory changes, many small businesses believe that keeping up with the flow of regulation is too daunting, time-consuming, and expensive a task. Many are therefore not even aware of the laws on the books that govern their businesses—some of which could dramatically alter the

way they *do* business. And many small businesses want relief from burdensome taxes and complicated filing requirements.

In general, small businesses spend a long time on tax compliance efforts. They also complain about late notifications from the IRS regarding rate changes, which causes them to have to completely redo their financial statements and annual budgets. Much of a small business's paperwork is related to IRS requirements; fortunately, the IRS, with the help of ONO, is lightening the load. Said a CPA and amusement park owner in testimony at the Nashville RegFair Roundtable on May 1, 2003: "Everyone thinks we always have a hate relationship with the IRS, but I can honestly say for myself, that's not true... the Taxpayer Advocate Service in particular has been responsive and helped put a better face on the IRS." ONO forged a new relationship with the IRS in FY 2003, so that comments go straight to the Taxpayer Advocate Service—to the "action people on the ground." Further, the agency's Taxpayer Education and Communication Office seeks to educate small businesses, thereby helping them avoid problems that arise simply from not understanding how to do the right thing.

Immigration law is another common area of concern for small businesses. Those with employees who are not classified as contractors must deal with the infamous I-9 Form required by the INS. One commenter complained that small businesses must become experts in immigration law to understand its constantly changing requirements and to know which documents grant legal status to whom—or they face heavy penalties. He noted that the average fee for an immigration attorney can be as high as \$500 an hour. This places an incredible burden on small employers.

## Heavy-Handed Enforcement

ONO worked in FY 2003 to help Federal agencies better understand the effects of their actions on small businesses. Because they have limited resources, small businesses are easily damaged when faced with heavy-handed enforcement in the form of excessive audits and inspections, or unreasonable additional paperwork requirements. What might be considered a relatively small fine to a larger business—e.g., a \$100 a day storage fee incurred as a result of required

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Regulations are strangling small businesses in this country. We've estimated that if we could reduce compliance costs in Kentucky by just 5 percent, we would put \$450 million back in the hands of our small businesses and create \$30 million in new tax revenue.

►BOBBY CLARK, REGFAIR BOARD ALUMNUS,  
*Testimony at the Nashville RegFair Roundtable,*  
May 1, 2003

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The ONO RegFair Board can help small businesses by helping to make the business environment one that is free from unnecessary regulation and oversight. The Board is also there to let Americans know that this Administration is here to do what it can to help small businesses prosper.

►REGFAIR BOARD MEMBER,  
*RegFair Board Meeting, September 15, 2003*

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It is true that enforcement of regulations in excessive fashion quite often not only hurts the small business, but often drives them *out* of business; therefore, a definite need exists in this area, and we thank you, Mr. Barrera, for helping the small businesses in this manner.

► SMALL BUSINESS OWNER,  
*Testimony at the Miami RegFair Hearing, January 3, 2003*

Customs holding times on container shipments—has an unequal impact on small business, which often has little or no cash reserve. Emphasizing enforcement over education steals time from small businesses and does not allow them to focus on the health and growth of their businesses.

Small businesses also complained about some agencies' rigid adherence to the demands of law when flexibility is called for. For example, at the July Idaho Roundtable, a commenter testified that he had inherited a building formerly used as a drycleaners which was then discovered to be contaminated with perchloroethylene, a dangerous drycleaning solvent. He was working with the Idaho Department of Environmental Quality to try and correct the problem when EPA regulators declared that efforts were taking too long. The building's owner testified that EPA interrupted significant progress and designated the site as an EPA Superfund site, which will likely increase his liability for ongoing study and remediation efforts.<sup>1</sup>

Other agencies exemplified flexibility in 2003. For example, where the law allows flexibility, DOI's Bureau of Reclamation provides all districts and landholders with notices of acreage limitation violations and gives them a chance to correct the problems without negative consequences. If, for instance, a landholder has incorrectly completed a required reporting form, he or she has 60 days to correct it, with no further action taken. The Consumer Product Safety Commission provides another positive example in that it allows firms a reasonable opportunity to respond to Letters of Advice issued when a violation has occurred. CPSC staff then work with the firm to negotiate voluntary corrective actions, with nearly all violations corrected this way.

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One of small business's greatest fears is dealing with the Federal Government because we feel it's them against us, but with the RegFair Board, small businesses now have a partner in dealing with unfair Federal regulations.

► REGFAIR BOARD MEMBER,  
*RegFair Board Meeting, September 15, 2003*

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<sup>1</sup>EPA's reaction to this comment: "EPA demonstrated flexibility in its enforcement approach twice in this situation. First, EPA took an observer posture for three years and chose not to intervene, with the understanding that oversight by the Idaho Department of Environmental Quality (IDEQ) would result in a complete site investigation and any needed cleanup. Second, although EPA was prepared to move forward with the characterization and cleanup as appropriate, it agreed to allow [the commenter] the opportunity to perform necessary site characterization work, despite concerns about his financial ability to complete the work. On June 19, 2003, a month prior to the comment being made at the Idaho Roundtable, [the commenter] entered into an Administrative Order of Consent (AOC) with EPA to complete the site assessment work." (EPA memo to ONO from Randy Hill, Office of Regulatory Enforcement, February 27, 2004.)



## Overly Rigorous Requirements: Shutting Out the Little Guy

The cost of complying is high. In fact, Federal regulations alone cost small businesses with fewer than 20 employees \$7,000 a year per employee.<sup>2</sup> And many small businesses are subject to regulations that are overreaching, yet must be answered or engender a fine. Calls for the fair and consistent application and interpretation of rules throughout the country were common. And in FY 2003, several small businesses complained about overly restrictive regulations where the cost of compliance was putting them *out* of business. Fortunately, ONO was able to help (see sidebar).

Commenting at the Jefferson City, Missouri, RegFair Roundtable held November 7, 2002, a Missouri National Federation of Independent Business (NFIB) member spoke of the burden felt by nursery and landscaping companies. EPA required these businesses to provide hazardous material-handling training for every employee, even if they only handle money. These companies are generally seasonal businesses with fluid workforces comprised largely of high school kids whose work involves some chemical products “no more dangerous to the environment than what a person at home is using, and probably even less so and in smaller quantities,” according to the commenter. Still, he said, EPA requires the same training as it would for large companies, even though the small company employee might only carry a box of window caulking. “That’s the biggest concern,” the commenter continued, “the need to have a better understanding of the actual situation employees are involved in, rather than just focus on the hazardous material with no context.”<sup>3</sup>

<sup>2</sup>SBA’s Office of Advocacy.

<sup>3</sup>EPA’s reaction to this comment: “EPA does not have any regulations which would require cashiers or other employees not directly involved in handling or applying these materials to be trained in such activities. This exclusion also applies to material-handling training requirements for

### ONO HELPS JET BOATING BUSINESS GET OFF THE GROUND

When a North Carolina couple decided to start an innovative jet boating business on the scenic banks of the Smoky Mountain National Park, the two cleared the idea with all the regulatory agencies they could think of: the Tennessee Valley Authority, the U.S. Forest Service, North Carolina’s Department of Natural Resources, the National Park Service, and various county commissioners. All said they could think of no other agencies involved. So, in February 2002, boats were ordered from New Zealand. Then the bad news: pursuant to the Jones Act, the Coast Guard had jurisdiction of the lake where the business would operate, and required that boats engaged in coast-wide trade be built in America and driven by Americans. This requirement was going to cost the small business much time and money. The business owners then contacted ONO and their congressman, and received the appropriate certificates to operate. “The SBA was instrumental in helping us out,” commented the husband. “The Ombudsman was quick to react to our problem. I’m not sure if the Coast Guard would have paid attention to us if it hadn’t been for the Ombudsman.”

## Fear of Doing the Wrong Thing

Fear of regulation and retaliation is common among small businesses faced with an inspection, audit, or other actions by Federal agency enforcement officials.

One of the things I hear most is that small businesses are afraid to tell us their stories. That's just not right. We work for you. The government works for its citizens. You shouldn't be afraid to tell us your story.

► NATIONAL OMBUDSMAN MICHAEL BARRERA,  
*Nashville RegFair Roundtable, May 1, 2003*

Even small businesses that feel they have committed no violation experience generalized anxiety that something is inherently wrong, something they did not know or realize, but something that will cost them in fines or legal fees in the end. And they're still afraid of being targeted by Federal agencies. One commenter at the Augusta, Maine, Marine Industries Forum, October 9, 2002, asked Ombudsman Barrera that question

directly: "Can [any Federal agency] pick up the phone and have someone targeted?"

Although the situation is improving, fear of retaliation is a recurring theme among small businesses afraid to comment or complain about a particular agency's or agent's enforcement activity. Some businesses fear that if they complain, the agency, agent, and possibly other Federal agencies will retaliate


against them for their complaints. Some agencies are proactively addressing this concern (see sidebar).

### EEOC PROGRAM BREAKS DOWN BARRIERS

Shortly after EEOC's St. Louis District Office visited with a Springfield, Missouri, small business as part of the agency's Small Business Contact Program, the manager called the District's Small Business Liaison to seek advice on an issue of harassment occurring between two employees at his place of business. He told the liaison he would not have made this call last year, but because of EEOC's willingness to make a personal visit to his business to advise him about the agency's compliance assistance programs, he felt more comfortable calling a government office for advice. He stated that since EEOC had taken the first step, he was not so nervous about asking for help.

ONO recommends that more agencies institute formal, written 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.

employees who 'might only carry a box of window caulking.' With respect to pesticides, employers are required to provide pesticide safety training when nursery and landscaping workers have the potential to be exposed to pesticides by performing activities such as preparing pesticides for use, applying the pesticide, transporting or storing pesticides, or disposing of excess pesticides. (Of course, nursery and landscaping workers would have a significantly greater potential for harmful exposure to pesticides than would occur in home use.) With respect to fertilizers, EPA does not regulate these materials unless they contain an active ingredient or claim for use again a 'pest.'" (EPA memo to ONO from Randy Hill, Office of Regulatory Enforcement, 2-27-04.)



# ONO Outreach: Increased Use of SBA Field Offices, RegFair Boards, and Technology

## Regional RegFair Boards: ONO's Eyes and Ears Across the United States

The RegFair Boards are made up of volunteers from throughout the country who support ONO and serve as the agency's eyes and ears in their communities. These 50 volunteer RegFair Board members (five people on 10 boards) are engaged in a variety of professions, from plumbing and tree farming to helicopter tourism and aerospace. They provide a critical voice for small businesses in their regions and communities to ensure that they are fairly regulated. 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, which gives them a sense of legitimacy and credibility not usually enjoyed by government representatives.

The role of the Board is to enhance regulatory oversight by serving as a conduit to government agencies that need to improve their enforcement policies and by reporting the results of its efforts annually to Congress.

Board members also participate in regulatory enforcement hearings and roundtables, and recommend regulatory enforcement improvements to the

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The government and its Federal agencies must be accountable for their enforcement actions and the resulting effects on small business. When businesses are burdened with inappropriate regulatory enforcement, they are crippled, customers and products suffer, and, ultimately, the economy is damaged.

▶ JOE SHEPARD, FY 2003 REGFAIR BOARD MEMBER  
AND REGION 6 CHAIR

SBA Administrator and the affected agencies. Board members describe their most important responsibilities as working with a clear sense of purpose to reach the goals they helped to establish, representing ONO fairly and consistently and helping small businesses help themselves. Board members say they consider helping small businesses to be one of the most important things they can do for their country.

Board members are encouraged to work directly with local SBA District Offices, Small Business Development Centers (SBDCs), and SCORE to raise awareness

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The relevance of the RegFair Board to small business is that people have an opportunity to have their complaints or comments heard by an organization that can actually get agencies' attention. They are no longer a speck of sand, but have a friend in high places.

►REGFAIR BOARD MEMBER,  
*RegFair Board Meeting, September 15, 2003*

of ONO services among small business concerns. In FY 2003, outreach initiatives undertaken by the Board included speaking engagements, story placement in local and national publications, contact with local congressional offices, mailings of brochures and other publicity materials, sharing of ONO success stories, and work with small business organizations and trades. Together, ONO and the RegFair Board members held 97 outreach meetings, nearly doubling the annual goal of 50 meetings. These included meetings with state senators, representatives, and governors to educate them on the Regulatory Fairness Initiative and to solicit their support in strengthening SBREFA laws and encouraging regulatory fairness. Board members also testified before state assemblies and were successful in encouraging several states to adopt a model law created by the SBA Office of Advocacy that mirrors the Regulatory Flexibility Act—a big win for small businesses. Additionally, RegFair Board members participated in regional conference calls and held numerous meetings with chambers of commerce, minority interests, small business organizations, and individual small business customers.

RegFair Board members also meet several times a year to advise the National Ombudsman of small business regulatory enforcement concerns and to hear about new outreach methods. In FY 2003, ONO held four RegFair Board meetings—three Regional RegFair Board meetings via teleconference and the annual RegFair Board meeting held September 15–16, 2003, in Arlington, Virginia. At the annual RegFair Board meeting, members saw as a priority the need to educate small business owners about their rights through the National Ombudsman's Office and to inform them about non-retaliation policies adopted by Federal agencies.

## Hearings and Roundtables: Facilitating the Discussion

Regulatory enforcement hearings—statutorily required by Congress—are designed to receive and publish, as appropriate, public testimony regarding specific excessive regulatory enforcement actions by Federal agencies. Less formal roundtables are designed to inform trade associations and chambers of commerce of their constituents' rights to file a formal comment about excessive Federal regulatory enforcement. Both hearings and roundtables are important forums for giving a voice to small business and for fulfilling the President's edict for government to be more customer-oriented. Hearings also allow regulatory agencies to convey some of the issues and challenges they face, such as mandatory audits and inspections and requirements imposed by statute.

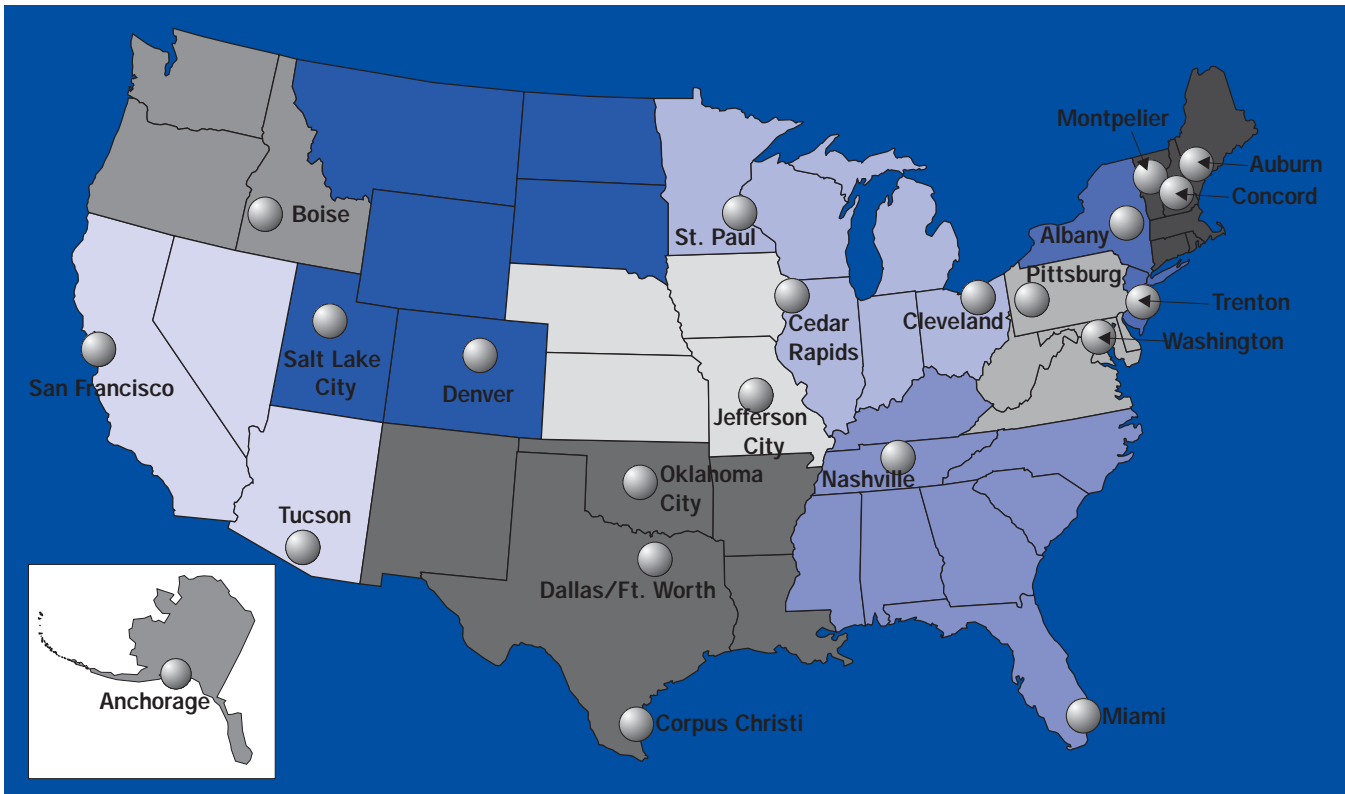
By facilitating face-to-face meetings between Federal agencies, small business people, and other interested groups in different parts of the country, ONO creates a synergistic climate for problem resolution, bringing all the players together. DOL and the IRS—the latter through its Taxpayer Advocate Service—attend every RegFair hearing conducted by ONO. In some cases, the small business owner testifying and the Federal agency representative leave the room, address the problem, and return to report that they have solved it *on the spot*. For example, at a Cleveland, Ohio, RegFair hearing held May 22, 2003, a restaurant owner complained that the IRS had not released the liens on his business, even though he had paid his taxes when the business was sold in 1997. IRS officials at the hearing immediately met with the commenter after his testimony and said they would help him.

In FY 2003, ONO held 11 regional RegFair hearings and 11 roundtables across the country, exceeding both 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. Host sites included the following cities:

- ▶ **Hearings held in FY 2003:** Pittsburgh, Pennsylvania; Trenton, New Jersey; Washington, D.C.; Miami, Florida; Cleveland, Ohio; St. Paul, Minnesota; Dallas/Ft. Worth, Texas; Denver, Colorado; Tucson, Arizona; San Francisco, California; and Cedar Rapids, Iowa.
- ▶ **Roundtables held in FY 2003:** Auburn, Maine; Montpelier, Vermont; Concord, New Hampshire; Albany, New York; Nashville, Tennessee; Jefferson City, Missouri; Oklahoma City, Oklahoma; Corpus Christi, Texas; Salt Lake City, Utah; Boise, Idaho; and Anchorage, Alaska.

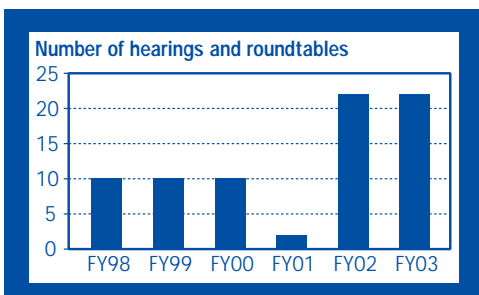
The map in figure 4 shows where the hearings and roundtables occurred; the number of meeting and roundtables has increased over time (see figure 5).

FIGURE 4  
HEARINGS AND ROUNDTABLES HELD IN FY 2003



Attendance at the 22 hearings and roundtables held in FY 2003 increased dramatically from the previous year, drawing crowds as large as 90 in Oklahoma City and 200 in Iowa (at 12 sites via video and satellite hookup). The SBA and ONO increased attendance by encouraging trade association members to attend and through leveraging SBA District Office efforts that attracted excellent news coverage for the hearings (see the appendix, Selected Media and Marketing Materials). More than 1,100 people—including small business owners, public officials, media representatives, and others—attended, and 149 small business and trade association representatives testified at ONO RegFair hearings around the country during FY 2003.

FIGURE 5  
NUMBER OF HEARINGS AND ROUNDTABLES  
BY FISCAL YEAR



### Increasing Access to ONO Resources

ONO continued in FY 2003 to make the comment process even more accessible to the small business owner, largely

through improvements to its website, [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman). Because the ONO website is interactive, practical, and user friendly, small business owners use it for purposes other than gleaning information. For instance, an online filing capability for comments, created last year, facilitates a quicker turnaround for agency responses. Comments filed online receive an acknowledgment within seven days, compared to 30 days using the traditional mail-in method. A three-question preview page helps users determine whether ONO can help them. After answering the questions, a short, two-page confidential form pops up that can be mailed, faxed, or electronically delivered to the main office. The online system can be accessed 24 hours a day, making it convenient for busy small business owners. Additionally, ONO RegFair Board members consistently use the website to obtain media and marketing meeting planning tools.

The ONO website shows a clear trend toward even greater usage, as ONO's Web-based initiatives continue to make information more readily available and useful for agencies and for small businesses. To help put businesses directly in touch with agencies, ONO has included on its website approximately 35 Federal agencies, with full contact information, allowing users to easily obtain information, or to phone, e-mail, or visit the websites of specific agencies. Online 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, and success stories. Other interactive Web-based services offered by ONO include the following:

- ▶ An online event report that RegFair Board members can file with ONO to report on their outreach activities.
- ▶ A mailing list (eBlast) 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 online "press room" where users can register to receive e-mail notices of Federal regulatory enforcement activities and actions taken by ONO, or to request an interview with the National Ombudsman.
- ▶ An online form with which users can request a regulatory enforcement fairness meeting in their hometown.

Other examples of ONO's leading-edge technology advances in FY 2003 include the successful testing of an online customer service tool during the January 14, 2003, Salt Lake City, Utah, roundtable. This technology enabled ONO to reach multiple District Offices and locations throughout a five-state area and al-

## SPREADING THE ONO MESSAGE

The National Ombudsman and representatives visited 22 cities and states for RegFair hearings and roundtables and made an additional 18 speeches and presentations nationwide. ONO reached out to audiences from Portland, Maine, to Portland, Oregon; from Southern California to Southern Florida; from Concord, New Hampshire, to Corpus Christi, Texas—and everywhere in between.

lowed testimony to be presented over phone lines straight to the National Ombudsman's ear. Similarly, an Iowa RegFair hearing on June 3, 2003, featured the first-ever nationwide ONO event using the Iowa Communications Network, which was built by the National Guard and is now used for education and training purposes. The hearing made 12 interactive satellite locations around the four-state region simultaneously available for small business owners to present their issues. SBDCs hosted the sites around Iowa, with RegFair and alumni Board members placed at different key cities around the state. A voice-activated system turned the camera on the speaker and allowed everyone to feel they were present in real time. Finally, as occurred last year, a collaborative laptop brainstorming session was held in September 2003 to allow real-time feedback and interaction among RegFair Board members at their annual meeting.

ONO also provided 422 instances of telephone assistance, surpassing its annual goal of 300.<sup>1</sup>

## Reaching Out and Following Up

In FY 2003, ONO reached roughly 8 million<sup>2</sup> small businesses with its message through trade associations, chambers of commerce, newsletters, and media outlets—achieving 800 percent of its annual goal of reaching 1 million customers.

This success is credited to a hard-working ONO team and to innovative efforts at the grassroots, small-business-friendly level. SBA field offices, volunteers, and Federal personnel promoted the ONO mission to small businesses, trade associations, and similar groups in their areas.

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People-to-people contact is the most important strategy to the success of ONO.

►REGFAIR BOARD MEMBER,  
*RegFair Board Meeting, September 15, 2003*

ONO also leveraged SBA District Office operations to help it spread the word, and ONO and SBA field personnel published dozens of articles in local and specialized media and trade publications. In FY 2003, articles about ONO appeared in 55 publications, including Web and eBlast communications, along with 17 radio and television interviews. One prime example is a feature article in the

<sup>1</sup>ONO Execution Scorecard for FY 2003.

<sup>2</sup>Ibid. The actual number, 7,884,420, was derived as follows: 1,353,818 small businesses represented at hearings, roundtables, and TEAM meetings; 873,565 from speeches and presentations; and 5,657,037 from national, state, and local publications (on August 25, 2003).



September 2003 U.S. Chamber publication that went out to all chambers across the country, to their leadership, to Capitol Hill, and to multiple state leadership organizations—a wide and influential visibility example (see figure 6; text is included in the appendix). As awareness and education continue to grow, so too will ONO's effectiveness.

### Success with Trade Associations

Small business trade associations and chambers of commerce remain a critical conduit for increasing ONO's visibility. In FY 2003, ONO continued to reach out to the trades using hearings, roundtables, Targeted Entrepreneur Area Market (TEAM) meetings, presentations, and publications to let them know that small businesses have somewhere to turn. Specifically, in FY 2003, nearly 100 small business and professional organizations attended roundtables, hearings, or TEAM meetings, representing a combined total of nearly 1.4 million small businesses (see table 4). These included huge membership organizations such as NFIB, plus many more specialized groups, such as the Chinese Fisherman's Association and the National Trailer Manufacturing Association. Several TEAM meetings were also attended by minority-based chambers of commerce and by owners of Asian American, African American, Hispanic American, and women-owned small businesses (see "Reaching Out to the Underserved" below).

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. ONO believes that agencies can also target trades to multiply their outreach to small businesses and inform them about their efforts, particularly with compliance assistance. For ONO, this outreach often becomes a two-way street, where small business organizations issue speaking invitations to ONO, helping to solidify partnerships. As an example, ONO has developed a strong working relationship with NFIB (600,000 membership), where ONO in FY 2003 was invited to speak, along with the chairman of CPSC, to a group composed of major small business organizations and people from Capitol Hill.

### ONO Outreach to Agencies

As public awareness of ONO grows, cooperation among the small business community and Federal agencies is growing and producing strong, positive rela-

FIGURE 6  
ONO FEATURE STORY IN U.S. CHAMBER  
OF COMMERCE PUBLICATION



**TABLE 4**  
**SMALL BUSINESS ASSOCIATIONS CONTACTED IN FY 2003**

| Contact Location  | Organizations Represented   | Total Membership |
|---|---|------------------|
| Augusta, ME<br>Roundtable<br>October 9, 2002                | Maine Association of Community Banks<br>Maine Restaurant Association<br>Maine Tourism Council<br>Maine Merchants Association<br>Associated Builders and Contractors<br>Maine Insurance Association<br>Augusta Board of Trade  | 12,593           |
| Jefferson City, MO<br>Roundtable<br>November 7, 2002        | Missouri NFIB<br>Missouri Chamber of Commerce<br>State Government Representative  | 17,000           |
| San Francisco, CA<br>Hearing & TEAM<br>November 11, 2002    | Chinese Fisherman's Association<br>National Meat Association<br>Golden Gate Restaurant Association  | 8,500            |
| Miami, FL<br>Hearing & TEAM<br>December 2, 2002             | Association of Indians in America<br>Beacon Council<br>National Minority Medical Suppliers Association<br>Puerto Rican Chamber of Commerce of South Florida   | 12,500           |
| Salt Lake City, UT<br>Roundtable & TEAM<br>January 14, 2003 | Associated General Contractors<br>Utah Restaurant Association<br>Utah Business Association<br>National Association of Women Business Owners (NAWBO)<br>United Small Business of Utah<br>Salt Lake City Chamber of Commerce  | 3,763            |
| Trenton, NJ<br>Hearing & TEAM<br>January 22, 2003           | New Jersey General Assembly<br>Food Policy Institute<br>New Jersey Association of Women Business Owners<br>Regional Business Assistance Corporation<br>Metro Trenton African-American Chamber of Commerce<br>Spanish Mercantile Federation  | 1,476            |
| Washington, DC<br>Hearing<br>February 20, 2003              | National Association of the Self-Employed<br>National Restaurant Association<br>Automotive Service Association<br>American Association of Meat Processors   | 1,100,000        |
| Tucson, AZ<br>Hearing & TEAM<br>March 25, 2003              | Tucson Hispanic Chamber of Commerce<br>Tucson Area Chamber of Commerce  | 1,260            |
| Denver, CO<br>Hearing & TEAM<br>March 27, 2003              | Asian Chamber of Commerce<br>Colorado Partners in Small Business<br>NAWBO<br>Rocky Mountain Minority Suppliers Council<br>Hispanic Contractors of Colorado<br>Rocky Mountain Minority Supplier Development Council  | 1,028            |
| Oklahoma City, OK<br>Roundtable & TEAM<br>April 22-23, 2003 | Northside Chamber of Commerce<br>Oklahoma NFIB<br>Oklahoma State Chamber of Commerce<br>South Oklahoma (Capitol Hill) Chamber of Commerce<br>WIPP<br>NAWBO<br>American Indian (Native American) Chamber of Commerce<br>Greater Oklahoma City Hispanic Chamber of Commerce<br>Vietnamese Chamber of Commerce | 8,920            |

(continued)

**TABLE 4**  
**SMALL BUSINESS ASSOCIATIONS CONTACTED IN FY 2003 (CONTINUED)**

| Contact Location  | Organizations Represented   | Total Membership |
|---|---|------------------|
| Dallas/Fort Worth, TX<br>Hearing & TEAM<br>April 24, 2003 | Texas NFIB<br>Texas Manufacturing Assistance Association<br>Greater Dallas Chamber of Commerce<br>Small Business United of Texas<br>Texas Association of Business   | 50,000           |
| Nashville, TN<br>Roundtable & TEAM<br>May 1, 2003         | Tennessee Grocers Association<br>Nashville Multi-Cultural Chamber of Commerce<br>Nashville Black Chamber of Commerce<br>Nashville Hispanic Chamber of Commerce<br>Nashville Chamber of Commerce   | 4,710            |
| Corpus Christi, TX<br>Roundtable & TEAM<br>May 7, 2003    | Texas Shrimp Association<br>Westside Business Association<br>Corpus Christi Hispanic Chamber of Commerce<br>100 Black Men of Corpus Christi<br>Associated General Contractors<br>15 Owners of Asian American, African American, Hispanic American, and Women-Owned Small Businesses | 1,586            |
| Cleveland, OH<br>Hearing & TEAM<br>May 22, 2003           | Hispanic Business Association<br>NAWBO of Ohio<br>Veterans Business Resource Council  | 547              |
| St. Paul, MN<br>Hearing & TEAM<br>June 12, 2003           | Minnesota Chamber of Commerce<br>Minnesota Hispanic Chamber of Commerce   | 3,000            |
| Cedar Rapids, IA<br>Roundtable & TEAM<br>June 16, 2003    | National Livestock Markets Association<br>National Trailer Manufacturing Association  | 1,253            |
| Anchorage, AK<br>Roundtable<br>July 15, 2003              | Anchorage Chamber of Commerce<br>Alaska Village Initiatives<br>Alaska Mining Association<br>Alaska Forest Association   | 205              |
| Boise, ID<br>Roundtable<br>July 19, 2003                  | Idaho Associated General Contractors<br>Boise Metro Chamber of Commerce<br>Idaho Hispanic Business Association<br>Idaho Retailers Association<br>Idaho NFIB<br>East Oregon Mining Association   | 10,450           |
| Montpelier, VT<br>Roundtable<br>September 23, 2003        | Vermont State AFL-CIO   | 20,000           |
| Concord, NH<br>Roundtable<br>September 24, 2003           | New Hampshire NFIB<br>New Hampshire Small Business Council<br>New Hampshire Realtors Association  | 46,000           |
| Pittsburgh, PA<br>Hearing<br>September 25, 2003           | Community Loan Fund of SW Pennsylvania  | 80               |
| Albany, NY<br>Roundtable<br>September 26, 2003            | New York BPA Association<br>New York NFIB   | 71,000           |
| <b>Total small businesses reached</b>                     |   | <b>1,375,871</b> |

tionships *and* results. ONO held two interagency meetings in FY 2003—December 4, 2002, and April 14, 2003—with representation from more than 40 Federal agencies and record-setting attendance that included Federal agency leaders in enforcement fairness and small business regulatory rights. This level of outreach and response to and by Federal agencies enriched the stream of ideas flowing from small businesses to ONO, Congress, and Federal enforcement agencies, and engendered greater support for and awareness of the plight of small businesses. The meetings also allowed Federal agency representatives to clarify ONO expectations and the intent of SBREFA, and to provide constructive input to help improve ONO processes. Small business organization representatives included those from the formidable NFIB and the U.S. Chamber of Commerce.

One central idea that ONO sought to reinforce in FY 2003 was to encourage Federal agencies to train their field staff in customer relations when carrying out enforcement duties. Another was for Federal agencies to link their websites to ONO's—which several agencies have done, including EEOC, PBGC, DEA, OSHA, and OSM.

As part of these outreach and assistance efforts, ONO has formed a partnership with OSHA and the SBA Office of Advocacy to keep small business owners apprised of new ergonomic guidelines designed to reduce injuries. This agreement is in line with ONO efforts to encourage agencies to focus on education over enforcement and on compliance over confrontation.

### Agency Outreach to Small Businesses

#### OSHA PARTNERS WITH SMALL BUSINESS GROUPS IN VERMONT

Three years ago, the Green Mountain Coffee Roasters—a high-profile Vermont small business—partnered with the Vermont Small Business Development Center and the Vermont OSHA consultants to deliver quarterly safety and health training sessions to small employers, who comprise 80 percent of Vermont's businesses. In FY 2003, this Partnership in Safety presented multiple training workshops in a cooperative environment, facilitating positive interaction among safety and health professionals from state and private organizations and small employers, and providing an excellent forum for sharing information on safety and health programs. Participants credit the partnership with redefining the traditional relationship between the government and the private sector to one of mutual collaboration and benefit.

Small businesses need to know that assistance is available *and* accessible. Federal regulatory enforcement agencies continue to heighten efforts to connect with small businesses and apprise them of rules, regulations, and helpful resources, making use of the Internet, increasing and improving outreach, conducting training seminars, and working more closely with trade associations (see sidebar for example). Of course, ONO would like to see agencies conduct even more outreach and compliance assistance—especially when they issue

new rules—and to direct small businesses to resources, such as the SBA's [www.businesslaw.gov](http://www.businesslaw.gov) website, that help them understand what they need to know.

Still, several agencies increased their outreach efforts in FY 2003. For example, DOL held a day-long seminar for its own personnel to raise employee awareness about the special needs of small businesses. DOJ fulfilled 60 training, speaking, and exhibit engagements to train mayors, local chambers of commerce, and millions of businesses on how to comply with ADA. Additionally, DOJ initiated a new outreach program called the ADA Business Connection, holding a series of meetings to foster a better understanding of ADA requirements among the business community (see sidebar). DOJ staff from the Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division conducted outreach via the media, including participating in radio call-in shows to answer questions from employers. Such efforts increase dialogue and cooperation between small businesses and Federal regulatory and enforcement agencies.

### DOJ's ADA BUSINESS CONNECTION

DOJ's Civil Rights Division completed the second year of its successful outreach initiative designed to encourage increased compliance with ADA requirements by helping businesses understand what they need to do. The ADA Business Connection also fosters dialogue and cooperation between the business and disability communities, and, in 2003, the program moderated productive discussions in Washington, D.C., Boston, and Houston, garnering much positive support from businesses. Because of its success, plans are in place to expand the program next fiscal year and to work with the SBA to reach a wider small business audience.

Another example of positive outreach efforts comes from the Fish and Wildlife Service, which routinely gave local outreach presentations in FY 2003 for the import and export community. Agency efforts to promote compliance with wildlife requirements included staffing educational booths at food trade shows and safari club events, and developing a conservation curriculum to train practitioners of traditional Chinese medicine on laws prohibiting the use of endangered animals and plants in medicinal products.

### Reaching Out to the Underserved

Nearly 40 percent of small businesses are owned by women, with close to 15 percent owned by minorities, a trend that is on the rise.<sup>3</sup> More than 3 million minority-owned small businesses provide job opportunities for millions of Americans in thousands of communities across America.<sup>4</sup> Because of their

<sup>3</sup>White House Web page, "The President's Plan to Strengthen Small Businesses," [www.whitehouse.gov/infocus/smallbusiness/](http://www.whitehouse.gov/infocus/smallbusiness/).

<sup>4</sup>Ibid.

unique communications 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 TEAM meetings, ONO is targeting leadership from diverse small business groups. Held in most cities where RegFair hearings and roundtables are scheduled, TEAM meetings are designed to air the concerns of women, Asian Americans, African Americans, Hispanic Americans, Native Americans, veterans, and other traditionally underserved markets, and to inform them of the full array of services, programs, and assistance available through ONO and the SBA. The format is flexible and informal, lending itself to open discussion with lenders, chamber and SBA representatives, banking representatives, and others. In FY 2003, ONO held 13 TEAM meetings in the following cities—one more than last year—achieving 130 percent of its annual goal of 10:<sup>5</sup> Auburn, Maine; San

Francisco, California; Miami, Florida; Salt Lake City, Utah; Trenton, New Jersey; Tucson, Arizona; Denver, Colorado; Oklahoma City, Oklahoma; Dallas, Texas; Nashville, Tennessee; Cleveland, Ohio; St. Paul, Minnesota; and Cedar Rapids, Iowa.

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Agencies need to find a way to market their compliance information to America's entrepreneurs. Mere brochures sitting unread in Washington, D.C., won't help small business owners. There is so much compliance assistance information available to small businesses, and we, the government, need to let them know about it.


► NATIONAL OMBUDSMAN MICHAEL BARRERA

In the goal area of bilingual assistance, ONO accomplished below budget and ahead of schedule all five of its planned projects for FY 2003. The Spanish ONO Web page is planned to span FYs 2003–2004 and is expected

to be completed before the projected due date. ONO also led two bilingual hearings in March 2003—in Miami and Denver—double its annual goal.<sup>6</sup> Simultaneous translation of the hearing into Spanish allowed business owners to voice their comments and concerns about Federal regulations more easily, using their primary language. According to the SBA's Miami District Office, the bilingual hearing was a “big hit” with participating agencies and small business owners. More than 50 business owners received straightforward information about the impact of government regulations and gained an appreciation of their ability to effect change in the rules being promulgated. ONO has also translated and printed its informational brochure, news advisory, news release, and PowerPoint presentation into Spanish. Finally, ONO has made all these tools available online in private areas for regional RegFair Board members and SBA District Offices.

<sup>5</sup>ONO Execution Scorecard for FY 2003.

<sup>6</sup>Ibid.



# Looking Ahead... Plans for the Future

ONO will continue engaging in outreach efforts through hearings and roundtables, media outlets, RegFair members, SBA partners, trade associations, and chambers of commerce. ONO will also leverage resources through optimal use of technology. Not to “rest on its laurels,” ONO will continue efforts not only to increase awareness of its program, but also to ensure its accessibility.

## **Continuing to Reach Out**

As they reach out to more community organizations, RegFair Board members will need the support of local SBA offices and local trade organizations to make contacts, distribute printed material and website information, establish more media connections, and strive to implement agreed-upon goals. Education initiatives with leaders of organizations and increased Board member involvement are ideas being realized, along with ways to better leverage other SBA events and provide more effective feedback from ONO. More meetings with trade associations are planned, as well as increased outreach to SBA district directors and personal contact with chambers of commerce, SBDCs, farm bureaus, and trade associations. “We need to sell ONO like we sell our business product,” commented one RegFair Board member. ONO will also continue to elicit feedback from the small businesses themselves to ensure that the services it provides are of value.

## **Making More Creative Use of Technology**

Several technology efforts under way at ONO will continue to evolve, as new initiatives begin. Greater use of the Internet will speed the comment process

even more, as will more creative use of e-mail. ONO will post Federal non-retaliation notices on its website and consolidate informational and contact lists for electronic use. ONO plans to make its website still more interactive, providing Board members and agencies with access to the status of comments relevant to them. ONO will also seek out ways to ensure faster updating of agency contact information, looking to agencies for input on realizing improvements such as online acceptance of agency responses. A Web search tool for compliance assistance information that would go across all agencies is another idea ONO is working on.

Additionally, ONO plans to pilot test roundtables that are conducted solely by a regional RegFair Board, with ONO Headquarters present only via Web link or phone. This pilot would be implemented with the help of SBA District Offices, regional administrators, regional advocates, and RegFair Board members. Regional administrators and district directors would actually run the meeting, with any questions immediately answered by ONO in Washington. This approach is designed to put more onus on the regional boards, while also establishing a wider network for exposure activities. The pilots are being targeted for early summer and fall.

## **Transferring Knowledge, Increasing Communication**

Education and greater dissemination of the role that ONO plays will raise awareness among small businesses and lead to more comments. Of great potential value is the use of testimony and actions taken—high-profile case studies that show how actual small businesses have won a reduction of fines or penalties from Federal agencies. Such examples will resonate with business leaders and regulators alike, unsettling the status quo and communicating the message in a real and meaningful way.

## **Increasing ONO Visibility**

To increase ONO's visibility, RegFair members will give more personal presentations; host more hearings and roundtables; hold more community meetings; distribute ONO promotional materials; and make more personal visits to economic development councils, chambers of commerce, business and trade organizations, and local congressional offices. Because state and local offices are likely the first point of contact for a small business, they provide an excellent point of referral for ONO.



The National Ombudsman and ONO staff will continue to expand awareness of ONO by delivering more speeches and presentations to state and national conventions of small business and trade organizations, marketing through trade newsletters and publications, and holding hearings and roundtables in states not yet visited. ONO will continue an active District Office education program describing ONO services and will develop broadcast media opportunities at the local, state, and national levels.

## Building Partnerships

ONO continues to work with OMB's Office of Information and Regulatory Affairs on implementing Small Business Paperwork Relief Act requirements for data collection and publication of Federal agency information required by the act. ONO will work with the SBA's Office of Advocacy, states, SBA District Offices, congressional offices, SBA partners, and small business associations to support and share model state legislation. ONO will also continue to exchange Internet links with trades and chambers of commerce, NAWBO, NFIB, and others, and will provide customer service training to SBA field offices. Outreach efforts will include initiating contact with college and university programs to integrate information about SBA and ONO.

## Finally...

ONO will work with SBA to leverage its small business programs and reach, including its loan programs, capitalizing on the agency's cachet with small business owners. RegFair Board members must be innovative in their approach, asking alumni for guidance, having SBA District Offices promote ONO at upcoming hearings and trade shows, eliciting support from SBDCs, becoming more engaged with the media, linking congressional offices, and informing state legislators who often receive complaints of a Federal nature to include RegFair Board members as the information is passed upstream. The President has also vowed to continue to streamline small business regulations and to call on Congress to enact legal reform to reduce the burden on small businesses and their customers.

By stressing interagency cooperation, public access, and education over prosecution—and promoting the vitality of small businesses by saving them time and money—ONO will help small businesses to be as successful as they can be. And, at SBA and ONO, we know that their success is our success.





# Selected Media and Marketing Materials

This appendix presents the results of ONO's media outreach efforts related to FY 2003 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 purple.

| Hearing/Roundtable                     | Print Media Coverage  | Radio/TV Coverage  |
|--|---|--|
| Auburn, ME<br>October 9, 2002          | American Farm Bureau's <i>Farm Bureau News</i> (Oct. 7)<br><i>Bangor Daily News</i> feature article (Oct. 10)   |  |
| Jefferson City, MO<br>November 7, 2002 | <i>Joplin Missouri Globe</i> feature article (Nov. 9)<br><i>Columbia Daily Tribune</i> feature article (Nov. 11)<br><i>Joplin Missouri Globe</i> feature article (Feb. 7)   | Missouri Radio Network interview<br>(51 stations)                  |
| San Francisco, CA<br>November 12, 2002 | <i>San Francisco Business Times</i> feature article (Nov. 12)   |  |
| Miami, FL<br>December 2-3, 2002        | <i>South Florida Business Journal</i> feature (Dec. 2)<br><i>Miami Herald</i> feature article (Dec. 3)<br><i>Sun-Sentinel</i> feature article (Dec. 3)<br><i>Palm Beach Post</i> feature article (Dec. 3)<br><i>Interface Magazine</i> feature article (Dec. 3) |  |
| Salt Lake City, UT<br>January 14, 2003 | <i>Salt Lake City Desert News</i> feature article (Jan. 15)   |  |
| Trenton, NJ<br>January 29, 2003        | <i>New Jersey Star-Ledger</i> feature article (Jan. 30)   |  |
| Washington, DC<br>February 20, 2003    | National Black Chamber of Commerce eBlast feature on<br>DC RegFair Hearing (Jan. 20)<br>NASE <i>Washington Watch</i> feature (Feb. 24)<br><i>INC Magazine</i> interview for feature (Feb. 28)   |  |
| Tucson, AZ<br>March 25, 2003           | <i>Inside Tucson Business</i> feature article (Mar. 10)<br><i>Arizona Daily Star</i> feature article (Mar. 15)  |  |
| Denver, CO<br>March 27, 2003           | <i>Longmont Daily Times</i> feature article (Mar. 28)   |  |
| Oklahoma City, OK<br>April 22, 2003    | <b><i>Durocher's Oklahoma City Business</i> feature article (April 8)</b><br><i>Oklahoma Journal Record</i> feature article (April 23)<br><i>Oklahoma Business Journal</i> feature article (April 23)<br><i>Daily Oklahoman</i> feature article (April 23)      | Oklahoma Innovations radio<br>interview (8 stations)<br>(April 11) |

| Hearing/Roundtable                      | Print Media Coverage   | Radio/TV Coverage  |
|---|--|--|
| Dallas/Fort Worth, TX<br>April 24, 2003 | <i>Dallas/Ft. Worth Business Journal</i> feature article (Mar. 20)<br><i>El Crucero –Spanish Language Weekly</i> (April 24)  |  |
| Nashville, TN<br>May 1, 2003            | <i>Tennessee Tribune</i> feature article (May 1)<br><i>Nashville Business Journal</i> feature article (May 2)<br><i>Daily Tennessean</i> feature article (May 2)   | Tennessee Radio Network<br>interview (80 stations)<br>(May 1)  |
| Corpus Christi, TX<br>May 7, 2003       | <i>Corpus Christi Caller Times</i> feature article (May 9)<br><i>VISION – Newsletter of the Corpus Christi Hispanic Chamber of Commerce</i> feature article (June 2)   | KIII 3 TV Corpus Christi interview<br>(May 7)  |
| Cleveland, OH<br>May 22, 2003           | <b><a href="#">Cleveland Plain Dealer feature article (May 23)</a></b>   | Cleveland Public Radio interview<br>(May 16)   |
| Minneapolis, MN<br>June 12, 2003        | <b><a href="#">St. Paul Pioneer Press feature article (June 14)</a></b><br><i>Minnesota Business Monthly</i> interview (June 13)   | Minnesota Public Radio live<br>interview (June 12)<br>KSDM TV17 interview 500,000<br>viewers (June 15)   |
| Cedar Rapids, IA<br>June 16, 2003       | <i>Omaha World Herald</i> feature article (June 17)<br><i>Des Moines Register</i> feature article (June 17)<br><i>Cedar Rapids Gazette</i> Feature article (June 17)<br><i>Council Bluffs Daily Nonpariel</i> feature article (June 17)<br><i>Quad City Times</i> feature article (June 17)<br><i>Burlington Hawk Eye</i> feature article (June 17)  | Radio Iowa interview (85<br>stations) (June 12)<br>WHO Radio Live (24,000<br>listeners) (June 16)<br>KGAN TV2 interview (250,000<br>viewers) (June 16)   |
| Boise, ID<br>June 10, 2003              | <b><a href="#">The Idaho Statesman feature article (July 11)</a></b><br><i>Idaho Business Review</i> feature article (July 21)   | KBOI 670 Talk Radio interview<br>(July 10)<br>Fox KTRV-12 interview (July 10)  |
| Anchorage, AK<br>July 15, 2003          | <i>Anchorage Daily News</i> feature article (July 14)  | KENI "Mike Pocaro Show" radio<br>interview (July 14)   |
| Montpelier, VT<br>September 23, 2003    |  | WNCS 104.7 FM "The Point"<br>radio interview (Sept. 12)<br>Vermont Public Radio, "Morning<br>Edition," interview (Sept. 15)<br>WRSA Radio interview, St.<br>Albans, VT (Sept. 16)<br>WTSA Radio 96.7 FM interview,<br>Brattleboro, VT (Sept. 22) |
| Concord, NH<br>September 24, 2003       | <i>Manchester NH Union Leader</i> feature article (Sept. 15)<br><i>Manchester NH Union Leader</i> feature article (Sept. 25)   |  |
| General                                 | <i>Boston Business Journal</i> feature article (Oct. 10)<br><i>Worcester Business Journal</i> feature article (Oct. 11)<br><b><a href="#">National Association of Counties "County News Online" (Oct. 14)</a></b><br>Mason Contractors Association of America website story (Dec. 23)<br>Cedar Rapids Area Chamber of Commerce "Chamber Notes"<br>cover story (Jan. 15)<br>U.S. Conference of Mayors "US Mayor" (Feb. 3)<br><b><a href="#">Professional Roofing magazine feature article (June 2003)</a></b><br><b><a href="#">Asian Press interview for feature (April 17)</a></b><br>U.S. Ombudsman "Daily On-line Report" feature articles<br>(worldwide circulation) (June 18)<br>Chicago Tribune OnLine feature article (Aug. 4)<br><i>Fortune Small Business</i> feature article (Aug. 4)<br><b><a href="#">USCHAMBER.COM Feature article (Sept. 23)</a></b> | National Radio interview with Jim<br>Blasingame (Feb. 4)<br>KCCO Radio interview "Strictly<br>Business" (June 11)  |

# County News

ONLINE

National Association of Counties • Washington, D.C. Vol. 34, No. 19 • October 14, 2002

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## Ombudsman puts fairness in regulatory enforcement

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If you are a small local government, business owner or represent small businesses and feel you have received excessive fines or penalties from a federal agency during an inspection, audit or enforcement action, the National Ombudsman Office of the Small Business Administration (SBA) would like to hear from you.

"We want to encourage a 'help-you' attitude, rather than a 'ootcha' attitude by federal agencies," said SBA National Ombudsman Michael Barrera. "By working together with small businesses and governments or nonprofits, we can make the federal regulatory process more cooperative and collaborative, fostering a more friendly regulatory environment."

In an effort to find a fair balance between necessary and excessive enforcement of federal laws, Congress created the national Ombudsman Office in 1996. The office holds hearings across the country to receive comments from small business owners about the federal regulatory enforcement environment. The office also receives comments and concerns filed directly in Washington, D.C.

These comments are then sent to the appropriate federal agency for review and response. The National Ombudsman then rates the federal agencies on their enforcement activities and sends his rating and report to Congress each year.

Congress also established 10 Regulatory Fairness Boards to hold hearings in each SBA region of the country. Each board is composed of five members — small business owners or operators from the region who volunteer their time to help small businesses cope with regulatory problems.

For a list of upcoming hearings or to read a transcript of a prior hearing, visit the National Ombudsman Web site at [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman). Complaints and concerns can also be filed online, or directly with the SBA Office of the National Ombudsman by calling (888) REG-FAIR (888) 734-3247.

*DUROCHER'S OKLAHOMA CITY BUSINESS – APRIL 8, 2003*

## Giving business a voice

Posted: Tuesday, April 08, 2003

**Joe Shepard was appointed to the SBA's Region VI Regulatory Fairness Board last fall**

By JERRY SPAEDER

Joe Shepard understands the importance of being the voice for the thousands of small businesses he represents. It's a role he takes very seriously.

As a managing partner with Archway Capital, LLC in Dallas, the native Oklahoman serves as an independent consultant, financial advisor and investor on a project basis to select private equity and mezzanine investment funds, as well as privately held companies. His day-to-day affiliation with the business sector contributed to his appointment last September to the U.S. Small Business Administration Region VI Regulatory Fairness Board for the Southwestern United States. SBA national administrator Hector V. Barreto named Shepard to the board.

Barreto said during Shepard's introduction to the board "entrepreneurs cannot operate effectively in a regulatory enforcement environment of uncertainty and confusion. Such an environment makes entrepreneurs spend more time with red tape and less time with their customers.

"Joe Shepard will be a great asset to small business owners in the Southwest and that he will play an active role in advancing regulatory fairness to all small businesses."

Shepard, who was born and raised in Oklahoma City, has always been a strong advocate of small business. As an associate for funding and financing of small businesses he has, over time, developed a reputation work his dedicated work for the advancement of small business.

"I've always been a very strong believer in what small businesses do for the economy of the U.S.," Shepard said. "With strong representation, you are able to raise a certain awareness level. That's best achieved when you walk the walk and talk the talk with the people you are speaking in behalf of in Washington. That's how results get done."

Congress created the Regulatory Fairness Board and crafted the national Ombudsman to ensure that small business would always have a voice in Congress. The boards scattered across the country are then charged with the job of reaching out to small business owners, understanding their needs and concerns, and collectively presenting before a national forum.

*DUROCHER'S OKLAHOMA CITY BUSINESS – APRIL 8, 2003 (CONTINUED)*

Through the board, the Ombudsman and by attending roundtable hearings, small businesses and advocates of small business are able to voice their opinions about regulations from the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Food and Drug Administration (FDA) and the Departments of Agriculture and Labor.

"Federal agencies want to be responsive; to seek out and find resolutions on behalf of small businesses," Shepard said. "They have a chance to go to (roundtable) hearings and voice their problems with federal agencies.

"I want to be that conduit, that link to a much larger voice. I want small businesses to know that there is someone always there to listen."

Shepard said his biggest challenge, and one that faces the SBA on a national level, is that many business owners feel they don't have a venue to vent their frustrations. "There's a lack of awareness and how the board is trying to help each and every business."

Day-to-day concerns of small business owners are very real unto themselves. Throw into the mix a U.S. involvement in a war with Iraq – and the possibility of workforce personnel being called to active duty – and it easily can manifest a sense of uncertainty and uneasiness for a business owner.

Though Shepard and the SBA are more directly involved with small business as it pertains to national agencies, they aren't withdrawn from addressing the needs in any capacity of its clientele.

Whether the economy is thriving or in a downward spiral, the SBA is there through thick and thin. Reassuring small business owners of that mantra is tantamount in Shepard's book.

"Some small business owners are afraid to comment on issues that pertain to their business," Shepard said. "All I can do is reaffirm that there is a non-retaliation policy against anything they might address in regard to an agency."

He said many business owners subscribe to a notion that they don't have a venue to vent or air out their frustrations. Shepard said most of that negativity stems from an unwillingness to speak their minds.

"The whole effort of my job, and the job of the SBA, is to see that (all small businesses) get fair treatment.

"It's imperative that the economic machine that small business is part of continues to work," Shepard said. "Our office is going to be there to serve whether times are good or bad."

*DUROCHER'S OKLAHOMA CITY BUSINESS – APRIL 8, 2003 (CONTINUED)*

## **SBA Roundtable**

**The U.S. Small Business Administration's National Ombudsman and the Regulatory Fairness Board will conduct a roundtable discussion on Tuesday, April 22 from 8:30-11:30 a.m. at the State Chamber in Oklahoma City, 330 NE 10<sup>th</sup> St.**

The National Federation of Independent Business/Oklahoma, Archway Capital and The State Chamber will sponsor the event.

The informal forum offers small business owners and representatives from business and trade associations a chance to discuss openly, without fear of retaliation, their concerns about federal compliance practices in Region VI, which includes Oklahoma, Texas, Arkansas, Louisiana and New Mexico.



ASIAN PRESS – APRIL 17, 2003

C4 二〇〇三年四月十七日 星期四 世界日報 THURSDAY, APRIL 17, 2003

# 聯邦中小企業局推廣特快貸款

## 由政府擔保降低銀行風險 飛達餅店申貸成功 華埠宣導活動現身說法

【本報訊】聯邦中小企業管理局(SBA)官員的「特快貸款」(SBA Express Loan)計劃，最近由飛達餅店(Fei Tai Bakery)成功申貸，這是SBA在華埠推廣特快貸款計劃的又一成功案例。

聯邦中小企業管理局第二屆行政主任萊巴諾(Richard Pappeo)說，這項貸款設立已七年，旨在幫助企業家發展，聯邦中小企業管理局與紐約 SBA 緊密的合作，其中獲額 20 萬美

元的銀行，政府均能作為擔保作擔保，其他國家銀行亦會向該店申請貸款，憑證會由美國一院制批准。由於銀行的風險減少，中小企業主比較容易獲得貸款。

萊巴諾說，這項貸款「911」災難貸款計劃之通，是「911」災難的受害者，這項貸款由國會任何國家政府擔保的中小企業，雖然如此，「911」發生後，這項貸款也增加了申請數目，2003 年對於年度比 2002 年貸款申請增加了 74%，而平均每項貸款額則減少了 72%。

「特快」貸款是通過擔保，對佔了「911」案，生意受到重大損失，獲得了 30 萬元的聯邦災難貸款。去年 3 月又通過擔保銀行，獲得由聯邦中小企業管理局的「特快貸款」17 萬元，而本報店得以大批和直接地說，有利擴大業務。



聯邦中小企業管理局第二屆行政主任萊巴諾(左一)、紐約中小企業發展會理事李亞坤(左二)、飛達餅店行政總裁李亞坤(左三)及飛達餅店經理陳國強(右二)，與數名華人

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步，一些從災後重新過生家，沒有商業財源，比較難獲得銀行貸款，而政府提供貸款，這些本來不困難的人，也比較容易得到貸款。

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THE PLAIN DEALER - MAY 23, 2003



PHOTOGRAPHS BY ROADRELL HICKMAN | THE PLAIN DEALER

Gil Goldberg, center, district director of the U.S. Small Business Administration, responds to testimony from Don Scott at a public hearing for small-business owners to voice their complaints about federal agencies. Scott, who owned a nightclub in Cleveland, was upset that liens have not been released even though he paid his taxes and sold his business in 1997.

## Owners sound off at hearing

### Regulators field complaints, queries

NICOLE HARRIS  
*Plain Dealer Reporter*

John Capozzi's struggle with the Environmental Protection Agency started almost 10 years ago, and it could end up costing him half of what his cabinet company makes in a year.

Yesterday, Capozzi, along with a handful of other small-business owners, voiced his complaints during a public hearing in Cleveland designed to help shrink the communications gap between small businesses and federal regulatory agencies.

Michael Barrera, national ombudsman for the U.S. Small Business Administration, listened and recorded the complaints, which ranged from questions on taxes for the IRS to food inspection regulations for the Department of Agriculture and fines from the Environmental Protection Agency. Officials from federal agencies, including the Occupational Safety and Health Administration and the IRS, were on hand to offer immediate help.

"We want to let small businesses know they have an office they can go to if they feel they are being treated unfairly in an enforcement action," Barrera said. Many



Michael Barrera, national ombudsman for the U.S. Small Business Administration: "We want to let small businesses know they have an office they can go to if they feel they are being treated unfairly...."

times, small-business operators are afraid to voice complaints, fearing retribution from regulators.

A poll by the National Federation of Independent Business indicated that it costs small businesses \$7,000 per employee

each year to comply with regulations.

"That's 60 percent more than for bigger companies," Barrera said, because big businesses have employees or hire lawyers who look out for their regulatory interests.

SEE SBA | C3

### Government hassles

If you are a small-business owner and have a complaint with a federal agency, call the U.S. Small Business Administration at 1-888-734-3247, visit [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) to download a complaint form, or mail your complaint to U.S. Small Business Administration, Office of the Ombudsman, 409 Third St. SW, Washington, D.C. 20416.

*The Plain Dealer* – May 23, 2003 (CONTINUED)

## SBA

FROM C1

### U.S. agencies get earful at hearing

For instance, they keep abreast of regulatory changes by combing the National Register. Small-business owners and managers don't have time to do that.

"A letter from the [IRS] doesn't get opened right away," Barrera said. "They'd rather not know."

Almost 10 years ago, the EPA began tests on Capozzi's cabinet company in Leavittsburg, near Warren, checking whether he was in violation of waste disposal methods. Capozzi said tests on a few shovels of dirt turned into cumbersome and expensive evaluations on a trash bin's worth of dirt collected from his property. The EPA did water tests, too.

"They were here like I was

some big conglomerate operation that goes through gallons and gallons of chemicals," said Capozzi, whose company has fewer than 10 employees. In five years, he said, his paint waste filled only half a 55-gallon drum.

After an administrative hearing with EPA officials, Capozzi was ordered to pay \$37,000 in penalties. He wrote several unanswered letters to elected officials because he thought, for a small business, the fines were excessive and he was unfairly treated.

The EPA said penalties are based on a complex formula that includes the severity of the violation, cooperation with the agency and the size of the company in terms of sales and profit.

"It's an unbelievable burden to have the federal government on your back like this," said Capozzi, who admits he violated regulations and is trying to pay the fines. "I need closure."

Although representatives from

the EPA were not at the hearing, Barrera said he would make sure Capozzi's testimony, along with that of the other small-business owners, is forwarded to the proper federal agency. Barrera said he couldn't promise the business owners a positive answer, but he could promise them an answer.

Don Scott, who owned Vef's on the Circle in Cleveland, also testified. His complaint was to the IRS. He said he paid his federal taxes and sold his business in 1997, but the liens have not been released. He has made calls to the IRS, looking for answers but never getting them. IRS officials at the hearing immediately met with Scott after his testimony and said they would help him.

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*Plain Dealer* reporter Mary Vanac contributed to this story.

To reach this *Plain Dealer* reporter: mvanis@pland.com, 216-999-4837

PROFESSIONAL ROOFING – JUNE 2003



## National Ombudsman Michael Barrera helps small businesses

by Kate Gawlik

Small businesses and federal agencies. Many small-business owners accept this David versus Goliath battle as part of owning a small business, especially when addressing regulatory enforcement. But the U.S. government and U.S. Small Business Administration (SBA) took a step to stop unfair, burdensome regulatory enforcement by creating the Office of the National Ombudsman, an office with which many small-business owners are unfamiliar.

The roofing industry, however, has become actively involved with the office. Bruce McGrory, chief operating officer and general manager of NRCA member Kiker Corp., Mobile, Ala., is Region IV Small Business

Regulatory Fairness Board Advisor to the National Ombudsman (see "Bruce McGrory's involvement," page 32).

The office's mission is "to foster a more small-business-friendly regulatory enforcement environment." This is done by helping small-business owners address repetitive audits or investigations, excessive fines, penalties, threats, retaliation and other unfair enforcement action by federal agencies. The office works to provide compliance information to small businesses and improve federal agencies' attitudes toward them. SBA generally defines small businesses as those that are independently owned and operated with fewer than 500 employees.

**PROFESSIONAL ROOFING – JUNE 2003 (CONTINUED)**

Leading the charge to help small businesses is National Ombudsman Michael Barrera. Barrera acts as a neutral liaison between federal agencies and small businesses. Following is how the office was created and how Barrera has responded to Congress's mandate to improve the regulatory enforcement process for small businesses.

**SBREFA**

In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA) to address the fact that small businesses face more regulatory costs and burdens than large corporations. According to the SBA Office of Advocacy, federal regulations annually cost small businesses with fewer than 20 employees about \$7,000 per employee—60 percent more than large businesses pay. In 2000, federal regulations cost all companies \$843 billion.

To make federal agencies more responsive to small businesses, Congress believed cultural changes had to occur in the way federal agencies enforce regulations. Therefore, as part of SBREFA, the Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman) at SBA was established to "create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solutions-orientated and make federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement."

Barrera, who reports to SBA Administrator Hector Barreto, was appointed by President Bush to begin this task Aug. 24, 2001. The Office of the National Ombudsman consists of seven employees in Washington, D.C., and is backed by 10 regional Regulatory Fairness Boards. Each board consists of five volunteer small-business owners who receive complaints from small-business owners in their regions and perform grassroots tasks, such as attending local hearings, for the office.

Barrera is grateful for the board members' involvement. He says, "I think [business owners] sometimes trust board members more than they trust me because they consider members to be one of them while I still am considered part of the government."

Getting people to trust the government has been one of Barrera's greatest challenges. Barrera says he is amazed that seven years after the Office of the National Ombudsman was created, small-business owners still are afraid to complain about federal agencies in fear of retaliation. Barrera has worked to create a new environment where small-business owners don't have to work in fear.

"We have to get rid of federal agencies' 'gotcha' attitude and turn it into a 'help you' attitude," Barrera explains.

**Making a complaint**

The Office of the National Ombudsman's help you attitude encourages small-business owners to file complaints

about federal agencies. Owners' comments are forwarded by the office to the federal agency mentioned in the complaint. The federal agency is requested to respond to the National Ombudsman, and the National Ombudsman strives to forward the agency's decision to the owner in 60 days. Although filing a complaint won't guarantee a perfect outcome, it has helped—fines have been reduced, and decisions have been eliminated. The office says complaints it handles receive a high-level review by agencies but the National Ombudsman cannot always change, stop or delay a federal enforcement.

Comments also are received at Regulatory Enforcement Hearings the National Ombudsman schedules throughout the United States. On average, about 60 small-business owners attend hearings where they can testify about their concerns, file complaints, or receive more information about the office and services it provides. Barrera says SBA is working to publicize the hearings; only two hearings were held in fiscal year 2001, but 22 hearings

**Small-business facts**

National Ombudsman Michael Barrera believes small businesses have survived because of their tenacity.

"Small businesses have taken a lot of hits," Barrera explains. "They have absorbed the economic and effects of Sept. 11, 2001."

Small business' tenacious nature may have helped them play a major role in the U.S. economy and work force. According to the U.S. Small Business Administration Office of Advocacy, the 25.5 million U.S. small businesses:

- Provide about 80 percent of new jobs
- Represent 69 percent of all employees
- Represent 30 percent of all U.S. exporters
- Employ 53 percent of private-sector workers
- Employ 61 percent of private workers on public assistance
- Employ 40 percent of private workers in high-tech occupations
- Receive 35 percent of federal contract dollars
- Account for 51 percent of private-sector output
- Provide 67 percent of workers with their first job, and on-the-job training in basic skills

## PROFESSIONAL ROOFING – JUNE 2003 (CONTINUED)

### Bruce McCrory's involvement

NBCA member Kiker Corp., Mobile, Ala., was having problems with its local Occupational Safety and Health Administration (OSHA) office. A compliance officer's behavior and other incidents led Bruce McCrory, Kiker's chief operating officer and general manager, to discuss his regulatory problems with Craig Brightup, NBCA's vice president of government relations. Brightup suggested McCrory look into becoming a board advisor to the National Ombudsman. There are 10 Small Business Regulatory Fairness Boards throughout the United States; each consists of five volunteer small-business owners.

McCrory, who admits he didn't know about the Office of the National Ombudsman, investigated the position on the office's Web site and decided it was a great way for his business to assist the government with the regulatory process.

"We were trying to find a way to get some help with regulations outside of the standard legal methods," McCrory says. "In searching for an alternative method, I found out about the National Ombudsman."

McCrory, who was appointed in August 2002, is serving a three-year term for Region IV's Small Business Regulatory Fairness Board. As a board member, McCrory receives complaint forms from small-business owners in his region, holds follow-up meetings with small-business owners to discuss complaints, reports significant enforcement issues to the National Ombudsman and

includes concerns in the National Ombudsman's annual report to Congress. In addition, McCrory attends several meetings and Regulatory Enforcement Fairness Hearings per year.

"I have the responsibility to hear from small businesses when they have complaints, direct them to the Office of the National Ombudsman and let as many of them as possible know about the office," McCrory adds.

While working as a board member for the past 10 months, McCrory has learned his company was among several small businesses having problems with federal regulations.

McCrory explains, "Most businesses want to comply but have trouble understanding certain rules and may not even be aware of the rules."

Not every small-business owner who has problems with federal agencies and regulatory enforcement will become as involved with the Office of the National Ombudsman as McCrory. But McCrory stresses the importance of small-business owners helping to improve the regulatory enforcement environment by filing complaints with the National Ombudsman—it is a way to make Congress aware of federal agencies' enforcement tactics.

McCrory notes: "The office can [send] complaints directly to Congress. And it is working—many agencies have begun to work with the National Ombudsman."

were conducted in fiscal year 2002. Barrera hopes to hold 23 hearings this fiscal year.

In 2002, the Office of the National Ombudsman received 319 complaints though many were from associations representing several hundred or thousand members. Complaints the office receives are incorporated into an annual report Barrera submits to Congress. The report also features information gathered at hearings; findings about the regulatory enforcement environment; and office-related milestones that occurred throughout a year, such as the office's Web site receiving 1 million hits during 2002.

A federal agency rating conducted by the office also is included in the report. For 2003, federal agencies will be rated on their timeliness in responding to small businesses' comments, quality of responses and nonretaliation policies. Agencies also will be rated on their ability to provide measurable regulatory enforcement compliance assistance, participation in Regulatory Enforcement Fairness Hearings and meetings when issues related to their mission are raised in testimony, and ability to give written and oral notice to small businesses when a citation or notice of regulatory violation is issued. Agencies are rated on a scale from A to F (A being excellent and F being

unsatisfactory). An agency can receive a "not applicable" rating if no issues related to its mission are raised.

### Making changes

Because agencies annually are rated on how well they cooperate with the Office of the National Ombudsman and interact with small businesses, Barrera says some agencies have begun to change. For instance, the U.S. Department of Health & Human Services' Center for Food Safety and Applied Nutrition now works with SBA and small-business owners *before*

*continues on page 34*

## PROFESSIONAL ROOFING – JUNE 2003 (CONTINUED)

*continued from page 32*

regulations are proposed; the U.S. Department of the Treasury's Employee Benefits Office simplified small-business pension plans; and the U.S. Securities and Exchange Commission included small-business owners in its Government Business Forum on Small Business Capital Formation.

In addition, Barrera has worked to get federal agencies more involved in the regulatory process instead of allowing them to only hand out fines and determinations. Barrera says agencies have responded to this request by attending hearings, creating a movement toward compliance assistance and forming partnerships.

For example, in April 2002, a memorandum of understanding was issued between the Occupational Safety and Health Administration (OSHA), SBA Office of Advocacy and Office of the National Ombudsman. The memorandum's purpose is to help OSHA share its ergonomics program information with small businesses and establish a referral process to help small businesses submit information about industry- and task-specific ergonomics guidelines to OSHA. But such partnerships are relatively new.

"We want to encourage agencies to assist rather than punish," Barrera notes. "Agencies have to help small businesses come into compliance. ... I was surprised agencies do not differentiate between small businesses and large businesses; they have to."

Barrera says his first task as National Ombudsman was to make federal agencies recognize SBREFA is good

government and good for small businesses. The next task was getting agencies to comply with the act. As agencies have worked to comply, Barrera says many of them have taken steps to work with small businesses and create comprehensive compliance assistance. But Barrera says many small-business owners still don't know about agencies' efforts. Barrera believes targeted marketing and using trade associations to disseminate information would help.

"Agencies need to find a way to get their information to market," Barrera explains. "Brochures don't do any good sitting in D.C. ... There is so much compliance assistance information out there, and I want [small businesses] to use it."

Barrera's job may have been made easier by working for an administration that supports small-business policies. For example, in August 2002, Bush signed Executive Order 13272 that requires federal agencies to protect small businesses when writing rules and regulations. Bush also has created an economic plan he believes will benefit small businesses.

"I have an active commitment from the president and his office," Barrera adds.

### Working for you

If you're wondering why Barrera wanted to become involved with SBA, it is because he spent much of his career as a small-business owner. Barrera's family owned two restaurants in Kansas City, Mo., where he worked.

After graduating from Manhattan-based Kansas State University, Barrera

was a marketing representative for Miller Brewing Co., Milwaukee, and helped local distributors with marketing and management tasks in Atlanta and Corpus Christi, Texas. His small-business experience continued when he received his law degree from the University of Texas School of Law, Austin, and opened two law firms in Kansas City.

In addition, Barrera has served as assistant prosecuting attorney for Jackson County, Mo.; chairman and president of the Hispanic Chamber of Commerce of Greater Kansas City; and founder and president of the Hispanic Bar Association of Greater Kansas City.

In his days as an attorney, Barrera says the Office of the National Ombudsman could have helped him but he didn't know about it.

"I wish I had known more about SBA, as well as the Office of the National Ombudsman, to help my clients," Barrera adds. "I think SBREFA has put SBA on the map."

### Tell him about it

Bush says, "The role of the government is not to create wealth, but to create an environment where entrepreneurs can flourish."

Barrera has taken his small-business experience and done just that.

"I help entrepreneurs flourish by freeing up their time and resources," Barrera says. "Money they save [from fines and determinations] can be put back into their businesses. They can buy insurance for their employees and spend more time with their families."

Barrera is passionate about letting small-business owners know his office was established to help them. And his message to owners is simple.

"Let us know what's wrong," Barrera pleads. "We can't help unless we know." ■

Kate Gawlik is associate editor of *Professional Roofing* magazine.

To file a complaint with the Office of the National Ombudsman, visit its Web site, [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman); send a complaint to the Office of the National Ombudsman, U.S. Small Business Administration, 409 Third St. S.W., MC2120, Washington, D.C. 20416-0005; or call (888) REG-FAIR (1734-3247). Send a copy of your complaint and supporting evidence to NRCA, as well.

ST. PAUL PIONEER PRESS – JUNE 14, 2003

# SBA clears the air in St. Paul

**G**orgia Barach has granted the **Small Business Administration** its wish.

The federal agency's ombudsman, **Michael Barrera**, convened a hearing in St. Paul Thursday for small-business owners' to air their gripes about dealing with federal agencies.

Barach, who owns the **Talus Group**, a technology consulting firm in west suburban Shorewood, gave him an earful. She protested that the SBA botched her thick application for "8-a" certification as a business owned by a disadvantaged person.

"We felt it necessary to docu-

## BUSINESS BEAT



**DAVE BEAL**  
*Columnist*

*Exploring business and economic news that affects the Twin Cities.*

ment all conversations and dealings with the government agency when our proposal was lost for six weeks," Barach testified.

She went on to complain that her repeated phone calls were bounced from one person to another, that the agency lacks a clear chain of command and that its officials were condescending and unresponsive.

"We are concerned that the agency is dysfunctional and cannot process our application,

**DAVE BEAL, 4C**



ST. PAUL PIONEER PRESS – JUNE 14, 2003 (CONTINUED)

## Dave Beal

(continued)

and if and when we are approved that the complicated, bungling process will force us to maintain expensive staff just to comply with the standards and recertifications," she said at the hearing.

"We hope to see changes to a bureaucracy that encumbers small companies with expensive submissions, rude treatment and nebulous standards."

Pretty searing criticism for the agency to swallow, right?

For sure, but it's somewhere close to the kind of a story Barrera says he wants to hear.

In an interview before the session, and again as he opened it, Barrera suggested that fear of retaliation is the biggest factor precluding small-business owners from complaining openly about their treatment by federal agencies.

Barrera reacted sympathetically to Barach's story. "No one deserves to be treated like you have," he told her.

Barrera, who co-founded two

low firms in Kansas City, Mo., helped to manage two of his family's restaurants there. In August of 2001, President Bush named him SBA ombudsman, a post created by Congress in 1996 as part of a broader effort to make federal agencies more responsive to small businesses.



Michael Barrera

"Regulatory fairness" hearings like the one Thursday are part of that process.

During the fiscal year ended last Sept. 30, the SBA conducted 22 such hearings. Barrera says the agency hopes to conduct at least that many this year. The St. Paul hearing was the first convened in the Twin Cities.

Federal agency officials are invited to the hearings to hear complaints. Representatives from the U.S. Departments of Labor and Agriculture and the Internal Revenue Service showed up for the St. Paul hearing.

The SBA has established five-member regulatory fairness boards in each of its 10

regions. Two members of this region's committee — **Lyle Clemenson**, who is its chairman, and **Lloyd Falconer** — were at the hearing Thursday.

Clemenson is president of CRI, an Osseo firm that sells cutting tool bits. Falconer, also a director of the **National Federation of Independent Business**, is secretary-treasurer of **Seward Screw Products** near Rockford, Ill.

Clemenson, also a critic of federal regulatory excesses, has been on the Midwest board since 1999. At the hearing, he asked the IRS to eliminate the paperwork generated by W-9 employer identification forms that his customers must keep on file.

Also testifying was **Al Paulson**, who heads St. Paul-based **MarketPlace Productions** and chairs the small-business policy committee of the **Minnesota Chamber of Commerce**.

Paulson wants the IRS to slash the number of its definitions of independent contractors to no more than seven from about 25 now. His company and many other small businesses rely heavily on such contractors.

Dealing with so many definitions is confusing and expen-

sive, Paulson says, adding that the agency hasn't acted on a recommendation that it reduce them.

IRS officials say they are looking into the concerns.

Georgia Barach wants to get Talus qualified for federal contracts set aside for disadvantaged small-business owners. Her company's applications now exceed 500 pages.

Barach's 2½-page chronology sums up 18 months of frustrations with the SBA that have left her in limbo.

She has been working with the offices of Minnesota **Reps. James Oberstar**, a Democrat, and **Jim Ramstad**, a Republican, to resolve the problems. Controversies involved in the recent closing of the agency's Texas office apparently have caused some of the difficulties.

"I am hopeful," Barach says. "I felt an immediate response from Barrera."

**Mary Jean Duran**, director of interagency affairs in SBA's office of government contracting in Washington, released this statement: "In 2003, we had 2,000 applications for the 8-a certification program. The average turn around time for those applications is 83 days. The 8-a i

governed by statutes which are very specific. Not everyone qualifies."

Meanwhile, Barrera urges small-business owners having problems with federal regulators to call him at (888) REG-FAIR, e-mail him at [ombudsman@sba.gov](mailto:ombudsman@sba.gov) or file a complaint by going to his Web site at [www@sba.gov/ombudsman](http://www@sba.gov/ombudsman).

THE IDAHO STATESMAN – JULY 11, 2003

# BUSINESS

The Idaho Statesman • Friday, July 11, 2003 • IdahoStatesman.com

## Federal ombudsman gets an

By Michael Journee  
The Idaho Statesman

Norman Hobson has a beef with the Environmental Protection Agency, and on Thursday he had an audience with the man most able to do something about it.

Michael Barrera, the Bush Administration's ombudsman at the U.S. Small Business Administration, listened to Hobson and a number of other disgruntled small business owners who've had run-ins with the federal government and its regulatory agencies.

"I don't consider it complaining," Barrera said of the

testimony he takes at hearings across the country about the shortcomings of federal agencies. "These are small business people who have concerns."

Barrera works directly with federal regulatory agencies to foster a more cooperative relationship between the agencies and small businesses that is less punitive and more solution-oriented.

During Thursday's "informal round-table discussion," called a Regulatory Fairness Hearing by the SBA, Barrera heard Hobson's story about the EPA. That and the other testimony taken at the meeting will be used by Barrera

to prepare a report to Congress on federal regulatory enforcement and its impact on small business.

Side discussions between the agencies and the businesses, urged by Barrera, yielded little progress by the end of the Thursday session held at the Boise Metro Chamber of Commerce offices.

Barrera directed local representatives of the federal agencies being criticized to redouble their efforts to work out compromises or other, less-confrontational solutions.

Here's a quick look at a few of the complaints lodged by area business against federal

## earful from Idaho businesses

agencies during the hearing:

► After inheriting a building long used as a dry cleaning business, Hobson discovered the site was contaminated with perchloroethylene, commonly known as perc, a solvent used in the dry cleaning process.

Hobson's efforts to find the extent and severity of the contamination through the Idaho Department of Environmental Quality were thwarted by EPA regulators who said efforts to clean up the chemical, which can create a variety of health problems, were taking too long.

Hobson said the EPA in-

terrupted significant progress on cleaning up the site by crowding the IDEQ out of the process. The site's subsequent designation as a Superfund site by the EPA will likely increase Hobson's liability for ongoing study and remediation efforts, he said.

► Lin Hintze, owner of Big Lost River Meats in Mackay, complained that U.S. Department of Agriculture inspectors are required to come to his butcher shop daily to ensure the quality of his product. Meanwhile, other butcher operations, like those in grocery stores or hotels and restaurants, operate with lit-

tle or no oversight.

"My problem is not with my inspector," Hintze said. "It's with the system that allows this. Every time I talk or complain to a government official, it's not their department — it's someone else's issue."

► Jan Alexander, representing about six eastern Oregon mines, said new Bureau of Land Management mining regulations have become so onerous that many smaller mining operations have shut down.

Contact reporter Mike Journee at [mjournee@idahostatesman.com](mailto:mjournee@idahostatesman.com) or 377-6465.

**FEATURE**

**U.S. Chamber  
 Co-Sponsors  
 SBA Event**



The U.S. Chamber is co-sponsoring SBA's National Entrepreneurial Conference and Expo September 17-19 in Washington, D.C. During the event, SBA will be celebrating its 50th anniversary by recognizing the contributions of small businesses to the American economy.

The conference will feature more than 175 exhibitors and provide a number of opportunities for small-business owners to connect with government and corporate buyers. The event also marks the inauguration of SBA's Hall of Fame. To register, go to [www.usc.org/entrepreneur](http://www.usc.org/entrepreneur).

If you can't make it to the nation's capital, consider attending one of these upcoming regional events for procurement opportunities, where you will have a chance to speak directly to government officials about the challenges facing small businesses.

- 2003**
- Bangor, Maine October 3
  - Syracuse, New York October 20
  - Bend, Oregon November 10
  - Davenport, Iowa November 17
  - Jacksonville, Florida January 19
- 2004**
- Albuquerque, New Mexico February 2
  - Reno, Nevada February 10
  - Clarksburg, West Virginia March 6
  - Green Bay, Wisconsin March 22
  - Denver, Colorado April 5
  - Springfield, Missouri April 12
- Visit SBA's Web site at [www.sba.gov/50](http://www.sba.gov/50) for more information.

**FEATURE**

# SBA Stands Up for Small Business

## Michael Barrera, Ombudsman, Could Be Your Ally

**I**f you think that your business is being unfairly regulated, Michael Barrera is a good person to know. As the Small Business Administration's national ombudsman, Barrera and his staff act as a go-between in feuds between federal regulators and the small businesses they regulate.

*uschamber.com* staff sat down for a conversation with Barrera, a lawyer, former manager of two family-owned restaurants, and former chairman and president of the Hispanic Chamber of Commerce of Greater Kansas City.

the Department of Labor's wage and hour division. DOL told the company that it should be paying some of its brewers hourly wages rather than salaries. The brewery owner disagreed with DOL and spent about \$7,000 in legal fees fighting it. Finally, he contacted our office and within 30 days we got a reversal of DOL's decision.

**uschamber.com: How does your office help small businesses?**  
 Barrera: Our overall mission is to create an environment in which small businesses feel free from unfair regulation and enforcement.

**What is the typical profile of a business your office assists?**  
 It's usually a business with fewer than 25 employees, but in almost all cases, it's a business that wants to comply and do the right thing. It cares about clean air, safe roads, and safe food products.

**What types of complaints do you hear about most from small businesses?**

We often hear about paperwork that small businesses don't understand—but which federal agencies expect them to understand, even though they don't supply businesses with compliance assistance. Another frequent complaint is that different regulatory agents enforce a specific regulation differently, which complicates small business planning. Small businesses don't like it when their complaints are met with "We'll get back to you." We try to give them an answer one way or another so that they can plan and move forward.

**Speaking of paperwork, how has your office been involved in the effort to reduce the paperwork burden?**

We've worked with the Office of Management and Budget to publish in the Federal Register and on our Web site a list of all the paperwork compliance assistance resources. Under the Small Business Paperwork Relief Act, all agencies are required by law to appoint someone in their agency who small businesses can contact for compliance assistance.

**Why wouldn't small businesses having a problem with a regulation appeal directly to the agency that issued it?**

Small businesses come to us because we are a neutral party, and we can take their concerns to a level above the regulatory agent that they're dealing with. This way their complaints get a fresh look. Our office serves as a buffer and troubleshooter for small businesses.

**Are there instances in which small businesses that have appealed to your office have seen a significant positive change in their situation?**

We've had some great success stories. There was a small brew pub in Illinois that was having an issue with



Under Michael Barrera's leadership, the number of businesses using the resources of the SBA's National Ombudsman Office has increased dramatically.

**Are companies afraid to use your services for fear of retaliation by the regulating agencies?**

My biggest disappointment when I first started—and it's still a concern today—is that many businesses are afraid to tell us their stories. Small-business owners are our bosses, our customers. If you don't listen to your customers, you're not going to improve as an agency. Many agencies have adopted formal, written small business nonretaliation policies, and

we're starting to grade each one. As more agencies adopt these policies, the overall regulatory environment for small businesses will change.

**You have about 50 "regulatory fairness boards" located across the country. What is their purpose?**

The members of our regulatory fairness board are individual business owners or operators that serve as our eyes and ears in their local communities. They hold hearings—about 22 last year—and help us reach out to small businesses. For me to go into a community and say, "I'm with the government, I'm here to help" doesn't always resonate with small-business owners. When small businesses see members of our regulatory fairness board working with us, it gives our program more legitimacy and credibility and takes away some of the fear.

**How many small businesses use your services?**

Not nearly enough, but we've made great strides. The year we started, we received 22 comments for the entire year. Last year, we received 319. That may not sound like a lot, but it represented thousands of businesses because many comments came from trade associations.

**How do you get the word out to small businesses that you are available to help them?**

First, some 1.5 million people access SBA's Web site, and our office has a prominent spot on the site. Second, we are better utilizing members of our regulatory fairness board for outreach. We've produced articles and interviews that trade associations can run in their newsletters. Finally, we're reaching out to Congress more because people who have a problem with government usually contact their members of Congress first.

