

2005 National Ombudsman Report to Congress



U.S. Small Business Administration

National Ombudsman's 2005 Report to Congress

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The ONO Mission

The Office of the National Ombudsman (ONO) 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 regulatory 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 Fairness (RegFair) Boards.
- Provide affected agencies with an opportunity to comment on draft reports.

What is an unfair enforcement action?

It can be repetitive audits or inspections, unreasonable fines or penalties, or threats by a Federal agency and/or acts of retaliation by a Federal agency.

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

ONO Regional RegFair Board Members, FY 2005

The Small Business Regulatory Enforcement Fairness Act of 1996 authorized the National Ombudsman and the creation of 10 Regional Regulatory Enforcement Fairness 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. ONO forums around the country enable small business owners to bring their concerns directly to the RegFair Boards, which encourages small businesses to come forward without having to go to Washington, DC.

RegFair Board members are appointed by the SBA Administrator. All RegFair Board members are volunteers and all are 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 an ONO RegFair Board in each of 10 SBA regions; and in FY 2005, the following people served:

Region I

Laura L. Monica
High Point Communications Group, Bow, NH

Leo R. Blais, Chair
P.V. Prescription and Surgical Center, Inc.,
Coventry, RI

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

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

Region II

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

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

Eric Jenkusky
Spark Management Resources, Oneonta, NY

Region III

Pamela Mazza
Piliero, Mazza & Pargament, Washington, DC

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

Felix J. Jackson, Chair
DataProbe Technical Service, Owings Mills, MD

Beverley Donati
Whiteoak Turf Care, Richmond, VA

Region IV

R. Bruce McCrory
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, Chair
Radio Station 98.9 - Charleston,
Mt. Pleasant, SC

Stanley L. King
S.L. King and Associates, Inc., Atlanta, GA

Region V

Lyle J. Clemenson
Clemenson Enterprises, Brooklyn Park, MN

Doug Hilbert, Chair
Professional Technical Development
East Lansing, MI

Edward Aprahamian
Lezk Corporation, Shorewood, WI

Region VI

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

Harold McAlpine
Christmas Tree Farm, Bismark, AR

Jose Cuevas, Jr., Chair
JumBurrito, Midland, TX

Mary Ann Weems
Weems Galleries and Framing,
Albuquerque, NM

Regina N. Hamilton
Jones, Walker, Waechter, Poitevent, Carrere
and Denegre, L.L.P., Baton Rouge, LA

Region VII

Paul Kinyon, Chair
Realty Advisors LLC, Cedar Rapids, IA

Jeanette Prenger
ECCO Select, Kansas City, MO

James J. Ziebarth
Ziebarth Farms, Wilcox, NE

Region VIII

James J. Larsen, Chair
Guidon Resources, Vermillion, SD

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

Michael J. Stransky
Gillies Stransky Brems Smith PC,
Salt Lake City, UT

Nancy Warneke-Gaynor
Gaynor River Bend, Whitefish, MT

Brenda Mosher
Interim Health Care of Wyoming, Casper, WY

Region IX

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

Kimberly King
King Security Services, San Francisco, CA

Region X

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

Michael Dahmer
Systems Associates, Inc., Jerome, ID

Carl Grossman, Chair
Public Private Partnerships, Inc., Portland, OR

Shiao-Yen Wu
WPI Real Estate, Seattle, WA

Sue Linford
Linford of Alaska, Inc., Anchorage, AK

Message from the SBA Administrator

I am pleased to present to you the U.S. Small Business Administration's *National Ombudsman's 2005 Report to Congress*.

The mission at the Office of the National Ombudsman is to ensure that small businesses receive fair regulatory enforcement, a goal that exemplifies the President's vision of government as nurturing—not inhibiting—a thriving marketplace. By encouraging Federal regulatory agencies to address small business concerns, the National Ombudsman helps to foster a business environment where entrepreneurs willingly test their ideas and risk their capital to be successful. In removing these roadblocks, we help free small business to do business.

The Office of the National Ombudsman continued to apply creative strategies in 2005 to create a triple-win situation for businesses, agencies, and the American people. We have employed technology to respond more efficiently and broaden participation by small businesses and Federal agencies alike. Improved communication channels encouraged regulatory agencies to opt for cooperation rather than punitive enforcement measures, creating a small business-friendly environment for entrepreneurs and cost-saving benefits for the entire nation.

The Office of the National Ombudsman's reputation throughout the Federal government as a champion of small business continued to grow in FY 2005, and this higher profile boosted the effectiveness of our outreach. As long as small businesses continue as a main driver of economic growth, the mission of easing their onerous regulatory burdens will make a valuable contribution to a thriving U.S. marketplace.



Steven C. Preston
SBA Administrator



Introduction by the National Ombudsman

As I survey the current entrepreneurial and business climate, there has never been a more exciting time to be a part of the small business community. While we strive to assist small business to achieve success, we also recognize America's small businesses have challenges – compliance and regulatory challenges.

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 the National Ombudsman to evaluate and rate Federal agencies annually on their regulatory enforcement activities. This report summarizes small businesses' experiences with various Federal agencies, and evaluates and rates agencies' responsiveness to their concerns.

One purpose of SBREFA is for the Regional Regulatory Fairness Boards, the National Ombudsman, and the affected agencies to receive quality feedback from small businesses on the regulatory enforcement environment they are faced with in today's ever-changing and dynamic marketplace. Information gathered at regional regulatory hearings is included in this context, along with findings and recommendations from other feedback received. The purpose of this report is to assess the performance of each agency as a whole.

In FY 2005, Federal agencies made great strides in improving the Federal regulatory enforcement environment. Response time improved, and there was a dramatic increase in the compliance assistance offered to small business. Several Federal regulatory agencies have heeded the National Ombudsman's advice to establish a single point of contact for small businesses who file comments with them.

The Office of the National Ombudsman conducted 17 RegFair Hearings across the country and received a total of 382 written comments from small businesses. Hearings and Dynamic Markets Meetings drew representatives from a variety of business groups and trade organizations that boast a collective membership of approximately 3.3 million.



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. The President's Small Business Agenda calls for removing the regulatory barriers to job creation for small businesses and giving them a strong voice in a complex and confusing regulatory process.

Small businesses are our customers. They need to feel comfortable telling their government both the good and the bad. This office provides a means for them to provide that input without fear of retaliation.

I look forward to a continued partnership with Federal agencies in implementing the President's and Administrator Preston's vision to create a regulatory environment that is fair and transparent for America's small businesses.



Nicholas N. Owens
National Ombudsman

FY 2005 Highlights

One of the toughest challenges faced by ONO in carrying out our mission is diffusing the “Us vs. Them” mentality that can develop among small businesses toward the Federal government agencies charged with regulating them. We have had gratifying success in FY 2005 with fostering understanding and workable compromise through ONO’s Regulatory Fairness (RegFair) Hearings, where small businesses and Federal regulatory agencies can air their concerns and seek solutions. We exceeded our annual goal for FY 2005 by holding 17 hearings across the nation, from Albuquerque, New Mexico, to Mobile, Alabama, to New York City.

Although we have always made ONO RegFair Hearings as accessible as possible, we recognize that not all of our small business constituents can leave their shops and offices to take advantage of these face-to-face exchanges. We are thankful for the perseverance of our RegFair Board members in encouraging their small business peers to voice their concerns in writing. ONO received 382 comments from small business entities in FY 2005, 175 of which were within our jurisdiction to address (see “Demystifying the Comment Process,” Chapter II). To avoid leaving our constituents lost in the Federal bureaucracy, we con-

tinued to offer referrals when ONO was not the proper point of contact for a particular small business issue.

Referring comments is just one example of how ONO continued building close relationships with our Federal agency partners, including those within the Small Business Administration (SBA). ONO held two Interagency Meetings in FY 2005 and met one-on-one with 15 agencies to assist our Federal partners in identifying common enforcement and compliance issues and potential solutions. It is noteworthy that attendance at Interagency Meetings has increased dramatically in the past few years, from two dozen at the initial meeting to more than 100 in FY 2005.

For their part, Federal agencies increasingly stepped up to the plate in FY 2005 to improve their response to small business concerns:

- Nearly three-fourths of the 19 Federal regulatory agencies that received comments responded in less than 60 days, earning them either an A or B rating for “timeliness” (see “A Closer Look at Federal Agency Response,” Chapter II).
- Attendance at ONO RegFair Hearings continued to improve among

SMALL BUSINESSES DRIVE OUR ECONOMY

Small businesses—those that are independently owned and operated with fewer than 500 employees—represent more than 99.7 percent of all employer firms, and were responsible for all net new jobs in 2000-2001, a similar result to that which occurred during the economic downturn of the early 1990s. Numbering 25.8 million in the United States, small businesses represent over 50 percent of our non-farm gross domestic product. They also:

- Employ half of all private sector non-farm employees.
- Have generated 60–80 percent of net new jobs annually over the last decade.
- Employ 41 percent of private sector workers in high-tech occupations (according to the Census Bureau).
- Are 53 percent home-based and 3 percent franchises.
- Make up 97 percent of all identified exporters, producing 28.6 percent of the known export value in FY 2004.

Source: SBA Office of Advocacy, “Frequently Asked Questions,” June 2006.

Federal agencies that were referenced in particular small business comments.

- More than 40 percent of the 16 Federal agencies that attended RegFair Hearings showed up at nearly every hearing. ONO’s Federal partners are demonstrating that they are more aware of small business needs and are willing to engage in proactive efforts to help.
- With ONO’s encouragement, most Federal agencies have established online links to a wealth of regulatory compliance assistance resources designed especially for small business consumers, including direct links to ONO’s website (see “Giving Credit Where Due,” Chapter II). ONO has reciprocated by providing direct links to each one of its Federal regulatory partners on its own website.

While ONO is proud of its growing positive impact on fair regulatory enforcement for small businesses, we recognize that much work remains to be done. Even as businesses discover that their voices can be heard if they bring their issues to the table, others still feel that Federal agencies are “out to get them,” (see Chapter III, “Championing the Cause of Small Business—Stories From the Front Line”). ONO’s RegFair Boards continue to be a mainstay in bridging this gap and championing the cause of regulatory fairness. Our board members across the country spread the word among their peers that they can turn to ONO for help in seeking recourse for unjust treatment.

As catalysts and leaders in their communities—and small business owners themselves—ONO RegFair Board members worked with SBA partners in FY 2005 in planning hearings and eliciting comments to give small business owners a voice in Washington (see Chapter IV, “RegFair Boards—Our Sentries in the Field”). Board members engaged in a variety of outreach activities aimed at raising awareness of ONO and encouraging small businesses to make their concerns known. These efforts included working collaboratively with trade associations, legislators, and state chambers of commerce to foster mutual support and unity at the grassroots level by emphasizing shared best interests. As a result, ONO has expanded its reach to an impressive 3.3 million small businesses that were represented by their trade groups at ONO RegFair Hearings (see “Reaching Out and Following Up,” Chapter IV).

ONO continued to train and encourage RegFair Board members to become media savvy and put mass communication to work in their regions. These efforts paid off in FY 2005, with ONO “spots” reaching a media market of more than 9.6 million people—8 million through radio and television interviews, 1.4 million through print media articles, and the rest through Internet websites (see “Media Events,” Appendix A).¹

RegFair Board members and the many SBA partners in their regions also helped ONO keep pace with 21st century entrepreneurship by securing

¹Determined through use of the Arbitron Rating system.

attendance at Dynamic Markets Meetings. These were held alongside RegFair Hearings and roundtables in FY 2005 as the venue for engaging emerging market entrepreneurs through trade associations, state chambers, and other interest groups. Dynamic Markets Meetings allow ONO staff and board members to also serve as SBA ambassadors, apprising emerging and diverse small business entrepreneurs of the full range of ONO and SBA resources (see “Reaching Out to the Underserved,” Chapter IV). These efforts are a prime example of ONO’s strategy of piggybacking on opportunities to broaden our impact with special interest and other groups.

ONO pledges to continue seeking out new and better ways of helping small businesses *do* business by making more creative use of technology and expanding our reach to garner as much participation as possible (see Chapter V, “Looking Ahead. . . Targets of Opportunity”). We also intend to continue helping small businesses *stay* in business by making their voices heard loud and clear. And finally, we aim to carry out our mission as efficiently and cost effectively as possible. ONO is determined to have a positive impact on the small businesses we serve and on the Federal agencies that regulate them.

ONO is proud to recap the following highlights of our FY 2005 accomplishments:

- ONO conducted 17 RegFair Hearings in 16 states and 10 regions. Two of the hearings were bilingual, with one conducted in English/Spanish and the other in English/Mandarin. All were attended by ONO’s Acting National Ombudsman and RegFair Board members, who presented comments from their regions.
- ONO held three RegFair Board member meeting/conference calls in FY 2005 and trained 19 RegFair Board members.
- ONO received a total of 382 written comments from small businesses. We referred the 108 comments that concerned issues outside of our jurisdiction to the appropriate Federal agency or SBA office.
- ONO Hearings and Dynamic Markets Meetings drew representatives from a variety of business groups and trade organizations that boast a collective membership of approximately 3.3 million.
- Several Federal regulatory agencies have heeded ONO’s advice to establish a single point of contact for small businesses who file comments with them. For example, the Department of Transportation (DOT) uses a high-level reviewer to ensure that the appropriate office thoroughly addresses small business comments; the Internal Revenue Service (IRS) provides a detailed response to all comments received and checks them for accuracy and quality at each review level; and at the Occupational Safety and Health Administration, each area office has a Compliance Assistance Specialist who responds to requests for help from a variety

of small business entities, offering seminars, training and speaking events, and other type of technical assistance.

- Multiple agencies instituted proactive changes in policies or procedures that made things easier on small businesses while several others published web and print materials and established innovative outreach programs to better communicate with their small business stakeholders. For example:
 - The Department of Justice (DOJ) developed an interactive online course for businesses, explaining how to comply with the Americans with Disabilities Act (ADA).
 - The IRS launched a proactive assistance program focusing on new small businesses, most owned by women and ethnic minorities, to help them comply with tax laws. All materials are available on the IRS website.
 - The Federal Transit Administration (FTA) within the U.S. Department of Transportation conducted a number of “listening” sessions at which small organizations provided feedback and identified local needs.
 - US Department of Labor (DOL) redesigned its compliance assistance website (www.dol.gov/compliance) to help the regulated community to quickly and easily navigate DOL’s wide range of regulatory and compliance information. The portal features a new navigation scheme, including a “by audience” page.
- Since FY 2002, 18 Federal agencies have joined the growing number of government entities with written non-retaliation policies. A total of 32 agencies now have written policies in place.
- ONO RegFair Board members actively encouraged small businesses to speak out and seek redress of their regulatory enforcement fairness concerns. They also raised awareness throughout their regions by speaking to business leaders at local chambers of commerce, attending planning and zoning meetings, and eliciting media coverage for RegFair Hearings, spreading the word about ONO throughout their communities.
- ONO hosted two Interagency Meetings for Federal regulators and conducted 13 Dynamic Markets Meetings around the country that targeted the leadership of emerging and diverse small business groups.
- ONO performed 208 customer assistance actions via telephone and email, and wrote and distributed three E-Blast electronic newsletters to about 3,000 subscribers, up from 2,000 in FY 2003.
- Television and radio interviews and exposure through print media and Internet articles reached a potential audience of 9.6 million.
- Business Gateway heralds a new way of doing business with Federal gov-

ernment that optimizes electronic business processes that save time, paperwork, and money. In line with ONO initiatives to do the same, <http://www.business.gov/> provides links and tools to assist companies in complying with Federal regulations.

The portal also allows businesses to easily find thousands of government-required documents and reduces the reporting burden on small businesses required to submit regulatory information to Federal, state, and local governments.

II

How They Measured Up— Holding Agencies Accountable

Each year, ONO continues to successfully motivate increased participation by Federal agencies as they respond to small business concerns and proactively take part in education and compliance assistance efforts. Chapter II describes the variety of mechanisms used by ONO to encourage regulatory enforcement agencies and the positive outcomes that we have achieved in FY 2005. Federal agencies are increasingly showing up at RegFair Hearings, particularly when an issue concerning an agency is on the table. ONO seeks to encourage these positive trends by keeping the channels of communication open with government organizations, holding interagency meetings, conferring one-on-one to discuss particular issues, and informing agencies of hearings that feature issues pertinent to them.

ONO also connects with government organizations via the Internet by including links on its website to all Federal agencies and sub-agencies with whom ONO is involved. By clicking on “Resources” on the left side of the Ombudsman home page, visitors can view links to a number of important sources of information (see Figure II-1). Clicking on “De-

partments and Agencies” in the “Federal Agencies” section displays a scrollable list of government organizations. A click on “Go” produces contact information specific to each agency. A built-in form is provided for composing and sending a message directly to the chosen contact.

Agencies Must Respond to Small Business Comments

Regulatory enforcement fairness is the focus at ONO. Small business comments about enforcement issues reach us by multiple avenues, including on-line comments; hearing testimony; mail, fax, or email; telephone calls; remote conferencing (for those who cannot attend a hearing); and by proxy through a board member or other representative. In addition, ONO has stepped up efforts to

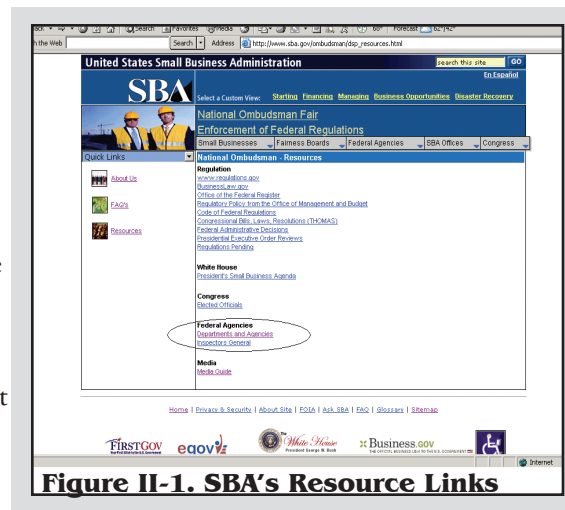


Figure II-1. SBA's Resource Links

get the word out to congressional representatives so they can refer comments received from small business owners and representatives. When businesses cannot attend a hearing in person or via remote conferencing, their comments can be read into testimony by a representative.

In FY 2005, ONO received 382 comments: 179 through on-line submissions, 92 at hearings, 58 by email, 29 by fax, 23 by U.S. mail, and one by phone (see Figure II-2). Comments (minus company identities to protect their privacy) are mailed to the board member in the same geographic region as the filers. This allows individual members to more easily follow regulatory issues in their regions. Board members also receive weekly mailings to keep updated on the status of comments filed. ONO is working to transmit this information electronically so that board members can track comment results in real-time.

If ONO determines that a comment falls within our jurisdiction, we forward it to the relevant agency. ONO refers non-jurisdictional comments (e.g., contracting issues, State issues, loan denials) to the appropriate SBA office or other governmental entity. This is one way in which we practice what we preach about Federal agency responsiveness and keep

our promise to small businesses that their comments will reach someone who can help even if the issue falls beyond our jurisdiction.

ONO expects that a Federal agency will respond within 30 days of receiving a comment and related paperwork. Comments not only provide an outlet for small businesses to air concerns, they serve as the foundation of ONO's work to change the culture of regulatory fairness in the United States. Comments provide a means for evaluating and rating Federal agency enforcement activity, measuring agency responsiveness to small business, supplying agencies with information they need to correct enforcement problems, and keeping legislators apprised of our own progress through ONO's Annual Report to Congress.

These mechanisms form a continuous improvement loop through which small business comments and agency responses prompt feedback that assists ONO in resolving regulatory issues to the benefit of both business and government. Federal agencies, for example, have modified their regulations or enforcement policies to make them more fair and effective as a result of small business comments.

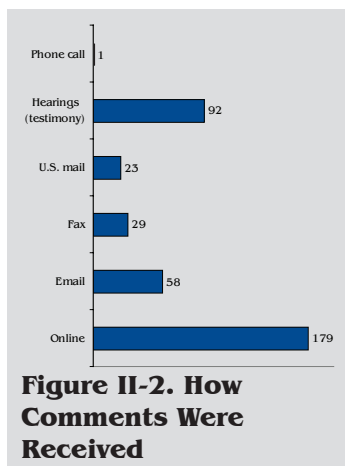


Figure II-2. How Comments Were Received

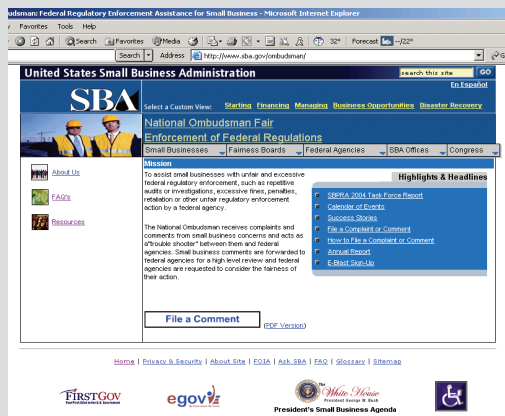


Figure II-3. Online Comment Form

information flowing and communication channels open. Users follow ONO's online Calendar of Events (Figure II-4) to view the most up-to-date information in their particular area of interest (see Figure II-5).

On-line at ONO
 ONO's website (<http://www.sba.gov/ombudsman/>) makes electronic filing of comments quick and easy. Users simply fill in the form and submit it with the click of a mouse button. Optionally, users can easily download a printable form to fill out, then mail or fax (see Figure II-3). ONO continues to discover creative ways that technology can make interacting with us as easy as possible. Transcripts of hearings, for example, are now immediately uploaded to the ONO website to help keep

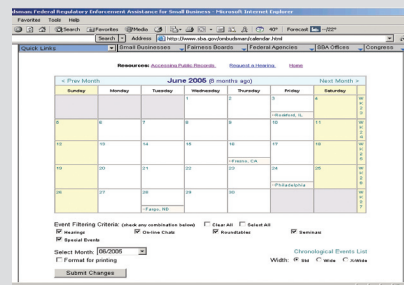


Figure II-4. Calendar Page

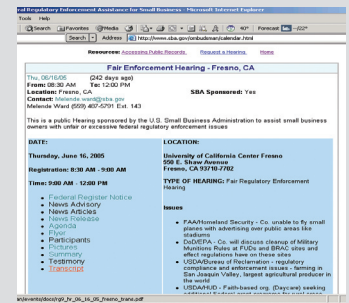


Figure II-5. Event Detail

Figure II-6 depicts the breakdown of who filed comments in FY 2005. As shown, the great majority came from small businesses, although associations and nonprofits were also represented.

Rating the Agencies

One of ONO's tasks is rating Federal agencies on their responses to comments received from small businesses and other entities (see Table II-1). ONO bases these ratings on criteria that seek to determine how quickly an agency responded and how hard it worked to educate small businesses about complying with regulations. The subsection below lists the seven criteria used by ONO in FY 2005 to guide its agency ratings. ONO also based these ratings on self-reporting by the agencies in response to the following questions:

- Do you have a written/online non-retaliation policy?

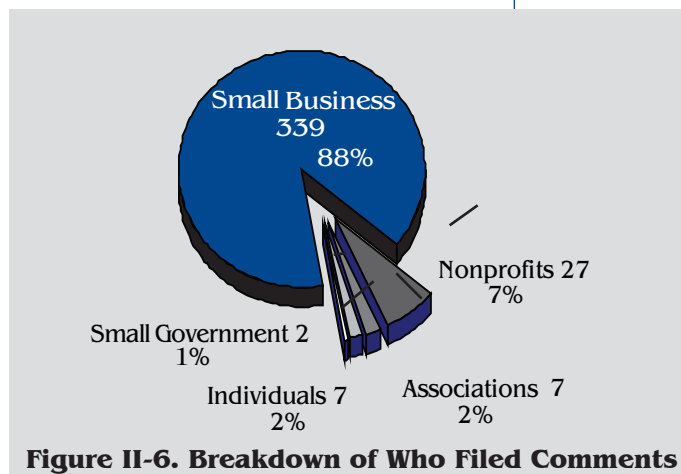


Figure II-6. Breakdown of Who Filed Comments

- How do small businesses access this information?
- How is it disseminated throughout your agency or sub-agencies?
- How do you provide compliance assistance to small business?
- What tools do you use to inform small business about Small Business Regulatory Enforcement Fairness Act (SBREFA) rights and how to contact ONO?
- To confirm our records, please list the ONO Hearings where you had

agency representation in attendance.

The ratings for (1) Timeliness and (2) Quality of Response are based on how agencies respond to small business comments, while the remaining grades are based on agency answers to the questions above. As a whole, Federal agencies provided quality responses in FY 2005. One encouraging trend is that more agencies have followed ONO's advice to appoint a representative--or point person--to address small business comments. Timeliness of responses also

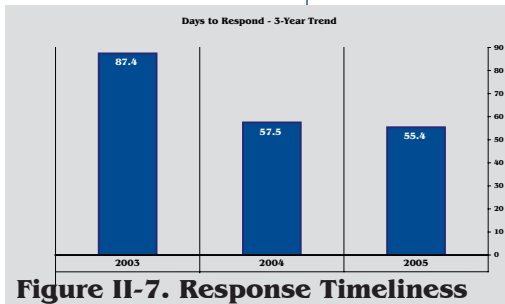


Figure II-7. Response Timeliness

continued a general upward trend (although several agencies continue to need improvement), shrinking from an average of 87.4 days in FY 2003 and 57.5

days in FY 2004 to 55.4

days in FY 2005 (see Figure II-7). Participation in the hearing process continues to improve as well. This score means that agencies are attending hearings, and sometimes even resolving issues and solving problems on the spot. Table II-1, which appears later in this section, depicts all Federal agency ratings for each of the seven criteria.

Federal Agency Rating Criteria for 2005

ONO used the seven criteria described in this section to rate Federal agency response to small business concerns in FY 2005. The bracketed text represents changes planned for FY 2006.

1. Timeliness¹ in responding to small entity comments.

- Over 30 days
- Over 60 days
- Over 90 days
- Over 120 days

2. Quality of response to small entity comments.

In forwarding a small business comment and its substantiating documentation to the Federal agency involved, ONO also includes a letter with several questions, including “Why and how did you take the enforcement action?” and “Did your agency consider alternatives, such as waiving penalties or reducing fines?” The answers help ONO to assess the agency's responsiveness, the degree to which it appreciated or considered the effects of its actions, and whether any follow-up occurred. To expedite a response, this letter is typically addressed to a particular person within an agency, ideally the specific point of contact for small business concerns. The agency's response is rated according to the following points [Comments that allege unprofessional behavior are referred by ONO to the Inspector General (IG) within the particular agency.]:

- The agency addressed the questions posed in ONO's forwarding letter that included the comment [to be added in FY 05: “and responded to

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

the specific comment made by the small entity”].

- The agency response came from a high-level representative (i.e., someone from the SBREFA office at the agency or someone 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 individual(s) agency personnel involved in the enforcement activity.
- The agency responded to the comment made by the small entity [in FY 05: “or took corrective action(s) including, but not limited to, reducing or waiving penalties, adopting a new policy to avoid recurrence of an inappropriate result, or conducting additional outreach with compliance assistance”].

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 [FY 05: “and may access”] its non-retaliation policy.
- Agency employees and small entities are aware of the consequences of not adhering to the agency non-retaliation policy.

4. Agency regulatory enforcement compliance assistance. The agency estab-

lishes a baseline and provides measurable regulatory enforcement compliance assistance, with increases expressed in percent 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 [FY 05: “and documents”] compliance assistance education.

5. RegFair participation. The agency participates in Regulatory Enforcement Fairness Hearings and meetings when issues related to its mission are presented in testimony.²

- 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. Agency notice to businesses of violations and right to comment. The agency [in FY 05: “establishes a policy wherein it”] provides written and verbal notice to small entities when a citation or notice of regulatory violation is issued. [In FY 05: “Policy should include, but not be limited to”]:

- The agency provides written notification of SBREFA rights to small business concerns.

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

- The agency informs small business concerns of their right to comment about the enforcement/compliance process to the National Ombudsman's office.
- The agency verbally informs small entities of their right to comment about the enforcement/compliance process to the National Ombudsman's office.
- The agency provides in writing [in FY 05: "and/or on appropriate website locations"] the National Ombudsman's Internet address, <http://www.sba.gov/ombudsman>, to small entities.

7. The agency complies with report-

ing requirements of the Small Business Paperwork Relief Act of 2002 (SBPRA), H.R. 327-5, paragraphs 1, 2, 3, and 4, and presents a copy of these reports to ONO on or before the due date established by statute. The following information should be included:

- The number of enforcement actions in which a civil penalty is assessed.
- The number of enforcement actions in which a penalty is assessed against a small entity.
- The number of enforcement actions in which a civil penalty is reduced or waived for small entities.

The total monetary amount of reductions or waivers against small entities.

TABLE II-1. RATING OF AGENCIES ACCORDING TO FY 2005 CRITERIA

AGENCY	Timeli- ness	Quality of Response	Non- Retalia- tion	Compliance Assistance	RegFair Participa- tion	Informs Small Business	PRA Report Submitted	Annual Rating
AGRICULTURE	C	A	C	D	A	D	B	C
Agricultural Marketing Service	B	A	B	A	N/A	A	N/A	N/A
Animal Plant Health Inspection Service	A	A	D	A	N/A	F	N/A	N/A
Food Safety Inspection Service	A	A	B	A	A	A	N/A	N/A
Forest Service	D	A	F	F	N/A	F	N/A	N/A
Rural Development	B	A	F	F	N/A	F	N/A	N/A
COMMERCE	A	A	A	A	A	A	B	A
DEFENSE	B	A	F	F	F	F	F	D
U.S. Army Corps of Engineers	C	A	N/A	N/A	N/A	N/A	N/A	N/A
Defense Contract Audit Agency	B	A	N/A	N/A	N/A	N/A	N/A	N/A
ENVIRONMENTAL PROTECTION AGENCY	A	A	A	A	A	A	C	A
FEDERAL COMMUNICATIONS COMMISSION	A	A	B	A	A	B	A	A
FEDERAL ENERGY REGULATORY COMMISSION	A	A	A	A	A	A	A	A
FEDERAL TRADE COMMISSION	A	A	A	A	N/A	A	A	A
HEALTH AND HUMAN SERVICES	B	A	A	A	A	A	B	A
Centers for Medicare & Medicaid Services	B	A	A	A	N/A	A	B	A
Food and Drug Administration	B	A	A	A	A	A	B	A
HOMELAND SECURITY	A	N/A	N/A	N/A	N/A	N/A	B	N/A
Coast Guard	N/A	N/A	A	A	N/A	A	C	B
Customs and Border Protection	A	A	A	A	A	A	B	A
Citizenship and Immigration Services	A	A	F	F	F	F	B	C
HOUSING AND URBAN DEVELOPMENT	F	A	A	A	N/A	A	A	B
INTERIOR	A	A	B	A	N/A	B	C	B
JUSTICE	D	A	D	A	A	D	F	C
Bureau of Alcohol, Tobacco, Firearms, and Explosives	F	A	D	A	A	D	N/A	N/A
Drug Enforcement Administration	B	A	D	A	N/A	D	N/A	N/A
LABOR	B	A	B	A	B	A	A	A
Occupational Safety and Health Administration	A	A	A	A	A	A	A	A

TABLE II-1. RATING OF AGENCIES ACCORDING TO FY 2005 CRITERIA (continued)

Mine Safety and Health Administration	C	A	A	A	C	A	A	B
Wage and Hour Division	C	A	C	A	A	A	A	B
Employment and Training Administration	B	A	N/A	N/A	N/A	N/A	N/A	N/A
NATIONAL LABOR RELATIONS BOARD	A	A	N/A	A	N/A	A	A	A
STATE	D	A	A	A	N/A	C	C	B
TRANSPORTATION	B	A	A	A	A	A	A	A
Federal Aviation Administration	B	A	N/A	N/A	N/A	N/A	N/A	N/A
Research and Special Programs	B	A	N/A	N/A	N/A	N/A	N/A	N/A
Office of the Inspector Gen.	B	A	N/A	N/A	N/A	N/A	N/A	N/A
DEPARTMENT OF VETERANS AFFAIRS	A	A	A	B	N/A	F	F	C
DEPARTMENT OF EDUCATION	N/A	N/A	F	N/A	N/A	N/A	B	C
DEPARTMENT OF THE TREASURY	N/A	N/A	F	F	F	F	A	D
Internal Revenue Service	C*	A	A	A	A	A	A	A
Office of Foreign Assets Control	A	A	N/A	N/A	N/A	N/A	N/A	N/A
Alcohol & Tobacco, Tax Trade Bureau	C	A	N/A	N/A	N/A	N/A	N/A	N/A
FEDERAL RESERVE SYSTEM	A	A	A	A	N/A	C	A	A
DEPARTMENT OF ENERGY	N/A	N/A	N/A	N/A	N/A	N/A	B	N/A
NATIONAL CREDIT UNION ADMINISTRATION	N/A	N/A	A	A	N/A	A	A	A
NUCLEAR REGULATORY COMMISSION	N/A/	N/A	N/A	N/A	N/A	N/A	A	N/A
PENSION BENEFIT GUARANTY CORPORATION	N/A	N/A	A	A	N/A	A	B	A
SECURITIES AND EXCHANGE COMMISSION	N/A	N/A	A	A	N/A	A	A	A
COMMODITY FUTURES TRADING COMMISSION	N/A	N/A	A	A	N/A	A	A	A
CONSUMER PRODUCT SAFETY COMMISSION	N/A	N/A	A	A	N/A	A	D	B
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	N/A	N/A	A	A	A	A	A	A
FEDERAL DEPOSIT INSURANCE CORPORATION	N/A	N/A	A	A	N/A	B	A	A
GENERAL SERVICES ADMINISTRATION	N/A	N/A	F	F	F	F	F	F

Timeliness Rating Scale (days): A=1-30 , B=31-60, C=61-90, D=91-120, F=Over 120

Agency Comments Regarding Ratings (*)

After ONO completed its initial draft report, it was presented for comment by the agencies and RegFair Board members. IRS provided the following comment on its timeliness grade of “C”.

In nearly all SBA cases, the Taxpayer Advocate Service (TAS) notifies SBA within 30 days that the inquiry has been received and assigned to a TAS office where the comment filer lives. Within that same timeframe, the comment filer is contacted and advised that TAS is responding to the inquiry, and will provide assistance in resolving the problem.

Solving problems with the IRS is a complex and time consuming process. Many cases require extensive documentation and formal requests for assistance from other IRS functions. TAS personnel must comply with relevant sections of the Internal Revenue Code (IRC), operate within the limits of their delegated authority, and must utilize normal IRS functions and procedures. The National Taxpayer

Advocate remains committed to providing a thorough review of all IRS actions taken on a particular case, and advocating on behalf of a filer where appropriate.

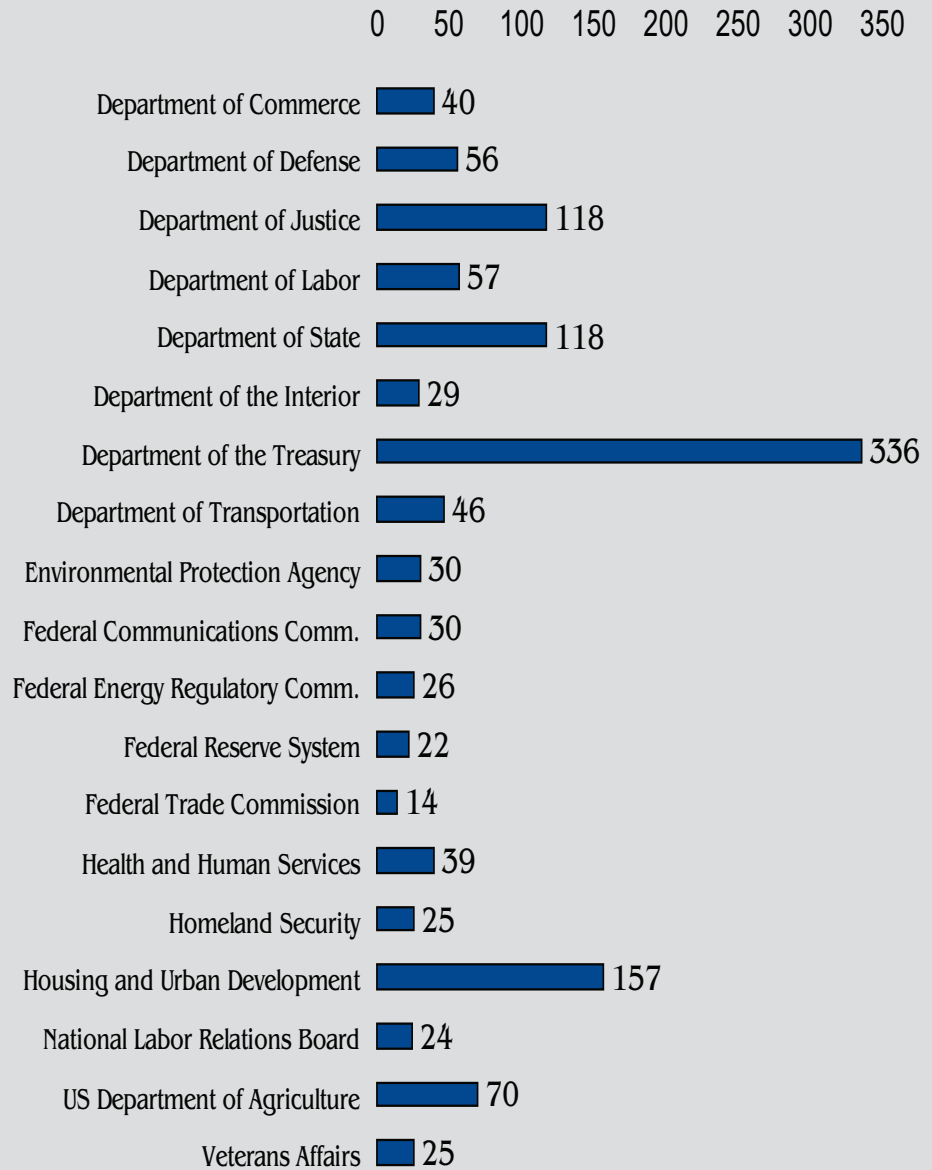
Timeliness of Response— Criterion 1

Most agencies improved their timeliness in addressing small business comments in FY 2005. Several, however, have longstanding records of delays in getting back to comment filers. In some cases, agencies justify this protracted period by citing the inherent complexities involved, including IRS’s argument that in order to be accurate and complete, it must take the time to gather extensive documentation. Figure II-8 illustrates the intervals used by ONO to calculate timeliness ratings, while Figure II-9 depicts the average number of days that agencies took to respond to small business comments.

Days	Rating
1 - 30	A
31 - 60	B
61 - 90	C
91 - 120	D
Over 120	F

Figure II-8. ONO Rating Rationale for Timeliness

**RESPONSE OF FEDERAL AGENCIES TO COMMENTS -
AVERAGE NUMBER OF DAYS Average Response Time**



**Figure II-9. Federal Agencies' Response to Comments—
Average number of days**

Quality of Response— Criterion 2

ONO expects agencies to provide a quality response to comments submitted by small businesses. This means that the response is detailed and addresses the commenter's specific concerns, is reviewed by a high-level official in the agency, and provides clear steps for the small business to take, preferably offering a means of satisfactory redress or other compromise, or a way to avoid similar problems in the future.

Most agencies attempt to fulfill this criterion, as evidenced by the grades received in FY 2005. Agencies generally acknowledge the burden placed on small businesses by fulfilling their regulatory responsibilities. Several agencies have taken steps to reduce this burden through e-commerce initiatives that provide alternative electronic methods of submitting and maintaining required information. Other agencies have made paperwork reduction part of an overall modernization effort to improve the way they do business.

- **The Federal Aviation Administration** (FAA) and the **Federal Railroad Administration** (FRA) bested their FY 2004 records by reducing or waiving more penalties for a greater number of small entities during 2005. FAA reduced penalties for some 800 small entities compared to roughly 150 in 2004, and reduced monetary penalties by approximately \$6.5 million compared to \$1.3 million in 2004. The FAA reduced or waived civil penalties in 2,228

enforcement actions in 2005. FRA reduced penalties for approximately 200 small entities in FY 2005 compared to about 160 in 2004, and cut monetary penalties by roughly \$640,000 compared to \$600,000 in 2004.

- At the **Department of Transportation**, a high-level reviewer ensures that agency responses come from the appropriate office, answer all questions posed in the ONO letter, and, if appropriate, respond in detail to the specific comments made by the small entity. The DOT response includes information showing that the agency has delved into the facts presented in the comments. ONO encourages adoption of a similar culture in all agencies for addressing small business concerns.
- Where the law allows flexibility, the Department of Interior's **Bureau of Reclamation** provides all districts and landholders with notices of acreage limitation violations and opportunities to correct identified problems without negative consequences. If a landholder has incorrectly completed a required reporting form, for example, he or she has 60 days to correct the omissions or errors. If the form is corrected within this period, the bureau takes no further action.
- **The IRS** provides a detailed response to all comments received; these are then checked for accuracy and quality at each level of the agency's review process. The majority of responses emanate from the Taxpayer Advocate

Service, whose mission is to resolve issues at the point of first contact and recommend changes to prevent future problems.

- **The Federal Trade Commission** (FTC) considered “leniency factors” (i.e., factors that may result in reduction or waiver of penalties) in a number of FY 2005 cases where civil penalties were assessed against small businesses. The FTC also continued its “second chance” policy for certain minor and inadvertent violations of the textile and wool labeling rules, which can apply to small businesses.

Agency Non-Retaliation Policy—Criterion 3

One agency reported adopting a non-retaliation policy in FY 2005, bringing the total number that now have policies in place to 32 (see figure II-10). ONO encourages agencies to establish stand-alone non-retaliation policies that specifically reference small businesses rather than rely on generalized ethics codes or standardized procedures such as those forbidding discrimination. A useful approach taken by some agencies is to routinely hand out documents containing non-retaliation policies during compliance actions and outreach events. This reminds employees as well as small business constituents about the policy.

The non-retaliation policy is a regular part of employee training programs in some agencies. The following are what ONO considers to be two exemplary agency non-retaliation policies:

- The U.S. Department of Agriculture’s

(USDA’s) Food Safety Inspection Service (FSIS) has revised its directive to further emphasize the agency’s non-retaliation policy, which is included on the Small and Very Small Outreach web page (http://www.fsis.usda.gov/Science/Small_Very_Small_Plant_Outreach/index.asp). Internal agency newsletters and prompts from senior agency officials, managers, and supervisors consistently remind FSIS’s 9,400 employees of the agency’s non-retaliation policy, which states:

All FSIS personnel, particularly those who make regulatory and enforcement decisions, are not to retaliate in any way against establishment owners, operators, or employees who have questioned or appealed regulatory or enforcement decisions. FSIS personnel who have engaged in retaliatory behavior may be subject to disciplinary action.

- Clicking the non-retaliation policy link on the U.S. Coast Guard website (http://www.uscg.mil/comdt/non-retaliation_policy.asp) prompts the following statement to appear:

If you question or lodge a complaint regarding a Coast Guard policy or action, to us or anyone else, or if you seek outside help in dealing with a Coast Guard policy or action, the Coast Guard will not retaliate against you in any fashion. The Coast Guard wants you to be able to comment, question, or lodge a complaint about our policies or actions without fear that we will retaliate or try to discourage future questions or complaints. If you think the Coast

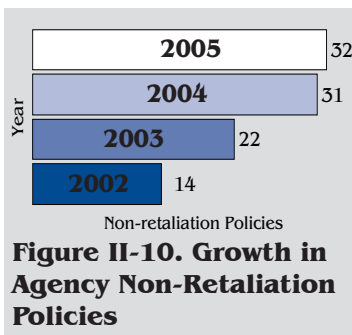


Figure II-10. Growth in Agency Non-Retaliation Policies

Guard has broken this promise, we will investigate, take appropriate action, and make sure that mistakes are not repeated. You may comment, ask questions, or file a complaint about Coast

Guard policies or actions by contacting your local Coast Guard office, or the Small Business Administration Office of the National Ombudsman at [full contact info provided].

Table II-2. Agencies Adopting Written Non-Retaliation Policies

Agencies Adopting Written Non-Retaliation Policies in FY 02	Agencies Adopting Written Non-Retaliation Policies in FY 03	Agencies Adopting Written Non-Retaliation Policies in FY 04	Agencies Adopting Written Non-Retaliation Policies in FY 05
Agriculture	APHIS (sub-agency of Agriculture)	Commerce's Bureau of Industry and Security	Federal Reserve System
Consumer Product Safety Commission	Commodity Futures Trading Commission	Centers for Medicare & Medicaid Services	
Customs	Federal Trade Commission	Coast Guard	
Equal Employment Opportunity Commission	National Aeronautics and Space Administration	Commerce	
Federal Communications Commission	Occupational Safety and Health Administration	Environmental Protection Agency	
Federal Deposit Insurance Corporation	Small Business Administration	Health and Human Services	
Food and Drug Administration	State Department	Housing and Urban Development	
Interior	Veterans Affairs	National Oceanic and Atmospheric Administration	
Internal Revenue Service		National Science Foundation	
Labor			
National Credit Union Administration			
Pension Benefit Guaranty Corporation			
Securities and Exchange Commission			
Transportation			

EPA Helps Nail Salons Comply with Regulations

EPA is partnering with the fingernail/toenail care industry to investigate and encourage the use of safer, cleaner, more efficient practices and technologies. The agency is concerned that many small nail salon owners are not aware of the health and environmental risks associated with the handling, using, and disposing of nail products. To address this concern, EPA presented highly successful nail salon workshops in 2005 in Pennsylvania and Virginia, drawing close to 120 people. The workshops were conducted in Vietnamese, since 40 percent of all nail salons in the United States are owned by Vietnamese Americans. The Virginia session was filmed by a Vietnamese-language television network, which aired the workshop to its viewers across the United States and Canada.

Agency Regulatory Enforcement Compliance Assistance—Criterion 4

Many agencies offer websites replete with compliance resources for small businesses, including informational contacts for specific issues and agency policies regarding notification and non-retaliation. Other agencies proactively address issues of concern to small businesses by holding training sessions and workshops and by soliciting suggestions and recommendations from stakeholders. Agencies also provide technical assistance through one-on-one counseling, email, toll-free compliance hotlines, information centers to answer regulatory questions, agency training programs, and industry conferences.

Small businesses are increasingly able to take advantage of more sophisticated online compliance tools such as internal hypertext links between agency rules and related interpretations and fully searchable regulatory databases. While agencies know that more small businesses are taking advantage of expanded resources, most had not calculated this increase in a “percentage over baseline” as requested in the criterion. Nevertheless, numerous examples of harnessing technology and creativity to improve compliance assistance came to ONO’s attention in FY 2005:

- **The Department of Justice (DOJ)** developed new technical assistance materials to help small businesses reach out to customers with disabilities. DOJ also developed an interactive online course for businesses,

explaining how to comply with the Americans with Disabilities Act (ADA) (<http://www.usdoj.gov/crt/ada/business.htm>).

- **The Office of Special Counsel (OSC)** within the Civil Rights Division of DOJ added content to its website (<http://www.usdoj.gov/crt/osc/htm/smbus.htm>) exclusively for small businesses to help them comply with obligations to verify the employment eligibility of their workforce in a non-discriminatory manner under the Immigration and Nationality Act. OSC also uses a toll-free hotline to investigate and resolve employment disputes that might otherwise result in protracted problems for small businesses.

- **The Environmental Protection Agency (EPA)** issued the Managing Your Environmental Responsibilities (MYER) guide, a comprehensive manual developed with substantial input from industry and other stakeholders to provide audit checklists and regulatory information to help ensure continuing compliance. Demand is high, with 1,400 hard copies of the manual distributed within the first few months of its publication.

- **The Perishable Agricultural Commodities Act (PACA) Branch** of USDA’s Fruit and Vegetable Program continues to educate its small business customers about their rights and responsibilities under PACA as well as the availability of PACA program services to help re-

solve contract disputes. The Branch now publishes and mails to PACA licensees a quarterly administrative newsletter that covers various issues and developments under the law. USDA's Animal and Plant Health Inspection Service (APHIS) has also made compliance assistance resources available to small businesses in several formats in both English and Spanish, all of which are available on its website. Food Stamp Program staff in the Food and Nutrition Service provide compliance assistance to participating retailers, including a training guide that is available as a CD, DVD, or videotape in six languages. Retailers use the material to train employees about regulations governing the Food Stamp Program. USDA's FSIS established cooperative agreements with 15 universities, which in turn scheduled dozens of classes and trained 1,600 participants in emerging food safety concerns to help small and very small plant owners improve their food safety systems and produce safer products. FSIS also redesigned its website (<http://www.fsis.usda.gov>) in FY 2005 to make it more useful and user friendly for small business owners.

- **The IRS** has launched a proactive program to help small businesses improve their compliance with tax laws. The program focuses on new businesses, most of which are owned by women and members of ethnic minority groups. All materials are available on the IRS website.
- **Fish and Wildlife Service** staff at airports, ocean ports, and border crossings helped individual businesses and brokers identify and resolve compliance assistance problems that were impeding trade. In Atlanta, for example, inspectors helped a dozen new businesses dealing in various commodities bring their import operations into compliance with FWS license, declaration, and permit requirements.
- **The Pension Benefit Guaranty Corporation** uses alternative dispute resolution practices to achieve consensual resolution of controversial issues, including compliance and enforcement matters.
- Every **Occupational Safety and Health Administration (OSHA)** Area Office under Federal jurisdiction has a Compliance Assistance Specialist who responds to requests for help from a variety of small businesses, trades, union locals, and other groups and is available for seminars, workshops, training, speaking events, and off-site technical assistance via telephone.
- **The Federal Trade Commission** (FTC) launched "microsites" on its website (<http://www.ftc.gov/>) to address issues particularly relevant to small businesses, such as Internet sales, unsolicited commercial email (i.e., "spam"), credit, information security, and fraud targeting Hispanic businesses and consumers.
- **The Commodity Futures Trading Commission's (CFTC's) Office of**

Collaborations Produce Beneficial Synergies

SBA, IRS, and other regulatory agencies collaborated with the Department of Labor to produce the Small Business Resource Guide, a CD designed to inform small businesses about taxes, employment standards, and other topics. The CD is free to small businesses through the IRS.

Working It Out

Before the FTC initiates an enforcement action, firms have opportunities to meet first with FTC leadership to discuss their concerns. Small businesses are not required to alter their practices or be subject to sanctions before these meetings take place. FTC staff members must inform firms that while the staff can recommend certain enforcement actions, the staff cannot commit the FTC to them before these preliminary meetings.

General Counsel assigns an “Attorney of the Day” to answer telephone inquiries about agency rules.

- **The National Oceanic and Atmospheric Administration (NOAA)** distributes compliance guides to all those governed by agency rules and to others who have expressed interest, and makes the guides available at sites where affected parties are most likely to see them. The guides are tailored for particular rules and user audiences.
- **The National Labor Relations Board (NLRB)** has added a public information page to its website that is

designed to answer frequently asked procedural questions. Since its inception in February 2005, the new feature has drawn more than half a million visitors and has answered more than a third of their inquiries through the site’s electronic search system.

Agency Participation in RegFair Hearings— Criterion 5

The following matrix identifies the breakdown of agency attendance at ONO RegFair Hearings and Roundtables in 2005. (see Table II-3).

TABLE II-3. BREAKDOWN OF AGENCY ATTENDANCE AT ONO REGFAIR HEARINGS, 2005

Event	Albuquerque, NM	Topeka, KS (11/18/04)	Lubbock, TX (1/31/05)	Anaheim, CA (3/1/05)	Indianapolis, IN (3/24/05)	Lincoln, NE (3/30/05)	Roanoke-Salem, VA	Mobile, AL (5/26/05)	Rockford, IL (6/3/05)	Fresno, CA (6/16/05)	Philadelphia, PA (6/24/05)	Fargo, ND (6/28/05)	New York, NY (7/14/05)	Spokane, WA (7/20/05)	Casper, WY (7/27/05)	Charlotte, NC (9/20/05)	Warwick, RI (9/29/05)
Agriculture																	
Food Safety Inspection Service	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
Commerce													✓				
Environmental Protection Agency		✓	✓		✓	✓				✓	✓	✓	✓	✓			
Equal Employment Opportunity Commission	✓	✓		✓					✓		✓		✓			✓	
Federal Communications Commission	✓																✓
Federal Trade Commission																	✓
Food and Drug Administration											✓						✓
General Services Administration											✓						
Customs and Border Protection	✓							✓								✓	
Internal Revenue Service	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Bureau of Alcohol, Tobacco, and Firearms														✓			
Labor	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Occupational Safety & Health Administration		✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fed. Contract Compliance Pgm				✓													
Wage and Hour Division	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Small Business Administration	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Transportation			✓							✓							
Federal Aviation Administration			✓							✓							
Veterans Affairs														✓			

It is noteworthy that more agencies are sending representatives to nearly every ONO RegFair Hearing, whether or not commenters plan to address concerns stemming from those agencies' regulatory responsibilities. This gives government organizations the opportunity to resolve any issues that come up, have a presence in the small business community, and promote particular compliance products and services. As with previous years, the IRS committed to 100 percent attendance at the ONO Hearings in 2005, as did FSIS, Department of Labor, and SBA. EPA attended nearly all of the Hearings (see table above). ONO encourages agencies to confirm hearing agendas with the SBA host office and to strive to have representation at all events.

Representatives from IRS's Governmental Liaison, Stakeholder Liaison, and the Taxpayer Advocate Service (TAS) attend all hearings and help resolve any IRS-related issues that come up. The IRS also likes to market and promote its business/self-employed products and services and to educate small businesses about their rights to fair regulatory treatment.

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

Many agencies include the SBA Ombudsman's Internet address within educational and guidance materials, regulatory documents, inspection materials, enforcement notices, and on websites. ONO encourages agencies to have such provisions in place to acknowledge the

special needs and status of small businesses. DOJ has heeded this advice and added ONO as a website link. Some regulatory agencies provide small entities with written notification of their right to contact the ONO, including phone and email contact information and the statement that any retaliatory acts by the regulatory agency's employees are prohibited and punished. Agencies often choose to provide this notification at the time of an inspection or audit.

- **The National Credit Union Administration (NCUA)** has a "Resources for Credit Unions" button on its website, with a special link for small credit unions. Updates in FY 2005 include a separate link to a letter informing small businesses of their rights under SBREFA to contact ONO.
- **The FTC** gives all small businesses involved in enforcement action written notice of their right to comment and of their freedom to do so without fear of reprisal. The statement includes all necessary contact information to reach the Ombudsman.

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

The Small Business Paperwork Relief Act of 2002 (SBPRA) imposes a variety of requirements on agencies. According to the Act, Federal agencies were to have established, for the first time, a baseline by December 31, 2003, and to measure and report against the baseline by De-

ember 31, 2004 (FY 2005).

ONO rated agencies on the extent to which they complied with the PRA report requirements in terms of timely submission of reports. The ratings reflect only whether agencies have submitted the required data to ONO in a timely a manner.

Giving Credit Where Credit Is Due

One of the most gratifying aspects of ONO's mission is seeing the information and guidance that we and our board members provide result in positive changes in the Federal regulatory environment. ONO's rating criteria can both signal the need for change as well as document the progress when it occurs. The examples below describe positive regulatory enforcement changes that took place in FY 2005 due to the efforts of ONO and our partners and board members.

- EPA will reduce or waive civil penalties whenever a small business makes a good faith effort to correct violations that were discovered as part of a government-sponsored compliance assistance program or a voluntary audit. The reduction or waiver also applies when a small business promptly discloses a violation and corrects it in a timely manner. Nearly 200 small businesses took advantage of this policy in FY 2005.
- EPA was also active in hands-on education, working with the Idaho Small Business Development Cen-

ter, the Idaho Department of Environmental Quality, the Building Contractors Association of Southwest Idaho, and a number of other stakeholders to develop and present workshops on erosion and sediment control measures. Nearly 3,000 training hours were provided to small businesses throughout Idaho.

- DOT's Federal Motor Carrier Safety Administration (FMCSA) simplified its numerous registration requirements by consolidating four registration systems into a single one-stop system for all interstate motor carriers and freight forwarders, most of which are small entities. FMCSA is developing a Supplemental Notice of Proposed rulemaking regarding the combination of the four systems. Currently, our projected publication date is late June 2007. Up to date information on this rulemaking is maintained at <http://regs.dot.gov/rulemakings/200608/fmcsa.htm>.
- Enforcement, Investigation and Analysis Officers (EIAO) who work for USDA's FSIS routinely make themselves available after normal business hours to provide clarifying information to small and very small plant owners facing an agency enforcement action. EIAOs realize that many small establishments have limited financial and human capital and may be faced with juggling FSIS concerns along with current daily business needs.
- IRS has set up a specialized division to address compliance through edu-

Agency Forums to Help Small Businesses

Several regulatory agencies participated as instructors and presenters at business forums around the country associated with the agencies' areas of regulatory responsibility:

Consumer Product Safety Commission (CPSC) experts in economic analysis, health sciences, epidemiology, and engineering sciences attend business and industry-sponsored events to discuss the product safety guidelines and regulatory requirements with which small businesses must comply in order to develop, produce, and distribute consumer products under the agency's jurisdiction. These rules include flammability standards related to mattresses and children's sleepwear.

Wildlife inspectors in the Department of the Interior's Fish and Wildlife Service (FWS) routinely conduct outreach presentations for the import/export community at the local level and work with individual businesses to help them meet regulatory requirements. FWS inspectors participated in meetings of broker associations and trade groups to review wildlife import/export requirements, including presentations for Virginia members of the National Brokers Association.

cation and communications to small businesses and self-employed taxpayers. The IRS set the goal of developing top quality pre-filing educational products and services to help taxpayers and stakeholders understand and comply with tax laws. Products can be ordered on line or by phone.

- **The Equal Employment Opportunity Commission (EEOC)** has also designated Small Business Liaisons in the field offices to provide compliance assistance, serve as a customer-referral resource, and help small employers with concerns about

discrimination charges. Small businesses can raise concerns about the length or scope of an investigation or any other matter involving the handling of a charge, and the liaisons will have both the knowledge and authority to provide an effective response.

- **The U.S. Coast Guard** offers commercial fishing vessels free dockside examinations to assess their compliance with Coast Guard requirements. If discrepancies are found, a “work list” is prepared for the vessel, but no citation is issued.

III

Championing the Cause of Small Business— Stories From the Front

Small businesses that struggle with regulatory enforcement challenges face a wide range of issues, but they do have one grievance in common: they do not feel that their concerns are being heard by the Federal agencies that regulate them.

ONO and a dedicated cadre of Regional RegFair Board members continued to fulfill our mission in FY 2005 by listening carefully to small business dilemmas, then carrying those concerns to the appropriate regulatory agency. Our aim, as always, was to reach a mutual understanding and a positive resolution. Board members continued to expand outreach efforts through RegFair Hearings, as well as through organizing and attending trade association meetings, small business forums, and other venues to inform as many businesses as possible that ONO stands ready to assist them in resolving regulatory enforcement difficulties.

Chapter III provides a sampling from across the nation and throughout the Federal bureaucracy of the challenges that small businesses faced in FY 2005. Their stories are culled from the companies' own testimony and background files—and in entrepreneurs' own words. From these regulatory enforcement con-

cerns brought to ONO for resolution, several underlying themes and perceptions emerged:

Crossed Signals/Lack of Communication

– Busy entrepreneurs are focused heart and soul on their individual businesses, while the mission of Federal regulatory agencies is to enforce rules that apply to many companies. With the attentions of the regulator and the regulated focused in different directions, some miscommunication is bound to occur. The problem arises when information that is misinterpreted or slips through the cracks has a serious negative impact on a small company.

Costly Compliance Conditions

– Although regulations are written to protect the public good, enforcers do not always recognize the frustrating hurdles that rules can pose to businesses with small staffs and limited financial resources.

Costly Agency Errors – One enforcement blunder—small or large—can produce a cumbersome financial burden for a small business.

Regulatory Overkill – When a small business suffers a serious financial blow from a fine imposed for filing an incorrect form, or Federal agents descend en

“It’s time for business to stop apologizing for being the one thing in this country that works.”

—Giovanni Coratolo,
Executive Director, Council on Small Business, U.S. Chamber of Commerce

Impact!

“The small businesses sometimes just don’t know where to go. I look at ONO as like having an uncle you can call when you have a problem, and he knows in town who to call and who to go to for the answers. That’s really what this is all about—cutting through the red tape and helping small businesses get to the bottom of their issue.”

—Leo Blais, *RegFair Board Region I Chair*

ONO Champions...the Way through Bureaucratic Tangles

A small, disadvantaged business vying for a GSA Schedule contract found that its proposal, which had been under review for four months, had been inexplicably closed. The company called on ONO to review and advise. The GSA Contract Specialist claimed that the small business was “non-responsive”—a claim that the owner attributed to a single unreturned phone message from the agency that was left unanswered because the company’s voicemail system had failed that day. GSA’s message was retrieved 12 days later when the voicemail system was repaired. Although the small business’s comment was non-jurisdictional—meaning that it did not concern a regulatory enforcement or compliance action—ONO referred the correspondence to the correct office within GSA. Two weeks later, GSA notified ONO that the company had been awarded a five-year contract.

masse on a business with no previous or known violations, agencies may need to reconsider how rules impact the companies that they regulate.

Confusing/Changing Regulations –

Small businesses can find themselves in regulatory hot water because they misinterpret a rule’s complexities or struggle to comply with new requirements.

Crossed Signals/ Lack of Communication

In the bustling world of modern business, it is not hard to understand how cramped schedules and information overload can lead to misunderstandings and dropped messages. For a small business with a lean staff and modest profit margin, however, a minor misunderstanding or omission by a regulatory agency can cause a substantial problem. ONO can step in as “interpreter” in these cases, uncrossing signals and making sure that businesses and regulators are operating with a mutual understanding of the rules and circumstances involved.

A case in point from FY 2005 involves an apparel importer who had just opened his business in Mobile, Alabama. Customs officials informed the owner that one of the first containers received by his company had been seized by Customs for a trademark violation. Frustrated when repeated phone calls to Customs went unanswered, the entrepreneur emailed the National Ombudsman to protest that his business

was “subject to an organization that is unresponsive and seems to have no accountability—out of control with their power.”

Several days later, the owner sent a second email to ONO stating that Customs had responded, processed the shipment, and explained that the cause for delay had been nothing more than a short-staffed, busy week at the port. The owner phoned in to testify at a subsequent RegFair Hearing in Mobile how faulty information had been compounded by lack of communication. “It appeared no one was concerned about our dilemma, and we were simply panicking and having multitudes of people calling and threatening to cancel orders.” He thanked ONO for its prompt intervention efforts, concluding that “it’s just been a great blessing to us to see that we’re not out here alone.”

ONO commitment to small business in FY 2005 is illustrated by its persistence in helping a construction company collect money due even after determining that the Federal agency involved was not causing the delay in payment. The company was a subcontractor on two Army Corps of Engineer projects, and emailed ONO for help in collecting \$1.5 million that had been overdue for more than a year. Because the small construction company was a subcontractor, the Army Corps had no authority to order a final payment from the prime contractor. The Corps and ONO persevered nevertheless in helping to work out a resolution. The construction company’s project manager emailed the Ombuds-

man, thanking ONO for its assistance—“We believe through your efforts and those of [the Corps of Engineers], that we received payment last week.”

This story illustrates our determination and success in steering businesses toward the help they need—even when the issue does not involve regulatory enforcement (see sidebar, previous page, for another example).

Costly Compliance Conditions

Even under the best of circumstances, regulatory compliance weighs heavily on the shoulders of small business. Unlike larger companies staffed with legal and financial departments, entrepreneurs must generally divert time, energy, and focus from their day-to-day operations to comply with tax codes, inspections, audits, and other regulatory processes. ONO works hard to creatively counter these costs by helping small businesses streamline compliance to the greatest extent possible. Part of ONO’s strategy is to connect with trade groups to strengthen outreach and to assist more companies at once.

In Washington state, for example, ONO worked with the Independent Business Association (IBA) to help solve a dilemma caused by Occupational Safety and Health Administration (OSHA) rules. IBA represents more than 4,200 small business owners from virtually every industry in the state. Washington is one of 24 states that have elected to enforce OSHA rules at the state level, in this

case through the Washington Industrial Safety and Health Administration (WISHA). The regulation in question requires employers who provide first aid services to injured workers to also have a program to protect employees from blood borne pathogen exposure.

IBA argued in its testimony that the “extremely complex and costly” pathogen program was designed primarily for the health care industry in response to HIV/AIDS and imposed unfair compliance costs—from \$872 to \$9,902 per firm—on small businesses that elect to provide first aid. IBA suggested as an alternative that all employees trained in first aid also be taught techniques to protect against blood borne pathogen exposure, and that appropriate protection items be required in first aid kits.

How Do Regulations Affect Small Firms?

Very small firms with fewer than 20 employees spend 45 percent more per employee than larger firms to comply with Federal regulations. These very small firms spend 4-1/2 times as much per employee to comply with environmental regulations and 67 percent more per employee on tax compliance than their larger counterparts. For data broken down by industry, see: www.sba.gov/advo/research/rs264tot.pdf

Cost of Federal Regulations by Firm Size, All business sectors (Dollars)

Type of Regulation	Cost per Employee for Firms with:	
	<20 Employees	500+ Employees
All Federal Regulation	\$7,647	\$5,282
Environmental	\$3,296	\$710
Economic	\$2,127	\$2,952
Workplace	\$920	\$841
Tax Compliance	\$1,304	\$780

Source: The Impact of Federal Regulations on Small firms, an Advocacy-funded study by W. Mark Crain, Sept. 2005.

ONO Champions... Affordable Mine Safety

A mine operator presented this predicament at a Reg-Fair Hearing in Spokane, Washington: “We have three small mines within a single mining district, with two miners working at each mine. The Mine Safety and Health Administration (MSHA) requires each mine to have a rescue team contract costing \$500 a month. It would be reasonable to have one contract for all three mines to reduce the cost.” ONO involvement led to a clarification of MSHA rules recognizing the expenses associated with establishing and maintaining mine rescue teams. The agency promulgated final regulations that do not require a separate contract for each mine as long as companies arrange to have at least two mine rescue teams available at all times when miners are underground.

ONO intervention elicited a response from the regional OSHA Administrator, who reminded IBA that not all employers are required to provide first aid—only those who are not in “near proximity” to an infirmary, clinic, or hospital. OSHA rules currently define “near proximity” as three to four minutes for life-threatening injuries and 15 minutes for non-life-threatening injuries, and work places within these time parameters do not need to train employees in first aid. The agency is working to further clarify its policy. ONO involvement prompted WISHA to get the word out to stakeholders about the “near proximity” standard and instruct compliance officers to inform small businesses during on-sight inspections of their right to comment to ONO.

When ONO acts on a small business’s call for assistance, the end result can be a regulation that accomplishes its purpose while also taking small business concerns into account (see sidebar for success story).

Costly Agency Errors

Small businesses often operate with notoriously slim profit margins. When a Federal regulatory agency makes an error—even a minor one—it can be extremely costly. Such errors can even threaten the small business’s existence, especially when the situation stalls. ONO can step in to quicken a resolu-

tion that gets the business back on track.

One example of this occurred in June 2005, when a small vendor selling computers to the Veterans Administration (VA) under a General Services Administration (GSA) contract filed a comment with ONO claiming that the company had not been paid in over a year, forcing it to carry more than \$39,000 in receivables. “We are a small business,” wrote the controller, “and this is very difficult to go so long without payment.” ONO intervened, and a short time later, an email from the controller to the National Ombudsman reflected a successful resolution—the vendor had been paid on all open invoices. “I wish to thank you for your assistance!” she wrote. “I don’t think we would have been paid without your help.” As a footnote to this case, the VA regional office was moved to put changes in place to prevent delays in processing payments to small businesses.

This example and the success story told in the sidebar on the next page illustrate one of ONO’s challenges in FY 2005: Not only are regulatory agencies often unaware of their errors, they can also fail to recognize the financially damaging effects they have on small businesses. ONO continues to raise Federal agencies’ awareness of how critical their actions can be to a struggling entrepreneur.

Regulatory Overkill

Impact!

“It’s not the one regulation that kills the small business owner, it’s the piling on and accommodating over and over until you can’t do it anymore. You bite your lip and do what he says. You say, ‘I don’t know what I don’t know.’ We must encourage small business owners to get out there and fight for their rights. Any avenue you take to enhance efforts out in the field is valuable.”

—Giovanni Coratolo, Executive Director, Council on Small Business, U.S. Chamber of Commerce

Are Federal agencies too rigorous or heavy-handed in dealing with business, or are they just doing their job of enforcing rules that help promote the public good? The answer may depend in part on a company’s size. Small enterprises sometimes complain that the exacting provisions and stiff penalties that keep large companies in line can effectively put the “little guy” out of business. The fines, fees, paperwork, and delays that a corporation takes in stride as costs of doing business can throw a small company into upheaval. When a small business comes to ONO overwhelmed by an agency’s enforcement tactics, it is our job to bring that company’s concern to the Federal regulator’s attention and help facilitate a solution that is sensitive to small business operations.

Even though it is OSHA policy not to give advance notice of inspections, unannounced inspections can sometimes be troubling for small business, which may perceive the procedure as an intimidating intrusion that results in unexpected compliance costs and/or

heavy fines. One such case in FY 2005 involves a manufacturer that was subject to an unannounced inspection by an OSHA safety and health officer. When the officer provided a verbal rather than written rundown of the company’s violations, the employer treated them as “informal suggestions” for complying with OSHA regulations. The business owner sought ONO’s help when he received a \$10,688 fine payable in 14 days.

When queried by ONO, OSHA replied that the company had been informed in writing that it exceeded the acceptable rate for worker illnesses and injuries, a statistic that targeted the small business for inspection. The officer discussed all safety and health hazards that would be recommended for citations, according to OSHA, and provided the employer with information about a free consultation service.

OSHA’s citation and penalty system allows for modifications and reductions based on an employer’s size, good faith, and history. After ONO brought the

ONO Champions....

Prompt Billing Recovery

A medical equipment company presented ONO with a claims problem involving Medicare Regional Carriers. The small business rents medical equipment for one month, after which time patients decide whether or not to buy it. The company must first submit a claim (bill) to Medicare for the one-month trial period before billing the agency for the purchase price. Medicare rules dictate that any claim submission for the sale of equipment will not be processed until payment for the rental submission has been made. The company’s COO contacted ONO complaining that a claim for rental equipment was denied several times because of various missing or incorrect pieces of information. In the meantime, the company filed a purchase claim, which was denied because the rental claim was still pending. The small business had \$19,000 in outstanding receivables by the time it contacted ONO. The COO wrote that his business “is a very, very small medical device manufacturing company that simply cannot afford to have such high receivables outstanding for such a long period of time, with no resolution in sight!” After ONO intervention, Medicare sorted out the rental billing problems with the equipment provider, clearing the way for paying both the rental the purchase claims.

Impact!

Small businesses throughout the country seemed to have the feeling (whether true or not) that the regulators and enforcers were enemies of the small businesses rather than partners in accomplishing their goals. I believe I've seen a change in that attitude over the years, at least with the groups that presented before ONO. The IRS now exemplifies an agency that has tried to put on a better face and become friendlier. It is reaching out in an effort to explain and to assist small business taxpayers with understanding the issues: the process has been simplified. While they still enforce the regulations, they seem to do it with a little more compassion in terms of their interactions. I think the same holds true for other agencies.

*—Pam Mazza, Region III
RegFair Board Member*

small business's concerns to OSHA, the agency and employer held an Informal Settlement Conference during which the company's \$10,800 penalty was reduced to \$6,400. During the closing conference after an enforcement visit, OSHA always encourages employers to seek an Informal Settlement Conference. OSHA Area Directors are authorized to offer additional reductions in penalties at the informal conference.

Once ONO succeeds in helping an agency and a small business focus together on the cause of the company's dilemma, the outcome can not only be a reduction in penalties, but a permanent solution that will help the business avoid the same pitfalls in the future. One example from FY 2005 involves a small business that received substantial fines from the IRS for reporting incorrect tax ID numbers (TINs) on IRS Forms 1098 and 1099INT. The company came to ONO for assistance, noting that it has a large customer base and a rapid account turnover rate, and therefore files a large number of forms. By contrast, the IRS feedback is relatively slow, according to the company's escrow officer, and the small business was receiving substantial fines "even though our accuracy level was exceptionally good."

The officer voiced his frustration and concern at a RegFair Hearing with a staff member of the IRS Taxpayer Advocate Service present. The Advocate's office was able to get the penalty waived and provide a solution for avoiding the problem in the future. "With the

help of the SBA and the IRS taxpayer advocate, we have the authorization to access the IRS e-services TIN matching utility [website]" the officer wrote, "which will allow us to verify taxpayer numbers" while the customer is still present. ONO's involvement resulted in a solution that both eased the regulatory burden on the business and helped the agency enforce its regulations more efficiently.

Confusing/Changing Regulations

Two common circumstances occur in the realm of regulatory enforcement that can create a difficult environment both for small business owners and Federal agencies. In the first case, entrepreneurs struggle to understand and comply with complex regulations, then find themselves in non-compliance despite those efforts. Small business owners harbor resentment toward the regulatory agencies that hand down sanctions for rules that the entrepreneurs cannot understand.

In the second case, small businesses feel that the rug has been pulled out from under them when they invest precious time and resources complying with regulations only to be confronted with significant changes in those rules, especially when they make compliance more difficult. In both cases, the regulatory agencies must face anger and bitterness when they are simply trying to enforce the rules. Part of ONO's mission in FY 2005 was to intervene in these often contentious situations and help parties

come to a mutually beneficial understanding.

One high-profile case illustrates the persistence and patience that ONO must exercise in these situations. Compounding pharmacists have been working through their trade groups since April 2004 to convince the Food and Drug Administration's (FDA's) Center for Veterinary Medicine to revise its guidelines on compounding drugs for use in animals. These trade groups represent thousands of members, mostly small business owners. The American Pharmacists Association (APhA), the International Academy of Compounding Pharmacists (IACP), and the National Community Pharmacists Association (NCPA) have protested that the tightened guidelines do not reflect the state of the practice, will threaten the health and safety of animal patients, and were issued without the opportunity for public review and comment from the pharmacy and veterinary professions and state regulatory agencies.

Outreach efforts spearheaded by the RegFair Board Chair in Region I included an appearance by the National Ombudsman at the IACP's annual meeting and a successful ONO comment-filing campaign. FDA decided in November 2004 to review the guidelines and revise them to reflect the interests of small pharmacies.

That pledge has yet to be filled. Not only has FDA failed to publish revised guidelines, but the agency is using the current version for enforcement action

against compounding pharmacists. In an August 2005 letter to the National Ombudsman, IACP states that "Pharmacists are being forced to daily operate under flawed policy, potentially jeopardizing their livelihood and reputation in order to meet patients' essential medication needs." To make matters worse, "FDA has substantially increased inspection and enforcement activities against compounding pharmacies in the last year, premised on the very documents that the agency acknowledges as flawed."

In answer to ONO's inquiry, the FDA's own Ombudsman replied that a draft of revised guidelines will be published "in the very near future" for public comment. She also explained the concerns that have caused FDA to be cautious in this matter, including pharmacies that manufacture and distribute unapproved new drugs, and establishments that engage in large-scale manufacturing under the guise of compounding to circumvent the drug approval process.

A second ongoing case from FY 2005 involves a debate over what constitutes a small business and how rules should be applied if they would drive a company out of the marketplace. A "producer-handler" dairy farmer contacted ONO about the U.S. Department of Agriculture's (USDA's) Recommended Decision to remove an exemption and require producer-handlers in the Pacific Northwest and Arizona-Las Vegas area to contribute to a pool of funds intended to subsidize other producers. Producer-handlers are dairy operations

Impact!

"We have continued to have dialog with the folks at FDA and FDA has stated that they believe the re-issuance of the guide is imminent in final status, and that is, I think, a testimony to the work that the Ombudsman and Advocacy brought to this process. We're very happy."

*—Leo Blais, Region I
RegFair Board Chair
on follow-up to the
2004 issue of rules for
compounding drugs for
animals*

that process and market milk from their own dairy cows on their own farms. The Recommended Decision would require these operations to pay into the subsidy pool if they put more than three million pounds of milk on the market per month.

Producer-handlers have been exempt from the rule for its 75 years of existence, noted the farmer, because they process their own milk and are not involved in the business transactions covered by the USDA pool. The farmer testified at a RegFair Hearing in July 2005 that “if farms that bottle their own milk are forced to pay into the Federal pool, the most likely result will be that (1) the increased expenses will be passed on to consumers or (2) these producer-handlers will reduce the size of their operations or go out of business.” He contended that large milk marketers and dairy processors who lobbied for the change are attempting to squeeze out the competition. Although the rule change is aimed at particular region, it “would set a national precedent and have national implications.”

USDA explained its own position in response to an ONO inquiry, contending that the farmer’s operation does not qualify as a small business because its annual revenues exceed \$750,000. The department said that it has received thousands of comments in support of and opposition to its proposal and a Final Decision is still pending.

Despite the dairy operation’s technical disqualification by USDA as a small business, ONO recognized the farmer’s concern over a regulatory burden with the potential to significantly undercut the viability of a company that operates on a much smaller scale than the other enterprises governed by the rule. The case illustrates ONO’s intention to ensure that small business concerns are heard, understood, and given serious consideration as an agency contemplates expanding its regulatory reach.

At the March 24, 2005 RegFair Hearing in Indianapolis, one testifier said, “I’m pleased to see these [ONO] people here. I think maybe they will probably either straighten me out or help me out, one of the two.”

IV

RegFair Boards— Our Sentries in the Field

Chapter IV spotlights ONO's Regional Regulatory Fairness Boards, which made FY 2005 another year of progress and accomplishment in representing the voice of small business to Federal regulators and serving as ONO's "eyes and ears" in local communities.

RegFair Boards are a primary point of contact for the small business community. Because board members are business owners themselves, they can offer their peers a sounding board to express concerns about unfair regulatory actions. RegFair Boards also encourage comments and testimony from small businesses, and monitor Federal agency regulatory enforcement issues. Board members make use of hearings, relationships with trade associations, and their own outreach initiatives to help small businesses resolve their regulatory enforcement challenges.

This chapter also highlights ONO's continued success with reaching out to Federal regulatory agencies and helping them to recognize and appreciate the burden frequently felt by small businesses struggling to comply with requirements. The gap between regulatory expectations and small business awareness continues to narrow as agencies take the initiative and launch their own outreach

efforts to benefit the businesses that they regulate. Federal agencies are providing entrepreneurs with more resources and compliance assistance so that small businesses can avoid fines and penalties.

Regional RegFair Hearings: Facilitating the Discussion

ONO Board members continued creating innovative outreach strategies using technology and other means to connect with each other and draw small businesses into the RegFair Hearing process. Conference calls that crossed regional boundaries reinforced RegFair Board members' unity of purpose in serving ONO's constituency. Members are full-time small business owners themselves and can draw on their own experiences and the knowledge of other members to relate to the issues faced by businesses in their regions.

Board members encouraged small businesses to attend regional RegFair Hearings where entrepreneurs could air their views on specific issues of concern in each region. Presentations by board members at local chambers of commerce meetings informed business leaders about how ONO serves its constituents

Opening a Dialog

"I have seen growth and greater familiarity among the public and within government, which helps small business people to be unafraid and to come forward to present what they feel are unfair regulatory processes."

*—Pam Mazza, Region III
RegFair Board Member*

**Table IV-1. FY2005
RegFair Hearings**

Albuquerque, NM (10/1/04)
Topeka, KS (11/18/04)
Lubbock, TX (1/31/05)
Anaheim, CA (3/1/05)
Indianapolis, IN (3/24/05)
Lincoln, NE (3/30/05)
Roanoke-Salem, VA (4/7/05)
Mobile, AL (5/26/05)
Rockford, IL (6/3/05)
Fresno, CA (6/16/05)
Philadelphia, PA (6/24/05)
Fargo, ND (6/28/05)
New York, NY (7/14/05)
Spokane, WA (7/20/05)
Casper, WY (7/27/05)
Charlotte, NC (9/20/05)
Warwick, RI (9/29/05)

and discussed the Federal regulatory enforcement problems encountered by small businesses. Board members also attended planning and zoning meetings to learn about environmental and other issues that arise when a new business is being proposed for a community. RegFair Board members then encouraged businesses to file comments on their issues through the ONO website or in person at a RegFair Hearing.

RegFair Board members who belong to trade organizations took opportunities to rally large memberships to file comments and gain attention for pressing regulatory challenges. Enlisting the support of national groups whose members are affected by regulatory fairness issues has proved an effective way to encourage small businesses to file comments.

In Region I, for example, pharmaceutical trade organizations rallied around a drug compounding issue that adversely affected independent pharmacies. The action triggered a Food and Drug Administration review, and FDA agreed to revise the rule to remove unnecessary burdens on small pharmacies (see p. 31 and 2004 ONO Report to Congress, p. 35). The FDA has failed to reissue this entrepreneur-friendly two-year Compliance Policy Guideline, and small pharmacies have once again begun filing comments with ONO.

An ONO RegFair Board member in Region II made productive use of the

SBA's extensive small business mailing list for his region, personally contacting business owners to invite them to comment on any regulatory enforcement difficulties that they had encountered. Through personalized email and phone contact, the RegFair Board member spread the word about ONO's services and encouraged small businesses to consult an online listing of upcoming hearings, then attend or file comments via the ONO website.

ONO held 17 RegFair Hearings in FY 2005, exceeding its goal of 16. [See table and map below for hearing dates and locations.] Testimony presented at the gatherings represented the interests of thousands of small businesses.

Hearing attendees vary from location to location, but can include Federal regulatory partners, the SBA team, RegFair Board members and alumni, business and trade organizations, chambers of commerce, media, state regulatory and elected officials, and small business owners and representatives. Media outreach efforts by board members and SBA field offices elicited extensive coverage for RegFair Hearings, an efficient way to amplify ONO information distribution at the community level (see Table IV-2 below for summary and Appendix A for detail). ONO Board members depend on SBA field offices to help publicize hearings and serve as information conduits to small business owners.

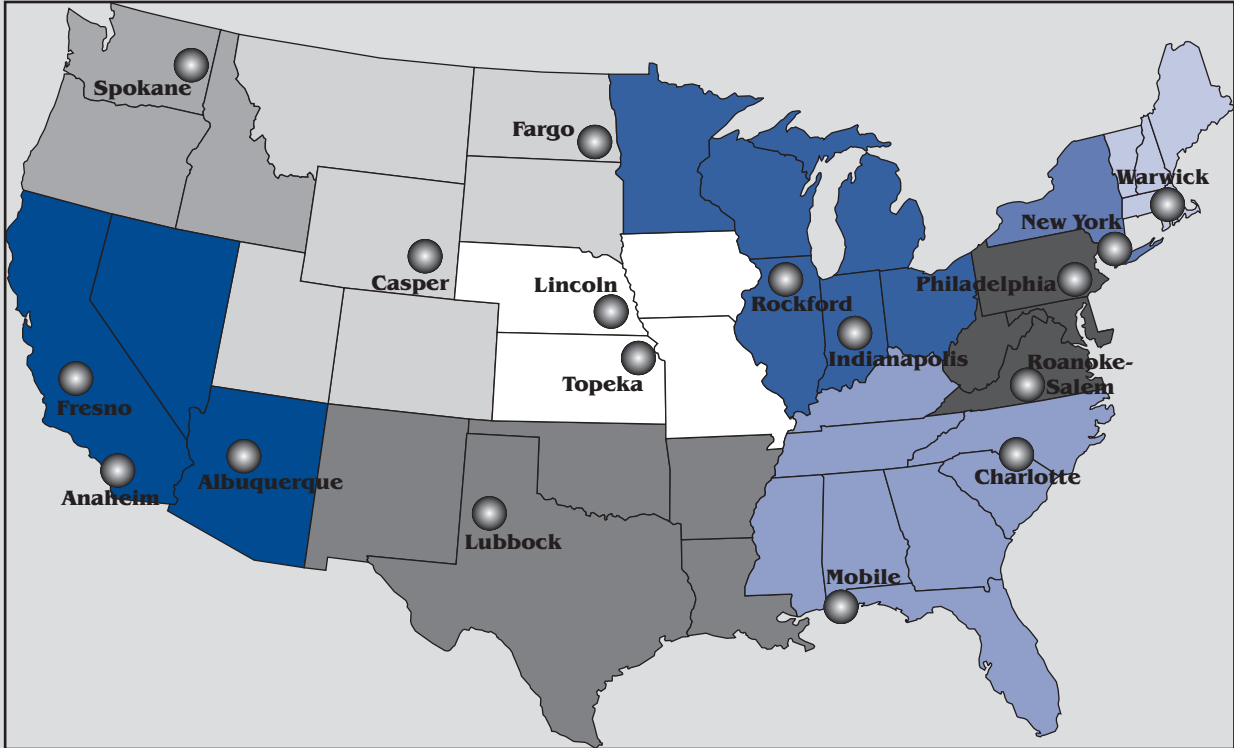


Figure IV-1. Hearings Held in FY 2005

In FY 2005, ONO held 17 hearings around the country. Afternoon sessions that focused on emerging markets were presented following most of the hearings.

Table IV-2. Potential Audience Reach of ONO Media Efforts

ONO Event	Potential Audience Numbers Reached through Various Media			
	Radio/TV Interviews	Newspaper Articles	Internet	Grand Totals
Albuquerque, NM (10/1/04)	620,230	120,200		740,430
Topeka, KS (11/18/04)				
Lubbock, TX (1/31/05)	893,990	66,921		960,911
Anaheim, CA (3/1/05)				
Indianapolis, IN (3/24/05)	1,019,870			1,019,870
Lincoln, NE (3/30/05)	653,490			653,490
Roanoke-Salem, VA (4/7/05)	445,000			445,000
Mobile, AL (5/26/05)		111,778		111,778
Rockford, IL (6/3/05)			175,560	
Fresno, CA (6/16/05)	259,200	178,225		437,425
Philadelphia, PA (6/24/05)	2,830,470	11,420		2,841,890
Fargo, ND (6/28/05)	773,610			773,610
New York, NY (7/14/05)		163,463		163,463
Spokane, WA (7/20/05)	58,400	159,510		217,910
Casper, WY (7/27/05)	50,010	91000		141,010
Charlotte, NC (9/20/05)		304,000		304,000
Warwick, RI (9/29/05)	47,000	201,861		248,861
TOTALS:	7,651,270	1,408,378	175,560	9,235,208

The Importance of Partnership

ONO is keenly aware of how much it depends on its partners to help secure regulatory enforcement fairness for small businesses. These partners include SBA district and regional field offices; headquarters in Washington, DC; and other SBA support organizations such as Small Business Development Centers (SBDCs) and SCORE. Other partners include trade associations and Federal government agencies.

A prime example of partnership at work is the support offered by the Office of Advocacy, located at SBA headquarters. While ONO addresses enforcement issues raised by regulations that are already in place, Advocacy works to generate small business involvement when regulations are proposed or, ideally, before they have even reached the formal rulemaking stage. Advocacy connects small businesses with Federal agencies to offer real-world information about regulatory decisions that will affect the entrepreneurial community. Research is a major aspect of Advocacy's work, which aims to reach a better understanding of regulations' potential impacts on small business, especially major cost implications. Advocacy shares its research both domestically and internationally so that more policymakers understand the economic and social impact of regulations.

Federal agencies are important partners in helping to ensure regulatory enforcement fairness for small businesses. Many agencies have recognized that they can

play a role in reducing the regulatory burden felt by small businesses and have pledged to work cooperatively with ONO in achieving SBREFA goals. ONO depends on feedback from Federal agencies to strengthen its efforts to get small businesses the help that they need to push for regulatory enforcement fairness.

ONO was able to make useful changes, for example, when Federal agencies asked for more notice of RegFair Hearings and a heads-up when the issues to be raised were pertinent to the agencies. Noted one EPA representative: "We are very appreciative of the cooperation and assistance of hearing contacts at ONO's and SBA's district and headquarters offices. These persons were unfailingly helpful in allowing EPA to know in advance whether a comment regarding an EPA enforcement matter was likely. This allowed us to use our limited travel funds effectively and attend hearings where our being there would be most important to small businesses. We also appreciate improvements in providing agencies with earlier notification of future hearings and agendas."¹

And, of course, trade associations are essential allies in helping us spread the word and ensure that ONO continues to offer meaningful support and guidance to our small business constituents. One of the largest trade organizations representing small businesses—the National Federation of Independent Businesses (NFIB)—recognizes the

¹ Jan 30 memo to Martin Gold, Acting National Ombudsman, from Walker B. Smith, Director of EPA's Office of Civil Enforcement.

Advocacy

"Small businesses should drive government decision-making—that's the bottom line. It is the responsibility of every small business to get involved in government. That's a choice, because you don't have a choice with government's ability to get involved with you."

*—Thomas M. Sullivan,
Chief Counsel, Office of
Advocacy*

Furthering Understanding

"We share your interest in reducing the regulatory burden placed on small businesses and look forward to a continued partnership with your office in achieving the goals of the Small Business Regulatory Enforcement Fairness Act."

*—Beth Tucker, IRS Director
of Communications,
Liaison, and Disclosure*

important reciprocal and mutually beneficial relationship that it enjoys with ONO. According to Andrew Langer, NFIB president, “NFIB members have found the National Ombudsman’s Office to be an invaluable and essential tool in combating the problem of regulatory overstepping or regulatory overreaching.” He goes on to note that few advocates exist for small businesses once regulations are in place and that ONO is an educational tool to help government regulatory agencies realize the differences between small and large businesses. “And that’s where the Ombudsman is most helpful,” he explains, “to let government agencies know that they need to work with small businesses, and not be antagonistic and engage in the ‘gotcha’ game.”

Reaching Out and Following Up

All outreach efforts that promote regulatory fairness—whether they originate from board members to small businesses, from ONO to Federal agencies, or from agencies to the small businesses they regulate—have many of the same principles at work:

- Build partnerships early.
- Devise new ideas and innovative strategies.
- Keep communication lines open with ONO.
- Seek support from stakeholder groups.
- Tap others for lessons learned.

RegFair Board members also gleaned good returns from involving politicians at all levels of government. From contacting congressional offices with small business liaison responsibilities to briefing local elected officials, board members have proved that informing politicians about small business concerns is a wise strategy. Many local officials, for example, are small business owners themselves and are happy to share their connections throughout a state. Elected officials can sometimes intervene to resolve regulatory fairness issues on the spot.

Success with Trade Associations

The number and complexity of Federal regulations are often daunting for small business owners, and keeping current on ever-changing rules can seem overwhelming. Just as these entrepreneurs rely on trade associations and chambers of commerce to track small business issues, RegFair Board members and ONO staff can leverage quantities of scale by encouraging trades and chambers to speak on behalf of their members and elicit feedback on regulatory enforcement issues. ONO considers its links with these groups to be perfect bi-directional communications conduits—they allow for both reaching out to and seeking input from small businesses.

Trade groups made an impressive showing at ONO Hearings and Dynamic Markets Meetings in FY 2005 (see table IV-3). Trade group attendance represented more than 3 million individual

Agency Outreach to Trades

The IRS holds forums with small business groups and associations to provide an avenue for an open exchange of information with external stakeholders. The forums give associations an opportunity to share feedback on behalf of their small business members.



Through its Alliances program, OSHA has teamed with NFIB, which is making health and safety information and compliance assistance resources available to the small business public through its large (600,000) membership.

members. Small local trades as well as large national organizations were represented, from the Central Rhode Island

Chamber of Commerce, with 1,200 members, to the NFIB, with approximately 600,000 members.

Chambers Extend Reach

“The State chambers play an integral part in our grassroots efforts with ONO hearings in the field. Chambers work best when businesses of all sizes are brought together—more issues unite businesses than divide them...Part of our mission is not just making government more small business-friendly, but also making chambers that way.”

*—Giovanni Coratolo,
Executive Director, Council
on Small Business, U.S.
Chamber of Commerce*

Table IV-3. Small Business Associations Reached in FY 2005

Location of Hearing or Emerging Market Session	Organizations Represented	Membership Represented
Albuquerque, NM (10/1/04)	Greater Albuquerque Chamber of Commerce African American Chamber of Commerce NM Native American Business Development Center Albuquerque TVI Small Business Development Center New Mexico Procurement Assistance Program Albuquerque SCORE Chapter American Indian Chamber of Commerce ACCION New Mexico Women’s Economic Self Sufficiency Team (WESST Corp) New Mexico Small Business Development Center National Association of Women Business Owners Women Impacting Public Policy New Mexico Cattle Growers Association New Mexico Community Development Loan Fund	5,805
Lubbock, TX (1/31/05)	Lubbock Hispanic Chamber of Commerce Northwest Texas Small Business Development Center Mayor’s Office of Economic Development City of Levelland South Plains Government Association Midland College	334,946
Anaheim, CA (3/1/05)	City of Anaheim San Bernardino Chamber of Commerce SCORE Chapter #114 Tri Tech Small Business Development Center Asian Business Association Orange County Economic Business Development, Inc. National Association of Government Guaranteed Lenders National Association Women Business Owners Vietnamese American Chamber of Commerce	330,698

Indianapolis, IN (3/24/05)	Community Bankers Association of Indiana Indianapolis Black Chamber of Commerce West Central Indiana Small Business Development Center Indiana Small Business Development Center Central Indiana Small Business Development Center National Association of Women Business Owners National Federation of Independent Business Indianapolis Urban Enterprise Association Indiana Builders Association	677,077
Lincoln, NE (3/30/05)	Nebraska Mexican American Commission Nebraska Business Development Centers – Lincoln Senator Chuck Hagel National Federation of Independent Business – Nebraska Chapter Nebraska Chamber of Commerce and Industry Lincoln Independent Business Association Lincoln Area Chamber of Commerce	11,416
Roanoke-Salem, VA (4/7/05)	Roanoke Regional Chamber of Commerce-Waynesboro Downtown Development Roanoke Regional Small Business Development Center Virginia Department of Business Assistance Total Action Against Poverty	1,806
Mobile, AL (5/26/05)	Mobile Area Chamber of Commerce Southern Shrimp Alliance Eat Alabama Wild Shrimp Association of American Railroads Quality Program Car Department Officers Association	7,600
Rockford, IL (6/3/05)	City of Rockford Rock Valley College Small Business Development Center Winnebago County Illinois Department of Employment Security Veteran's Assistance Commission of McHenry County Illinois Department of Commerce and Economic Opportunity	372,043
Fresno, CA (6/16/05)	University of California Mercer Small Business Development Center Mayor's Office – City Manager Greater Fresno Chamber of Commerce Kern County Economic Development Corporation Fresno West Coalition for Economic Development	698,749

Philadelphia, PA (6/24/05)	American Association of Meat Processors Small Business Development Center – University of Pennsylvania – Wharton School Pennsylvania Landscape & Nursery Association-Independent Miners & Associates	2,648
Fargo, ND (6/28/05)	FM Chamber of Commerce Associated General Contractors of North Dakota National Federation of Independent Business Automobile Dealers Association of North Dakota Central North American Trade Corridor Minn-Dak Manufacturer’s Association North Dakota AFL-CIO North Dakota Association of Builders North Dakota Association of Realtors North Dakota Association of Rural Electric Cooperation/Lineworks North Dakota Association of Telecommunications Cooperatives North Dakota Beer Wholesalers Association North Dakota Grocers Association North Dakota Implement Dealers Association North Dakota Newspaper Association North Dakota Petroleum Marketers Association North Dakota Pharmacists Association North Dakota Propane Gas Association North Dakota Ready Mix & Concrete Products Association North Dakota Retail Association North Dakota Well Drillers Association City Mayors and Governments Devils Lake Sioux Tribe Standing Rock Sioux Turtle Mountain Band of Chippewa	40,230
New York, NY (7/14/05)	New York State Wide Coalition of Hispanic Chamber of Commerce Small Business Development Center – Boricua College SCORE – NYWall Street Rising Chinese Chamber of Commerce Ling Sing AssociationChinese Consolidated Benevolent Association Myanmar Chinese Association of NY Association of Minority Enterprises of NY NYC Department of Small Business Services	535,623

Spokane, WA (7/20/05)	Spokane Chamber of Commerce	175,643
	BIZStreet Resource Center	
	Colville Chamber of Commerce	
	Automotive Recyclers of Washington	
	Spokane Valley Economic Development	
	Ponderay Newsprint	
	Independent Business Association	
	WA Restaurant Association	
	WA Farm Bureau	
	Associated Industries	
	TINCAN – Community Access Network	
	Inland NW Women’s Business Center	
	WA State Small Business Development Center	
	SCORE	
	AHANA Minority Business Association	
	National Association of Women Business Owners	
Casper, WY (7/27/05)	Wyoming Small Business Development Center	91,214
	Wyoming Lodging & Restaurant Association	
	Wyoming Retail Merchants Association	
	Wyoming State Liquor Association	
	Wyoming Mining Association	
	Wyoming Business Alliance	
	Wyoming Bankers Association	
	Wyoming Automotive Dealers Association	
	Wyoming County Commissioner’s Association	
	Wyoming Society of CPA’s	
	Mountains & Plains Booksellers	
	Wyoming Funeral Directors Association	
	Northern Arapaho Business Council	
	Shoshone Business Council	
	Town of La Barge	
	City of Newcastle	
	Town of Albin	
	Town of Guernsey	
	Lander Chamber of Commerce	
	Cody Chamber of Commerce	
	Wyoming Economic Development Association	
	City of Casper	
	Wind River Development Fund	
Wyoming Business Council, State of Wyoming		

Casper, WY (cont'd)	Casper Chamber of Commerce	
	Riverton Chamber of Commerce	
	Laramie Chamber of Commerce	
	Dubois Chamber of Commerce	
	Thermopolis Chamber of Commerce	
	Worland Ten Sleep Chamber of Commerce	
	Powell Valley Chamber of Commerce	
	Jackson Hole Chamber of Commerce	
	Cheyenne Chamber of Commerce	
	Buffalo Chamber of Commerce	
	Evanston Chamber of Commerce	
	Douglas Chamber of Commerce	
	Greybull Chamber of Commerce	
	Green River Chamber of Commerce	
	Sheridan County Chamber of Commerce	
	Lovell Chamber of Commerce	
	Rock Springs Chamber of Commerce	
	Campbell County Chamber of Commerce	
	Kemmerer Diamondville Chamber of Commerce	
	Sundance Chamber of Commerce	
Torrington Chamber of Commerce		
Bridger Valley Chamber of Commerce		
Manufacturing Works		
Charlotte, NC (9/20/05)	BIG Council	23,398
	BEFCO Certified Development Corporation	
	Carolinas Association of General Contractors	
	City of Charlotte – Small Business Department	
	Charlotte Chamber of Commerce	
	Charlotte Mecklenburg School System	
	Mecklenburg County MW/SBE	
	Metrolina Council of Governments	
	SCORE	
	Small Business & Tech Development Center	
	Small Business Information Center	
Warwick, RI (9/29/05)	Central R.I. Chamber of Commerce	1,200
Total Small Business Reached		3,310,096

Agency Outreach to Small Businesses

Federal agencies continued to increase their outreach efforts to small businesses in FY 2005. A highlight for many regulatory enforcement agencies was participating in the SBA EXPO from April 25 to April 28, 2005, where they set up exhibits and disseminated information to hundreds of small businesses. ONO encourages agencies to be proactive and preemptive with their outreach efforts to mitigate small business concerns before they become major headaches for both sides. Highlighted below are specific examples of successful agency outreach programs:

- The Drug Enforcement Administration's (DEA's) **Office of Diversion Control**. Falling under the U.S. Department of Justice (DOJ), the Office of Diversion Control is responsible for small business oversight. The office reported that its website (<http://www.deadiversion.usdoj.gov/>) was visited 2 million times between January and September 2005, an average of more than 9,000 times a day and more than double last year's visits. The website contains extensive information on DEA's drug and chemical programs, and provides access to SBREFA materials and outreach initiatives.
- **The Office of Special Counsel for Immigration-Related Unfair Employment Practices** (OSC) within DOJ's Civil Rights Division. OSC offers employer training ses-

sions throughout the country at no charge, providing guidance to businesses on how they can comply with the anti-discrimination provisions of immigration laws. OSC participated in 23 employer training sessions in FY 2005, reaching hundreds of company owners, managers, and human resources personnel.

- **The Federal Transit Administration** (FTA) within the U.S. Department of Transportation. FTA conducted a number of "listening" sessions at which small organizations provided feedback and identified local needs. As a result, the FTA published and/or revised a number of its circulars to clarify the issues raised by these organizations.
- The Agricultural Marketing Service's Science and Technology Programs **Pesticide Records Branch** (PRB). The PRB, which is part of the U.S. Department of Agriculture (USDA), launched a new interactive CD to be distributed to clients through trade shows, Cooperative Extension Service educational programs, and state Departments of Agriculture. The CD provides complete information on how to keep restricted use pesticide records in compliance with the Federal pesticides recordkeeping regulation.
- USDA's **Food Safety Inspection Service**. FSIS held six Food Defense workshops in major cities in FY 2005 for the owners and operators of meat, poultry, egg processing, import, and slaughter establishments.

Dynamic Markets meetings were held in the following cities in FY 2005:

- 📍 Albuquerque, NM
- 📍 Lubbock, TX
- 📍 Anaheim, CA
- 📍 Indianapolis, IN
- 📍 Roanoke-Salem, VA
- 📍 Fresno, CA
- 📍 Philadelphia, PA
- 📍 Fargo, ND
- 📍 New York City, NY
- 📍 Spokane, WA
- 📍 Casper, WY
- 📍 Charlotte, NC
- 📍 Warwick, RI

Outreach to Increase Compliance

EPA used workshops to increase environmental awareness and address many of the health, safety, and environmental concerns associated with recycling operations in residential and/or environmentally sensitive areas. In collaboration with the city of Philadelphia, the Pennsylvania Department of Environmental Protection, local auto recycling trade associations, non-profits, and the auto industry, EPA created an Automotive Recycler's Environmental Compliance Workshop. An intergovernmental task force briefed attendees on compliance with the regulatory requirements under various environmental statutes. Trade associations and non-governmental organizations presented their environmental services and programs. Vendors that service the automotive sector discussed how to handle the materials generated (e.g., tires, mercury switches, waste oil, and freon) and hosted booths to display their products. The event was part of an integrated compliance strategy that encompasses compliance assistance, monitoring, and enforcement.

The workshops were designed to provide these businesses with the guidance and tools needed to develop a "food security" plan. Several of the workshops were web cast to reach a wider audience.

- **USDA's Grain Inspection, Packers, and Stockyards Administration (GIPSA).** GIPSA is educating small and disadvantaged farmers, small inspection agency owners, and grain elevator operators about their rights under the law. This outreach program is conducted via formal events as well as informal meetings with individual growers, feedlot and stockyard owners, grain elevator operators, and inspection service providers.
- **The Internal Revenue Service.** The IRS sponsors a monthly program, "Tax Talk Today", which features current tax issues and policies, a panel discussion, questions and answers from viewers, current tax news stories, and "tax teasers." The show's format allows viewers to ask questions via email, fax, or telephone.
- **The Fish and Wildlife Service** (FWS) of the U.S. Department of the Interior. Part of the FWS mission is keeping small businesses that hold wildlife import and export licenses up to date on regulatory requirements. The agency fulfills its duty by issuing public bulletins via the Internet, at ports of entry, and through trade associations. Other outreach efforts include presentations and exhibits at outdoor expos

to apprise companies involved in pest control, tree trimming, and coral sales about regulations protecting marine life and migratory birds.

- **The Occupational Safety and Health Administration (OSHA)** within the U.S. Department of Labor (DOL). OSHA has a free and confidential Consultation Program in all 50 States, plus U.S. territories, that provides highly qualified occupational safety and health professionals to help employers establish and maintain a safe and healthy workplace. Consultants personally examine a business workplace or specific operations and discuss applicable OSHA standards with the employer and affected employees. Consultants may also provide safety and health training to prevent future hazardous situations. OSHA consultants made more than 30,000 visits to small businesses in FY 2005.
- The U.S. Department of State's **Bureau of Overseas Building Operations.** The bureau sponsors an annual "Industry Day" designed to educate businesses on how to carry on construction abroad. The event consists of workshops, industry panels, mini-seminars, and networking opportunities.
- **The Federal Trade Commission.** The FTC initiated a "Business Briefcase" project in FY 2005 to distribute its most popular business education publications on a CD-ROM the size of a business card. It includes compliance and other information

especially helpful to small businesses and is distributed at small business fairs, Better Business Bureaus, and local chambers of commerce.

■ **The Equal Employment Opportunity Commission.** EEOC reached almost 25,000 small business representatives in FY 2005 by hosting nearly 500 no-cost and 70 fee-based outreach events. Topics covered included mediation, sexual harassment, Title VII, and the Americans with Disabilities Act.

■ **The Federal Deposit Insurance Corporation** has a Banker Outreach Program where senior FDIC staff contact and meet with bank management to discuss new technologies, product innovations, and recent statutory changes.

Dynamic Markets Meetings—Reaching Out to the Underserved

ONO hosted Dynamic Markets Meetings to assist emergent small businesses and business owners who may need extra support and resources to enter the marketplace. The typically underserved groups that own these businesses include women, Asian Americans, African Americans, Hispanic Americans, Native Americans, and veterans. ONO changed

its format to hold Dynamic Markets Meetings in nearly every city where it held RegFair Hearings, with the RegFair program presented in the morning and a Dynamic Markets Meeting in the afternoon. In total, 13 meetings were held to apprise businesses in emerging markets of ONO and SBA services.

ONO is expanding its efforts to engage minority business owners and ensure equal access to informational resources by holding bilingual hearings and translating ONO materials into other languages. ONO held two bi-lingual hearings in FY 2005 in Albuquerque, NM and in New York City, NY. In addition, many of our materials were translated into Spanish, including Mandarin Chinese, and progress was made on the Spanish version of our website, established in 2002. ONO's Spanish website aligns with the format of the SBA's website, www.sba.gov/espanol, and may be found at www.sba.gov/espanol/Ombudsman_Nacional/.

Our goal in all of these projects is to assure that small businesses from all walks of life have access to ONO resources. We continue to look for ways to enhance our outreach, and have designated this effort as a special area of emphasis for the immediate future (see Chapter V, "Looking Ahead...Targets of Opportunity).

FTA Listens to Small Businesses

The Federal Transit Administration (FTA) has conducted a number of listening sessions at which small entities took the opportunity to provide feedback to the agency regarding its programs. These sessions optimized the flexibility of states and transit operators in addressing locally identified needs. As a result, FTA has published and/or revised a number of its circulars to clarify many issues presented by small entities.

V

Looking Ahead— Targets of Opportunity

If ensuring regulatory fairness for small business is ONO's mission, opening clear channels of communication is the means by which we succeed. The most effective way to advance fair enforcement is to ensure that small business concerns reach the ears of Federal regulators. ONO intends in the year ahead to build on our past success at creating opportunities for businesses to participate in making their voices heard. To accomplish this, we must not only increase awareness of ONO in the small business community, but make our services accessible to all of our constituents.

ONO and RegFair Board members will step up outreach efforts through hearings, media outlets, SBA partners, trade associations, and chambers of commerce. Our office will seek out every opportunity to make optimal use of technology, including expediting the comment process via the Internet; making more effective use of email as an inexpensive, efficient communications tool; and electronically managing information and contact lists. ONO will also continue to hone best practice strategies for collaborating with our partners in the States, SBA field offices, Congress, and small business organizations as well as our sponsors and other stakeholders.

Broadening awareness of small business concerns is ONO's most effective tool for advancing regulatory enforcement fairness.

Improved Access, Increased Involvement

Time and distance often prove an insurmountable barrier for busy small business owners who wish to attend RegFair Hearings. ONO plans to improve accessibility by expanding efforts already underway to use video technologies and other innovative communications that allow small business people to participate remotely. In Iowa, for example, SBA has access to an off-site video system (Iowa Communications Network) that reaches more than 100 counties and dozens of chambers of commerce. The RegFair Board in the region has leveraged this technology to boost hearing participation by offering small businesses the choice of real-time remote attendance.

Federal agencies will also benefit through increased participation from remote sites, which alleviates the strain on budgets and gives agencies a chance not only to intervene with particular issues from commenters, but to highlight ways

Getting a Greater Return on Investment

“ONO and members of the RegFair Board are committed to addressing our developmental issues head on so we can be more productive with the money that Congress has given us. Outreach is an important part of this and, effectively orchestrated, can be a phenomenal tool for both agencies and businesses.”

*—Jim Larson, Region VIII
RegFair Board Member*

in which they are working to address the needs and concerns that small businesses have.

ONO continues to search for and encourage similar creative uses of technology that give more small businesses the opportunity to proactively address their regulatory challenges.

ONO is currently considering a suggestion from board members for increasing small business involvement through a more focused outreach to the financial community. Those companies could become an information resource about ONO services and refer entrepreneurs to our office when they are struggling with regulatory fairness and enforcement concerns.

Optimizing Technology Tools

The preceding section describes several examples of how creative use of technology has become one of ONO's most effective tools in ensuring regulatory enforcement fairness. We continue to harness technological resources to further all aspects of our mission. We are, for example, encouraging each Federal regulatory agency that interacts with small businesses to amplify its own outreach efforts by highlighting a website link to ONO's Comment page. In addition to raising our profile, these links would reflect the high priority that the Bush Administration places on reducing regulatory burdens on small businesses.

The Administration's priorities are also evidenced by the Business Gateway, one

of 25 Presidential E-Government Initiatives. It is a multi-year, multi-phase project designed to provide small and medium-sized businesses with a single access point (www.business.gov) to easily find government information, including forms and compliance assistance resources and tools. Business Gateway also reduces the regulatory paperwork burden on businesses through easier data submission.

To achieve its strategic goals, Business Gateway has created a web site that directs companies to a one-stop common access point for government information and resources. Business.gov provides links and tools to assist companies in complying with Federal regulations. Business.gov also provides access to a Federal forms catalog, which enables businesses to easily find more than 5,500 government-required forms and related documents. Business.gov reduces the burden on businesses in certain industries by streamlining data collection and distribution for regulatory reports to Federal, state, and local governments.

When re-launched publicly on September 29, 2006, business.gov will focus on providing a single point of access to find compliance information and assistance quickly, using a sophisticated search capability.

Technology innovation continues to enhance ONO's business processes and our ability to connect effectively with all of our stakeholders. One example that ONO is exploring is the use of automated systems by board members to check

the status of small business comments, from those recently submitted to those pending or resolved. The automated information will allow board members to keep better tabs on commenters in their regions and step in to assist small businesses when needed.

Strengthening Alliances Through Visibility and Education

ONO plans to promote more involvement by its RegFair Board at the local community level through more creative outreach strategies and a greater presence. Board member suggestions for reaching this goal include a year-round effort to expose small businesses to ONO through such venues as business publications, speaking engagements, and briefings. One board member suggested that “An aggressive educational outreach campaign might include speaking to business schools; at professional organizations like Rotary, Lions, and Kiwanas Clubs; or at chamber of commerce events, telling small businesses what we do and using the full array of available SBA resources to promote this important work.”

Other outreach plans include using more effective mechanisms to reach larger numbers of small businesses more efficiently—to achieve a greater “bang for the buck” by using national associations (e.g., Hispanic Chamber of Commerce, U.S. Chamber of Commerce) as part of orchestrated marketing efforts to increase reach, visibility, and thus par-

ticipation in hearings.

ONO has learned an important lesson over the years—regulatory enforcement concerns are more easily resolved when small businesses, Federal agencies, and other stakeholders understand our mission. ONO will continue to foster that understanding through a variety of methods, including education and training initiatives for the leaders of small business organizations, and closer partnerships with Federal agency representatives. We are also looking at ways to establish a regular presence in the ONO districts and plan to work with District Directors to create an effective year-long outreach program. When these partnerships are strong, agencies often participate willingly and effectively in addressing regulatory fairness, sometimes resolving concerns at the rulemaking stage before enforcement becomes an issue.

ONO has also learned the value of mass media exposure in spreading the word about our services to local small business communities (see sidebar next page). We have an ongoing challenge in reaching the entrepreneurs who face unfair regulatory enforcement issues and could benefit from ONO resources. Garnering media exposure before RegFair Hearings draws attention to the struggles that business owners face and helps inform entrepreneurs and small business groups about how ONO can assist them.

One of our most effective resources for raising ONO’s visibility and educating interested parties is our RegFair Board

members. Whether they are networking with business groups, educating legislators at all levels of government, or representing ONO in the media, our board members are our ambassadors.

The Value of Mass Media Exposure

Joe Shepard, who chairs the Region VI Regulatory Fairness Board, reports that outreach efforts have paid off in the Southwest region in terms of both media coverage of hearings and volume of comments to his board and Ombudsman's Office. Shepard succeeded in placing articles he wrote about the regulatory fairness program in a national business magazine, the *Hispanic Journal*, and a state newspaper in Texas, the *Austin Business Journal*. While the response to these articles is not known, Shepard says a third outreach article he placed in the Wal-Mart's magazine for Sam's Club members, Sam's Club Source, produced "a surge of comments" to the Ombudsman's Office. The magazine goes to some 5.5 million small business owners.

Shepard added that the press releases the SBA sends out in advance of hearings are frequently picked up by local or regional newspapers and by websites belonging to chambers of commerce and the National Federation of Independent Business. He believes the releases also lead to greater participation at hearings.



They continue to spread the word in their communities about ONO's mission, and they often generate the kind of innovative ideas that expand our communications channels and our reach among small businesses across the United States.

Conclusion

America's small businesses are the economic engine leading the Nation's economy. SBA reports that small businesses:

- generated 60 to 80 percent of the net new jobs annually over the last

decade.

- represent 99.7 percent of all employers.
- employ half of the private work force.
- provide 40.9 percent of private sales in the country.
- account for 41 percent of jobs in high technology sectors.
- account for 52 percent of private sector output in 1999.
- represent 97 percent of all U.S. exporters.

The same entrepreneurial spirit that forged a powerful, prosperous democracy is alive and well and manifested through U.S. small businessmen and women today. While Federal agencies are prompted to impose regulations to protect the general good, they can fail to recognize and appreciate the burden frequently felt by small businesses struggling to comply with requirements.

ONO's mission lies in seeing that small businesses are relieved of the burden of following unfair regulations. Through effective education and outreach, we are spreading the word to small businesses that they have an ally in their struggle against excessive rules that drain resources better spent supplying products and services to the marketplace. Our Federal agency partners are finding that when they understand small business concerns, they can come to a less contentious resolution of regulatory conflicts—or even head off enforcement issues before rules are written.

ONO is proud and honored to continue its mission of lifting the burden of unfair regulatory enforcement, freeing

small businesses to remain the driving force in the U.S. economy for the 21st century.

Appendix: Media Outreach

Event/Date	Radio/TV Interviews	Print Media Articles	Internet	Market Size/ Arbitron Rating
Albuquerque, NM Hearing 10-01-04	Jim Morrison, KLUZ TV Channel 41 (Spanish) interviewed Michael Barrera and Administrator Barreto on 9/30/04	Albuquerque Journal ran an article promoting the hearing on 08/23/04	Hearing information placed on New Mexico Business Weekly website, Albuquerque.bizjournals.com on 08-31-04	KLUZ - 620,230 Journal - 120,200
Lubbock, TX Hearing 01-31-05	Ben Gonzales, KEJS Spanish Radio, interviewed Michael Barrera on 1/25/05 Doug Nelson, Producer / Director, KTXT-TV ran a public service announcement promoting the event on 01/20/05 Hearing was highlighted by local affiliates: KAMC-TV (CBS) KCBD-TV (ABC) KLBK-TV (NBC)	Lubbock Avalanche-Journal ran an article promoting the hearing on January 16, 2005		KTXT - 149,990 KAMC - 248,000 KCBD - 248,000 KLBK - 248,000 Journal - 66,921
Anaheim, CA Hearing 03-01-05			Hearing information placed on Yahoo.com finance page on Thursday, February 24, 2005 Recap of hearing was placed on OC Register.com on March 2, 2005	
Indianapolis, IN 03-24-05	Kevin Keith, WSCI 1010AM, interviewed Peter Sorum on March 18, 2005		Hearing information was placed on the Inside Edge E-Newsletter website, insideindianapolis.com on March 9, 2005	WSCI - 1,019,870
Lincoln, NE Hearing 03-30-05	Dwight of KLIN Radio interviewed Michael Barrera on 03-28-05 Roger Olson, KFAB Radio, interviewed Michael Barrera on 03/28/05			KLIN - 266, 890 KFAB - 386,600

Event/Date	Radio/TV Interviews	Print Media Articles	Internet	Market Size/ Arbitron Rating
Roanoke-Salem, VA Hearing 04-07-05	Dutchie Mirolli, WVTM Radio (NPR Affiliate) interviewed Peter Sorum on 04-05-05	Blue Ridge Journal interviewed Peter Sorum on 03/29/05 and ran an article on 04-18-05		WVTM - 445,000
Mobile, AL Hearing 05-26-05		Mobile Register ran an article promoting the hearing on 05-25-05		Register - 111,778
SBA Expo '05 04-26-05/04-27-05	Joseph R. Perone, Business Reporter, The Star Ledger, interviewed Michael Barrera on 04-28-05. Article printed on 04-30-05 Jim Blassingame, The Small Business Advocate, interviewed Michael Barrera on 04-27-05.			Star Ledger - 394,767
Rockford, IL Hearing 06-03-05		Worldwide Ombudsman newsletter ran an article promoting the hearing on April 1, 2005	WREX, Channel 13, posted an article promoting the hearing on its website	WREX - 175,560
Fresno, CA Hearing 06-16-05	Scott Taylor, DVEC 920, San Luis Obispo, CA interviewed Peter Sorum on June 2, 2005 Monterey County Herald promoted the hearing in its Business Briefs section on June 9, 2005 KFTV Channel 21 (Spanish Language) interviewed Carlos Mendoza, DD at hearing on June 16, 2005 KSEQ-97 FM Radio recorded hearing via Ready Talk and aired it on June 19, 2005 on its 5:30 and 6:00 a.m. shows	The Fresno Bee ran an article promoting the hearing on June 14, 2005 The Hartford Sentinel listed the hearing in its Business Briefs on June 13, 2005	Hearing was listed as a calendar of events item on the Californian.com website on June 4, 2005	DVEC - 9,200 Herald - 38,000 KFTV - 212,000 Bee - 164,815 Sentinel - 13,410
Philadelphia, PA Hearing 06-24-05	WGTV-TV, Channel 48, interviewed Peter Sorum on June 3, 2005	Philadelphia Business Journal listed the hearing on its calendar of events for the week of June 3-9, 2005		WGTV - 2,830,470 Journal - 11,420

Event/Date	Radio/TV Interviews	Print Media Articles	Internet	Market Size/ Arbitron Rating
Fargo, ND Hearing 06-28-05	Jim Larsen, RegFair Board Member, appeared on KSFY-TV, Fargo, with Host, Mitch Krebs, on June 10, 2005 KFJM (North Dakota Public Radio) interviewed Peter Sorum on June 29, 2005 Peter Sorum was interviewed by Channel 6 (WDAY). Interviewed was aired twice on June 29, 2005	Valley City Times Record ran an article promoting the hearing on June 6, 2005		KSFY - 244,310 KFJM - 82,300 WDAY - 447,000
New York, NY Hearing 06-28-05	The Sino TV (Chinese TV) interviewed Peter Sorum on July 14, 2005	The World Journal (Chinese Newspaper) covered the Dynamic Markets Meeting on July 14, 2005 Janet Xiong, Managing Editor, The Epoch Times covered the Dynamic Markets Meeting on July 14, 2005 The Poughkeepsie Journal ran an article promoting the hearing on June 16, 2005	City of Yonkers posted the promotional flyer for the hearing on its website on July 6, 2005	World Journal - 70,000 Epoch Times - 43,463 Poughkeepsie Journal - 43,463
Spokane, WA Hearing 07-20-05	Bud Nameck and Debra Wild, KXLY Radio, interviewed Peter Sorum on July 18, 2005	Tayla Tover, TriCities Herald, interviewed Peter Sorum on July 11, 2005 The Spokesman Reivew ran article promoting the hearing on July 13, 2005		KXLY - 58,400 TriCities Herald - 43,000 Spokesman Review - 116,510
Casper, WY Hearing 07-27-05	Rachel April of KWTO-TV interviewed Peter Sorum on July 27, 2005	The Wyoming Business Report published an article on the hearing. The Casper Star Tribune published two articles to promote the hearing		WKTO - 50,010 Business Report - 20,000 Star Tribune - 71,000

Event/Date	Radio/TV Interviews	Print Media Articles	Internet	Market Size/ Arbitron Rating
Charlotte, NC Hearing 09-20-05		Archdale-Trinity News published an article on the Office of the National Ombudsman and promoted the hearing on August 11, 2005 Kerry Hall of the Charlotte Observer interviewed Peter Sorum after the hearing on September 20, 2005 and ran an article on the hearing on September 21, 2005.	News14 Carolina promoted the hearing on its website on September 14, 2005.	Trinity News - 4,000 Observer - 300,000
Warwick, RI Hearing 09-29-05	Peter Sorum interviewed in a "live" television segment on WJAR-TV, Channel 10 (an NBC Affiliate in Warwick, RI) on September 29, 2005. WJAR also sent a camera crew to cover the later that day.	Dave Cranshaw, Staff Writer, Providence Business News, interviewed Peter Sorum on September 2, 2005. The Providence Business News also covered the hearing and interviewed Mr. Sorum following the hearing. The Providence Journal covered the hearing and interviewed Mr. Sorum following the hearing.		WJAR - 47,000 Business News - 35,300 Journal - 166,561
TOTAL - 175,560				

