

**Analysis of State Efforts to Mitigate  
Regulatory Burdens on Small  
Businesses**

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## Executive Summary

The U.S. Small Business Administration, Office of Advocacy (hereafter referred to as SBA Office of Advocacy) contracted with Management Research and Planning Corp. (MRP) to study what state and local governments were doing to mitigate burdensome regulations on small business entities. The analysis of this study looked at how state efforts compared to federal protection under the Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement and Fairness Act (SBREFA) and Executive Order 12866. It also studied what unique methods states were using to protect small businesses from burdensome regulations. As little was known prior to this effort as to what states were doing to protect small businesses from burdensome regulatory actions, this study was contracted with the goal of identifying best practices in reducing small business regulatory burdens and sharing those best practices with all state and local governments.

The research discovered that few states are actively implementing protections for small businesses against burdensome regulations, with fewer still implementing meaningful programs that are genuinely benefiting the small business community. Implementing a program that provides true protection to small businesses requires well-written legislation and executive orders, as well as the political support of the state government, particularly the governor's office, to ensure these written protections are enforced. As the body of this report demonstrates, laws and executive orders that do not garner the support of the governor's office typically fail in providing the regulatory protection to small businesses. While there are several elements of government support that can make or break the pro-small business environment, ensuring regulatory agencies do not encumber small businesses with burdensome regulations is an integral part of this task.

Beyond the element of gubernatorial support, the states that actively sought to mitigate regulatory burdens demonstrated that there are various ways to accomplish this mission. While some states followed some element of the federal model, others incorporated unique elements that proved effective in reducing regulatory burden. These elements typically involved independent bodies that reviewed agency regulations to ensure they measured the economic impact of the regulation and that this impact would not unduly burden small businesses. Even one state, Arizona, provided their independent review board the authority to block regulations that were determined to be burdensome, providing a unique and powerful program to protect small businesses. This regulatory protection system is likely one of the main reasons why Arizona and Phoenix have been rated so highly as a great place to start a small business by *Inc.* magazine.

This report clearly identifies the level of success state governments are achieving in reducing regulatory burdens on small businesses. The vast majority of states are falling short in even attempting to protect small businesses from regulatory burden. Some states are trying but are falling short of adequately protecting small business interests (according to small business advocates like the National Federation of Independent Businesses (NFIB)). A few states however are providing shining examples of how governments that support the small business community can achieve success in mitigating burdensome regulations. These state's processes and other information and analysis collected in this report provide a substantive overview of where state governments currently stand in averting regulatory burden and identify best practices that can be applied to improve the regulatory climate for small businesses.

**Summary Report:**

**Research and Analysis of**

**State's Efforts to Mitigate Regulatory**

**Burdens on Small Businesses**

## **A. Background**

The U.S. Small Business Administration, Office of Advocacy (hereafter referred to as SBA Office of Advocacy) has the responsibility, along with federal regulatory agencies, for ensuring that federal regulations are modified to avert and mitigate their impacts on small businesses. These actions are supported under the Regulatory Flexibility Act, which was amended by the Small Business Regulatory Enforcement Fairness Act, and by the requirements of Executive Order 12866. The Acts and the executive order are described briefly in Section E, “Summary Descriptions of Relevant Federal Laws/Executive Order.”

With the enactment of these laws and the Executive Order, small businesses now have more influence over the development of regulations, additional compliance assistance for Federal rules, and new mechanisms for addressing enforcement actions by agencies. The federal government recognizes small businesses as a major influence on the U.S. economy and the government; these laws and the Executive Order have attempted to ensure that unduly burdensome federal laws or regulations will not threaten small business viability.

While these efforts by the federal government are well documented, little is known regarding the efforts that state and local governments are making to ensure similar protection to small businesses from state and local legislative and regulatory bodies. Management Research and Planning Corp. (MRP) was contracted by the SBA Office of Advocacy to research what state governments are doing to monitor and regulate small business legislative and regulatory burdens. The purpose of this study is to discover what states and local governments are doing to address the same concerns at the state and local regulatory level.

This research was designed to meet the following objectives:

1. Determine which states have, or are planning to have, analytical requirements for regulation development.
2. Determine which states require assessments of the cumulative impacts of regulations on small businesses.
3. 3. Identify the mechanisms and data sources used by states to calculate the baseline burden of regulation on small businesses.
4. Identify the mechanisms used by states to enhance the credibility of their regulatory analysis.
5. Publish a report on the findings, analysis, conclusions, and recommendations to provide the SBA Office of Advocacy an effective policy development tool.

## **B. Methodology**

MRP was to conduct this project in two stages:

1. **Telephone interviews with knowledgeable respondents of their respective states' regulatory climate for small businesses, addressing the specific project objectives.** Interviews were conducted with respondents from both small business advocacy positions (Small Business Development Center [SBDC] directors, lead personnel with small business watchdog and lobbyist groups, etc.) as well as with state government personnel involved with their states' regulatory policies (small business ombudsmen, personnel in state government's small business advocacy offices, etc). MRP conducted more than 125 telephone interviews in 33 states with respondents actively involved in their states' small business government policy arena.

MRP developed and tested a screening process and interview guide for conducting the interviews. MRP worked with the SBA Office of Advocacy in the development of the interview instrument. The interview instrument was conducted "open," with MRP being identified as a market research firm conducting a study for the SBA Office of Advocacy. MRP worked with the SBA Office of Advocacy to obtain all Office of Management and Budget (OMB) approvals for the study.

In addition to the telephone interviews, MRP conducted secondary research through the Internet and other sources to determine if laws or executive orders had been passed by states to provide protection for small businesses similar to that provided by the federal government. This information, where possible, was compared to the information collected in the interviews to validate findings from either source.

2. **Complete a case study of selected states with established processes and procedures for regulatory analysis requirements.**

MRP and the SBA Office of Advocacy, based upon the findings from the research, selected five states to study more in-depth. These states were selected for their unique efforts to reduce regulatory burden. The purpose of the case study was to identify best practices from state governments in reducing regulatory burden. This case study can be found on page 35 of this report.

## **C. Considerations/Caveats**

It should be noted when reviewing our findings that the respondents who were interviewed often had a distinct bias in their comments. For example, if the Lieutenant Governor of a state is appointed as its small business advocate, this person would comment that his or her state is small business friendly and has made several steps to ensure small businesses are not unduly burdened. Similarly, watchdog groups like the state Chambers of Commerce or other lobbyist organizations were not inclined to suggest that their states are doing everything they possibly can to reduce regulatory burden on small businesses.

MRP hoped that the directors of the Small Business Development Centers (SBDC's) would provide an objective position on this subject; however, we often discovered that

the SBDC offices were not overly familiar with their states' regulatory climate. In fact with several states, MRP discovered discrepancies between the data collected from SBDC respondents and data from other respondents regarding the statutory and regulatory climates of their respective state.

Another consideration when reviewing this data is the need for critical feedback from those parties most apt to grade their state on its efforts to reduce regulatory burden: small businesses themselves. As this study did not have sufficient budget to research small businesses within the states, this population's feedback was not collected. However, when determining the "final analysis" of states' efforts to reduce regulatory burden and the effectiveness of each state's program, quantitative and qualitative analysis relating to the small business community of each state is critical to make a completely accurate assessment.

MRP was able to collect definitive information via secondary research and collected valuable data through its in-depth interviews with respondents actively involved in small business interests. We believe this information provides sufficient analysis of the regulatory climate affecting small businesses within the United States at the state level.

## **D. Overview of Findings**

Analysis of the findings of the research was conducted from two vantage points:

1. The comparison of state's regulatory processes vis-à-vis the federal processes: RFA, Executive Order 12866 and SBREFA;
2. Analyze whether a state's regulatory processes, while different from the federal model, could accomplish the same goals as the federal system: to monitor regulations for negative impacts on small businesses, to provide avenues to relieve small businesses through review processes, and to modify or alter the adverse regulation.

MRP successfully completed interviews with respondents representing 33 states. This success was initially viewed by MRP as "good but not great." After reviewing the regulatory landscape via secondary research, we discovered that our success was far greater than originally estimated. We focused our efforts to ensure we obtained representation from geographic segments of the United States, as well as to ensure all states with large metropolitan areas were represented. MRP believes our findings are more likely to be better than the norm for such research. MRP contacted respondents in all 50 states to participate in this study. Respondents from seventeen states chose not to participate: upon a review of our secondary research, it is likely these respondents did not participate, in part, due to the marginal or non-existent efforts made by their states to protect small businesses from unduly burdensome regulations.

Our findings indicate that states, overall, are behind the federal government in providing regulatory relief to small businesses. Many respondents when interviewed referenced statutes that mirrored the Administrative Procedures Act (APA), an act that the RFA, Executive Order 12866, and SBREFA amended, in part, to provide small business relief to regulatory burdens. As with the federal APA provision, little or any reference is made in state APA-like laws regarding protecting small business interests. Many respondents suggested that their states had policies in place to review regulations, had review periods

of anywhere between 30 and 60 days, and had statutes requiring that agencies consider the ramifications of their proposed regulations. Unfortunately, those states that had statutes similar to the APA were not in the majority, according to our findings. Overall, we discovered that approximately 50 percent of the states had statutes in place designed around the APA or rudimentary components of the RFA (*i.e.*, there were extremely limited components of the RFA built into their laws). The percentages declined significantly when comparing full RFA legislation, Executive Order 12866, and SBREFA to state actions to protect small business interests. Less than 25 percent of states had **limited** codified protection similar to that provided by RFA and Executive Order 12866; less than 10 percent of the states had what MRP would consider fully comparable RFA-type protection, either by statute or executive order. Only two states, Arizona and Washington, were discovered to have laws or executive orders that gave some agency or governing body the authority to review regulations and laws for RFA compliance.

Another common discovery was that many states' legislative or executive protection for small business interests resulted from environmental laws, specifically the Clean Air Act. Several states indicated having a small business ombudsman, but the ombudsman position, more often than not, was created to answer ***all business*** questions regarding the Clean Air Act. Typically, the ombudsmen indicated they were not knowledgeable of their states' efforts to reduce small business burdens and were only knowledgeable of regulatory burdens in relation to environmental laws like the Clean Air Act and how those impact ***all businesses***, small and large alike.

For states that had made some efforts to analyze and/or regulate small business regulatory burden, respondents who were not state-employed personnel were often succinct in describing their states' efforts to reduce regulatory burden on small businesses: "insufficient," "non-existent," "unsatisfactory." For every respondent who provided positive feedback on their state's efforts, typically a government employee of the state, a representative of a small business watchdog group or lobbyist group representing small businesses would typically contradict that positive review. In the states that had more protection or had solid laws to protect small business interests, small business advocate respondents almost unanimously indicated that their state did not typically enforce those laws, making the legislation meaningless, unless political leadership was notably small business friendly.

For those states that had made no legislative or executive order efforts to protect small businesses from regulatory burden, it was not uncommon for both state respondents and small business advocate respondents to indicate that their state had done nothing to address the regulatory protection needs of the small business community. Most of the respondents who were state employed indicated that the political leadership was aware of the small business community's needs and did not need legislation to ensure small businesses were well-represented and protected. Small business advocate respondents, of course, were much more negative and felt that small business needs were often secondary to large corporate needs.

While these two perspectives will likely never see "eye to eye," it should be reinforced that the states that had laws in place to protect small business interests from unduly burdensome regulations were clearly in the minority. Most states had no legislation that required impact studies or analysis of their legislative or regulatory actions on small businesses. The states that did have impact study requirements hardly had objective



reviews of those studies. Neither did they have independent bodies of government to monitor the enforcement of the current laws. Small business advocates from states with such laws often indicated the laws were either not enforced or marginally enforced.

As noted previously, the attitude of a state's government leadership towards small businesses significantly impacted small business interests regarding the regulatory burden climate of their state. Several small business advocate respondents, while deploring the lack of legal protection from burdensome state regulations, were nonetheless supportive of their states' efforts to protect small business interests through the actions of their Governor or legislative body. Respondents from one state, for example, indicated that their Governor and Lieutenant Governor were both small business owners at one time and hence were very sensitive to the needs of the small business community. They in turn were very aggressive in pushing small business protections or even referendums to monitor agency actions impacting small business interests.

On the other side of the spectrum, some states commented the Governor and/or the state legislatures gave small business concerns "lip service" and were more concerned with the acceptance of "Corporate America" and unions than the small business community. A few of these "negative" leadership states had laws in place to protect small business interests; these laws were simply ignored or were topically addressed to meet the law's objectives without addressing the true spirit of the law. Clearly, a state's leadership could have far greater impact on reducing the regulatory burden on small businesses than any law or executive order could. Local government leadership by way of action or example was far more powerful than legislative or executive remedies unfulfilled.

Hence, the majority of states had no laws or executive orders in place to offer any assistance in reducing regulatory burdens faced by small businesses. For those that did have laws, there was a discrepancy in the application and enforcement of the law(s). When reviewing the states' efforts to reduce regulatory burden on small businesses, it became clear that few states could be candidates for best practices case studies. Few states had systems in place that appeared to genuinely attempt to offer a climate geared towards fostering positive small business opportunities for growth and protection from regulatory burden.

The purpose of the Case Study analysis was to examine best practices employed by five states. MRP recommended six states that we perceived as the best candidates to study more thoroughly, based upon respondent feedback. After consulting with the SBA Office of Advocacy, five states were selected. Those states are, in alphabetical order:

1. Arizona;
2. California;
3. Illinois;
4. New York;
5. Virginia

These states, in the opinion of MRP, provide the best opportunity to build a systematic framework of the best approaches to reducing regulatory burden on small businesses. While many of them are not as comprehensive as the current federal model, our research clearly showed that a great percentage of the states were either in the fledgling stages of this process or not at all, putting the federal initiative far ahead of state efforts overall.

These states represent the greatest in regulatory burden protection for small businesses, with many having unique approaches to the small business regulatory problem. These different approaches may provide excellent insight, when analyzed cumulatively, as to whether there is a comparable or better system than the one the federal government currently employs.

Complete state-by-state analysis can be found in Section F, “Summary of Findings by Each State,” comparing each state to the federal model of the RFA, Executive Order 12866, and SBREFA. A summary section was also provided addressing information that was obtained regarding the state’s efforts to reduce regulatory burden on small businesses.

## **E. Summary Descriptions of Relevant Federal Laws/Executive Order**

This section was provided for the reader who may not be fully knowledgeable of the federal laws that this study was asked to compare with state processes. A brief description is given of each significant law or executive order, distinguishing each mandate. Similar information was provided to respondents who participated in the research so they could accurately compare their state with the federal system.

### **Regulatory Flexibility Act (RFA)**

In 1980, Congress enacted the RFA to require Federal agencies to analyze the impact of proposed rules on small business and consider and analyze meaningful alternatives that would achieve the agency’s goal without unduly burdening small business.

Under the RFA, each agency must analyze how its regulations affect the ability of small entities to invent, to produce, and to compete. Agencies are supposed to balance the burdens imposed by regulations against their benefits and propose alternatives to those regulations that create economic disparities between different-sized entities. The RFA, an outline for responsible, deliberate rulemaking, establishes a procedure for looking at the effects of rules on small entities. Regulated small entities are encouraged to participate in the development and consideration of alternate means of achieving regulatory objectives. Federal agencies must consider establishing different compliance or reporting requirements, timetables, or exemptions to take into account the more limited resources available to small entities.

The *Chief Counsel for Advocacy*, appointed by the President and approved by the Senate, is selected from the private sector to lead the *Small Business Administration’s Office of Advocacy* and is charged with monitoring regulatory burden on small businesses. The SBA Office of Advocacy was created by Congress in 1976 and was designated to monitor agency compliance with the RFA, possessing authority to intervene as *amicus curiae* (i.e., “friend of the court”) in court proceedings involving compliance with the RFA. This position, Congress concluded, was needed so small businesses had a voice in the councils of government - a voice that was both independent and credible - to ensure that the influence and well-funded lobbyists of big businesses did not unduly influence public policy. The Chief Counsel’s mandate, therefore, is to be an independent voice for small business in policy deliberations, a unique mission in the Federal

government. The law specifically required the Office of Advocacy to measure the costs and impacts of regulation on small business. The Office of Advocacy was given the responsibility for reporting annually to Congress and the President on agency compliance with this law.

### **Executive Order 12866**

In 1993, President Clinton issued *Executive Order 12866*, “Regulatory Planning and Review,” which, among other things, reinforced the RFA. To ensure that agencies’ regulatory programs were consistent with the philosophy of weighing the costs and benefits of available regulatory alternatives, Executive Order 12866 required agencies to abide by a number of principles. A partial list follows:

- 1) Each agency shall identify and assess available alternatives to direct regulation.
- 2) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective.
- 3) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, and taking into account, among other things and to the extent practicable, the costs of cumulative regulations.
- 4) The Office of Management and Budget may require a more extensive and detailed analysis for a rule if it affects a sector of the economy, including one predominantly made up of small businesses.

The Executive Order was further defined to impact “significant regulatory actions,” which are regulatory actions that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the executive order.

### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

In 1996, the *Small Business Regulatory Enforcement Fairness Act (SBREFA)* became law. This law provided new avenues for small businesses to participate in and have access to the Federal regulatory arena. Congress had finally been persuaded by 15 years of uneven compliance with the RFA, and by the repeated urging of the small business community, to authorize the courts to review agency compliance with the RFA. “Judicial review” was thought to be the incentive that was lacking in the original statute. SBREFA also reinforced the RFA requirement that agencies reach out to small entities in the development of regulatory proposals, subjecting this outreach to judicial review as well. The following issues are subject to judicial review under SBREFA:

- 1) The agency’s decision to certify that a rule will not have a significant impact on a substantial number of small entities, and the factual basis for the certification;
- 2) Agency compliance with the RFA;
- 3) The final regulatory flexibility analysis, including the agency’s efforts to evaluate alternative regulatory approaches and reasons for rejecting or accepting them;
- 4) The agency’s compliance with a requirement for periodic reviews at the 10-year anniversary of every rule or the enactment of the 1980 law, whichever occurs first.

Very explicit outreach responsibilities were imposed on the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA). These two agencies are required to convene small business advocacy review panels that consult with small entities on the overall effectiveness and impacts of specific proposals at the pre-proposal stage of a rule’s development. This precedent-setting provision of the law institutionalizes outreach to small entities and ensures that these two agencies identify and consider effective alternatives that accomplish their public policy objectives.

The Chief Counsel for Advocacy and the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) are statutory members of the panels and are mandated to partner with these agencies to consult with small entities on regulatory proposals. They report their findings, jointly with agency staff, to the head of the agency. Advocacy and OIRA have access - by act of Congress - to an agency’s earliest deliberations that identify a problem, document the scope of the problem, analyze its various causes, and evaluate how best to address the problem without unnecessary harm to small business or the economy.

## **F. Summary of Findings by Each State**

The following summaries contain the data MRP collected from respondents interviewed for this study as well as from secondary research conducted via various search engines on the Internet. States where MRP was able to reach knowledgeable representatives of regulatory processes to interview are marked accordingly. If MRP was unable to interview someone within a particular state, the information provided is often limited to specific statutes or executive orders referenced for that state, if applicable. MRP has not attempted to conduct any analysis or interpretation of statutes or whether they are applicable to regulatory flexibility for small businesses.

## **Alabama**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Respondents indicated that no laws addressing small business regulatory concerns existed, and that there were no plans for any in the near future.

## **Alaska**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated Alaska had any laws mirroring RFA or SBREFA.

## **Arizona**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: Yes**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Arizona has a Governor's Regulatory Review Council, which has the power to review and send regulations back to agencies, or bills to the legislature for revision if they are determined duplicative or burdensome to the public. Arizona also has a state ombudsman formed under the Governor's Small Business Advocacy Program. This program was started approximately 10 years ago. Respondents felt that these changes and the offices created to monitor agency regulatory burden on small businesses are very effective. Both of these programs are legislated into law and serve small business interests. According to one respondent, Arizona was nominated "Best Place to Start a Small Business" recently by *Inc.* magazine, a noted and referenced periodical addressing the needs of entrepreneurs.

## **Arkansas**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated Arkansas had any laws mirroring RFA or SBREFA.

### **California**

**-RFA/Executive Order 12866 Equivalency Laws: Yes**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

(Small businesses in California are defined as having 100 employees or less.)

California law requires state agencies proposing regulations to do a cost assessment of those regulations. The Economic Regulation Review Unit reviews these studies for accuracy from an economic standpoint and was created to address some of the shortcomings of previous laws.

California rulemaking law ([www.commerce.ca.gov](http://www.commerce.ca.gov)) has had a number of provisions relating to small business on the books for a few decades. The laws required agencies to find the least burdensome alternative, to try to notify a representative sample, use plain English when the language affects small business, and so forth. However, conformity was inconsistent. There is an office of administrative law that oversees the legal process, but it was discovered that the attorneys, who had the ability to recognize that an assessment had been done, did not have the ability to accurately evaluate the assessment. That is where the system broke down, leading to the creation of the new system. The Regulation Review Unit was authorized statutorily and created through the budgetary process. It deals only with proposed regulations and became operational in 1995.

Agencies must have legal authority to propose regulations, and administrative law attorneys oversee the process from a legal standpoint. Agencies are required to prepare a package of a variety of materials such as an initial statement of reasons, cost assessments, etc. The Office of Administrative Law (OAL) reviews the package for completeness in meeting legal requirements. Following OAL review the regulation is published in the California Regulatory Notice Register as a proposed announcement of proposed regulations. This begins a public comment period. Agencies must allow a minimum of 45 days for the public, including small businesses, to comment on the proposals. After the comments are received, they are reviewed and responded to in the public record. If the agency feels that the proposed regulation is satisfactory and complete, it is then sent back to OAL for final review. If OAL approves the regulation, it is sent to the Secretary of State for approval and then becomes part of the California Code of Regulations.

Small businesses have the opportunity for involvement during the public comment period. Agencies are required by law to notify representative business enterprises or their representatives if the proposal affects small business. The California Register is now online, which has improved access to the process.

California law requires an economic assessment for proposed regulations. The law is not precise about the completeness of the assessment. According to one respondent, there are sometimes problems because the agency is not completely aware of what its regulations will do, and sometimes the assessment is not done as completely as it should. Agencies are legally required to assess, but they can always say that an assessment has been done and that the proposed regulation will have minimal effects.

The law requires agencies to make certain findings specifically about small business, and those findings are reviewed closely. The effect on small business must be noted in the register under a specific heading for this category. The Regulation Review Unit looks at this carefully and has noticed over time that this section is becoming more and more complete in terms of agencies addressing small business impacts.

### **Colorado**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Colorado was noted as having a law similar to the Administrative Procedures Act (APA), requiring agencies to publish their potential rule changes publicly as well as have a comment period prior to enacting them. According to the respondent, there were no specific laws requiring small business review or analysis. Agencies had no requirements to study small business impacts of their regulatory changes, nor did they have to modify them if small businesses stated during the public commenting period that the changes would have a negative impact.

### **Connecticut**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Respondents indicated that Connecticut has APA laws in place but no sections that focus on small business considerations. While respondents indicated that the political climate

was supportive of small business interests and had programs aimed at helping small businesses, no regulatory protection was in place.

## **Delaware**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

## **Summary**

**Consider Feasibility of Exempting Small Business 29 Del C. 1040:** *Prior to the issuance of any rule or regulation an agency shall consider whether it is lawful, feasible and desirable for the agency to exempt individuals and small businesses from the effect of the rule or regulation or whether the agency may and should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.*

## **Florida**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

## **Summary**

Respondents were conflicted about the effectiveness of the state's programs; however, both parties agreed that there are no regulatory laws in place to protect small business interests from unduly burdensome regulations. The state representative indicated that Florida's APA laws require public commenting notices and review periods for entities to comment. The small business advocate respondent, however, commented that while these laws exist, there are no definitions describing where the public notice must be published. He also indicated there is public outcry that the government makes life difficult for small businesses.

## **Georgia**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

## **Summary**

**Economic Analysis and Alternatives O.C.G.A 50-13-4:** Analysis of Economic Impact on the rule making of the state of Georgia. Outlines the procedures involved in



establishing rules and the analysis of their impact on the small business economy within the state of Georgia. Law models RFA procedures.

## **Hawaii**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Hawaii, like Florida, received very conflicting reviews. The respondent that we spoke with was involved in the state's small business effort; he indicated that Hawaii is small business friendly and has RFA-type laws in place. The Lieutenant Governor heads the small business effort to eliminate government waste and make the state small business friendly. Hawaii also created a Small Business Advocacy Board to review the state and report to the Governor on how the state was affecting small businesses through regulations, new laws, and other actions that impact small businesses. This legislation also created an ombudsman-like position so small businesses could have a point of contact and voice.

A small business advocate, however, painted a very different picture. He indicated that the problem with the ombudsman position was that it was never funded. While the Lieutenant Governor was lauded for issuing numerous pieces of proposed legislation to help reduce small business burden, his efforts were rebuffed by the actions taken by the Governor and the Legislature. The Small Business Advocacy Board wrote in a report recently that Hawaii was not small business friendly and that the blame fell on the Governor and the Legislature. The Governor threw out the report and many Advocacy Board members, frustrated with the lack of progress, resigned. The small business advocate also indicated that the RFA laws in place were not followed and were given "lip service," with no enforcement body in place to ensure that the laws were followed by agencies.

## **Idaho**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

The Idaho respondent indicated there were no RFA laws or executive orders in place and that small businesses had no real protection from regulations. Small businesses in Idaho,

as in many states, rely on watchdog groups to keep them informed of what is going on in government; however, the watchdog groups in Idaho track legislation and regulations for all businesses, hence there is no group that solely serves small business interests. The respondent did indicate that the actions of Governor Batt in the 1980's helped make government more sensitive to small business interests, but added that there are no formal processes or protective measures in place.

## **Illinois**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: Yes**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

In Illinois, every agency, by law, must conduct an impact analysis on its rules and how they would affect small businesses, communities, and other small entities. The assessment would have to be provided to the office of Commerce and Community Affairs for further analysis and/or to the small business community if it wants it. All regulations/laws are reviewed by a panel known as the Joint Committee on Administrative Rules (JCAR). JCAR looks in part for unduly burdensome regulations and considers alternatives. There is a public register that notifies affected parties of new laws, puts the wording in "plain English," and allows them to voice their concerns, mimicking the APA. There also is a Small Business Ombudsman office, created in the last year to be the voice of small businesses. To date, no real authority has been established through this office. The Governor has placed a lot of emphasis on customer satisfaction, and agencies are measured in performance by the scores that constituents give them in terms of their service, similar to the Government Performance and Results Act (GPRA) within the federal government. Respondents felt that this has helped small businesses through the improved service.

## **Indiana**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated Indiana had any laws mirroring RFA or SBREFA.

## **Iowa**

- RFA/Executive Order 12866 Equivalency Laws: No**

- SBREFA Equivalency Laws: No
- Interviews Conducted: No
- Data Conflict: Secondary Research and Interviews: No

### Summary

**Regulatory Flexibility Analysis Iowa Code 17A.31:** *If an agency proposes a rule which may have an impact on small business, the agency shall comply with the additional notice provisions of subsection 3 and the **analysis** requirements of subsection 4. This compliance includes the following: an agency shall issue a **regulatory flexibility analysis** of a proposed rule if, within twenty days after the published notice of proposed rule adoption, a written request for the **analysis** is filed with the appropriate agency by the administrative rules review committee, the governor, a political subdivision, at least twenty-five persons signing the request, who qualify as a small business, or a registered organization representing at least twenty-five persons.*

### Kansas

- RFA/Executive Order 12866 Equivalency Laws: No
- SBREFA Equivalency Laws: No
- Interviews Conducted: No
- Data Conflict: Secondary Research and Interviews: No

### Summary

No information was discovered that indicated Kansas had any laws mirroring RFA or SBREFA.

### Kentucky

- RFA/Executive Order 12866 Equivalency Laws: No
- SBREFA Equivalency Laws: No
- Interviews Conducted: Yes
- Data Conflict: Secondary Research and Interviews: No

### Summary

Kentucky has no specific legislation in place that addresses small business concerns; however, there is legislation that requires review of legislation and regulations and ensures that the legislature and agencies review new laws or regulations that are identified as potentially burdensome for certain groups. This is mainly in response to environmental regulations, and therefore models the federal government's regulatory assessment created through the Clean Air Act. Kentucky also recently created in 2001 a Commission of Small Business Advocacy made up of the Kentucky SBDC chair, small business owners and others. This is the main tool to help small businesses ensure agencies don't overly burden them; this body would act as the RFA equivalent. Funding problems in the state have made this program potentially expendable, hence it has not been fully incorporated. Kentucky is trying to create a program similar to SBREFA, but respondents indicated that providing funding and keeping the legislature focused on

making this happen is proving difficult. The commission has no real authority, as it only acts as the “voice of the small businessperson” and currently functions solely as a watchdog group.

## **Louisiana**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated Louisiana had any laws mirroring RFA or SBREFA.

## **Maine**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Legislation exists that asks agencies to refrain from passing overly burdensome laws and requires a review process for regulations that may impact small businesses by more than \$1 million. Respondents indicated that the statute is rarely enforced and that there is no enforcement arm to require agencies to act. There is a public commenting period publicized in the newspaper, but the agencies are not required to address any comments that come back, including those that address small business concerns. Public hearings are sometimes an avenue, but only when sufficient community backlash demands it. Maine created a task force that assembles periodically to review the burdens on small business, but it does not meet regularly and focuses on a myriad of topics, not solely burdensome regulations or legislation. Respondents described the small business environment as "fairly friendly"; however, this was a result of political climate and not legal protections or government bodies created to look out for small business interests. Information provided by the SBA indicated that Maine recently passed SBREFA-type laws; however, respondents interviewed were not familiar with this legislation.

## **Maryland**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Maryland has legislation that requires all proposed regulations or laws be reviewed by an independent committee that reviews financial impact and other impacts on all entities, small and large. Recent legislative changes added specific language to look specifically at impacts on small businesses. The Governor also recently created an ombudsman-type office, made up of three people, that is the conduit for small businesses to voice their concerns on legislation. The respondent indicated that there is a state register that is supposed to be posted for review, mimicking APA requirements. The respondent questioned the follow-through on these laws and further suggested that the analysis was often not thorough enough to address small business interests. The respondent also indicated that communication with small businesses revealed that little has been done to let them know about the ombudsman office or about their rights under laws similar to APA.

### **Massachusetts**

**-RFA/Executive Order 12866 Equivalency Laws: Yes**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Massachusetts has a review process for regulations, with agencies required to conduct financial and small business impact studies. All regulations are reviewed, with the process recently overhauled to address small business concerns. The small business advocate respondent, however, indicated that there is a long way to go. The laws cannot correct any regulation that is determined to be burdensome (*i.e.*, as with SBREFA). Furthermore, the body responsible for enforcement of regulatory review often does not follow through. In other words, no analysis is done or the analysis is weak. Agencies post proposed regulations on a Web site and other locations for public comment, and provide a comment period (APA). Small businesses are invited to participate in the review process.

### **Michigan**

**-RFA/Executive Order 12866 Equivalency Laws: No**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Michigan is viewed as more business friendly because of the current Governor, who is in his third term; however, there was little legal protection discovered. There is a law modeled after the APA that requires a review process of proposed laws and regulations. The state has been making efforts to make this information more publicly accessible via a Web site and other public mediums. An ombudsman office was created to hear small business concerns; however, there are no laws requiring impact studies, or laws that have created agencies or bodies that can force modification of proposed laws or regulations to protect small businesses. Agencies are, however, held in check by the Governor's support of the small business community.

## **Minnesota**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Minnesota was found to be unique because of the "town hall meeting" environment it encourages. All laws and regulations go through a public review and comment period. According to one respondent, if you can get 25 people together to request a hearing on a proposed regulation, you'll get your hearing. The laws require agencies to specifically state the purpose and usefulness of the law or regulation, including whom it impacts, what the costs will be to those affected, and what alternatives exist to avoid the regulation or law. Minnesota recently repealed APA- and RFA-like laws and replaced them with the laws described above. The current law encourages agencies to meet with the affected parties prior to proposing laws, under the premise this will help avoid the need for hearings and make the process more efficient. There are no set rules designed to protect small businesses. Watchdog groups are supposed to keep up with agency proposed regulations and how they may affect small businesses. Minnesota, like many other states, relies on its current political leadership to ensure agencies follow these guidelines.

## **Mississippi**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Mississippi has very informal processes that mimic the APA. Sometimes actual meetings are held for public comment, but the respondents indicated this is very rare. Mississippi does not have at its disposal a state register that is similar to that of the federal government. The Mississippi Economic Council Legislative Action Center publishes notices of pending legislative action. The Environmental Resource Center (ERC) also has a small business ombudsman for environmental regulations who quite often gets involved in this particular review process. Again, Mississippi does not impose many

regulations that are not required by the federal government. The review process is required, but the timeliness of the review period is controlled by the agency, and there is no recourse to mandate change.

## **Missouri**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Missouri is behind the curve in terms of regulatory reform legislation but, according to respondents, is making attempts to improve. State officials created a Center for Entrepreneurial Development to conduct a series of roundtable discussion groups to evaluate how the state can encourage small businesses and foster entrepreneurial spirit. Regulations and their impact will be one topic. Missouri does require a public commenting period, but does not require change or a formal response process. Small businesses in the past have been relatively estranged from government, complaining that they have no voice. One respondent indicated that the state is not focused on this problem at all and has nothing new in the works that will address it. The Lieutenant Governor does handle advocacy for all business issues, but most people aren't aware of this and therefore don't know what is available to them. The Lieutenant Governor has no authority to change anything, but can only speak out on behalf of constituents.

## **Montana**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated Montana had any laws mirroring RFA or SBREFA.

## **Nebraska**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated Nebraska had any laws mirroring RFA or SBREFA.

## **Nevada**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Nevada has regulatory review laws for small businesses, which impact state agencies and local governments, and are monitored by the state government. The review process includes public notice, allowing small businesses to respond or comment. This and local watchdog groups like the State's Chamber of commerce help small businesses keep an eye on legislation or regulations that are burdensome. The typical remedy is for these watchdog groups to go to the agency heads to remedy problems, utilizing the review and comment periods. However, there is no enforcement or reactive process to cause agencies to alter their regulations. There is an ombudsman, but as in many states, the office is focused on environmental regulatory review for all businesses and the ombudsman knows little about small business regulations outside of environmental impacts. The public notice period is 30 days, but there is not a state register like the Federal Register.

## **New Hampshire**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated New Hampshire had any laws mirroring RFA or SBREFA.

## **New Jersey**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**



New Jersey has a regulatory review process, along with a requirement that agencies do an economic impact statement. Respondents indicated, however, that the economic impact statements have no formal process and are often useless due to the lack of formal procedures or instructions. There is supposed to be special consideration for small business concerns, *i.e.*, impact statements are supposed to specifically address small business impacts, but respondents indicated that this is hardly happening since there is no agency to enforce or monitor agency compliance. Newly proposed regulations are to be reviewed by an intra-department agency team, which is supposed to always include relevant stakeholders affected by the proposed regulations. The team reviews the impact, receives comments from the public during the 30-to-60-day window allotted for comment, and revises regulations as necessary. Compliance with this statute is not always high. There are laws on the books requiring agencies to conduct impact studies on small businesses, but respondents' views were mixed as to whether this was effectively happening, with state representatives commenting that it does happen and small business advocates stating it usually does not. The impetus for these regulatory reform laws was environmental regulations and their burdens on businesses. New Jersey went further, modeling its reform laws in part after the RFA laws.

## **New Mexico**

**-RFA/Executive Order 12866 Equivalency Laws: No**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

## **Summary**

New Mexico has a Small Business Advisory Council, headed by the Lieutenant Governor, which was created approximately six years ago. This council was created to be a public and small business forum so that the small business community could voice concerns over newly proposed regulations or laws. There is not a review process, however, required by the legislature for proposed or existing laws; *i.e.*, agencies are not required to do an impact study, nor are they required to react to public comments during the review process.

The impetus behind the improved small business community relations has been executive leadership, as both the Governor and the Lieutenant Governor were once small business owners. There are, however, no executive orders or statutes requiring regulatory review or reform for small businesses. Requirements have been requested by the Governor, but the legislature has resisted each time. There is a public comment period of approximately 30 days on new laws or regulations.

## **New York**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

New York Governor George Pataki issued two executive orders during the 1990's. Executive Order #2 placed a 90-day moratorium on all newly proposed regulations or laws. Executive Order #20 created the Governor's Office of Regulatory Reform (GORR), which monitors and oversees all government regulations and questions their necessity. This, however, only covers existing regulations that are deemed problematic (read: Newly proposed regulations or laws are not reviewed). New regulations, as part of Executive Order #20, are reviewed through structure similar to APA laws, which require a review process, a public comments period, and response to public comments. The executive order also requires agencies to specifically address the small business impact. The comment period is 30 days. These executive orders and GORR were built to mirror current federal RFA laws.

### **North Carolina**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

North Carolina does not have a regulatory review process. The state's solution is to make the law- or regulation-making process more complicated, such as by requiring "cooling" periods before regulations become enacted, so that unduly burdensome regulations have time to be reviewed by all and objections can be voiced. Watchdog groups are the voice for small businesses; however, there are no formal processes in place. There are no explicit protections in place to ensure small businesses are protected.

### **North Dakota**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

North Dakota has no formal processes: all laws must be reviewed by a committee, which is believed to reduce many new laws and regulations, but nothing specifically addresses

small business concerns. Watchdog groups are the eyes and ears of small businesses in North Dakota, but these advocates currently are happy because of current political leadership advocating “less” government and therefore less legislation and regulation. The state legislature meets only three times every other year in an effort to focus on issues of critical importance.

## **Ohio**

**-RFA/Executive Order 12866 Equivalency Laws: No**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Ohio does have regulatory review processes in place, though none designed to consider the needs of small businesses. There are supposed to be cost studies and impact analyses done for each new piece of legislation/regulation, but this is rarely done. There are no mechanisms in place to ensure and enforce agency compliance. There is a public commenting period and review process, which lasts 40 days. The public notice is placed in the Ohio State Register, managed by the SBDC office. The SBDC office, however, is slow to release this information because it is overburdened.

## **Oklahoma**

**-RFA/Executive Order 12866 Equivalency Laws: Yes**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

A state representative respondent indicated that in 1997, Oklahoma’s Speaker of the House of Representatives and the President Pro-Tempore of the Senate created a Committee on Small Business in each respective body. With the organization of these committees, Oklahoma small businesses now have a direct link to the legislative process.

Responding immediately to one of the greatest problems facing small business everywhere, government regulation, the Small Business Committees secured the enactment of the Oklahoma Regulatory Review Act by both chambers of the legislature. The Act requires all state agencies to review all regulations under their purview and rescind or amend any redundant or unnecessary rules already in place. On or before July 1, 1999, each agency was required to report its findings and actions to implement the act.

Tax reform has also been a major focus of the Small Business Committees. Specifically, they were successful in passing small business provisions in an omnibus tax reform legislation. The bill included estate tax relief and a provision allowing a tax credit for

Oklahoma businesses to offset the federally mandated fee charged by the SBA on its small business loan guarantees. They also secured approval of legislation harmonizing tax filing dates for both corporate and franchise taxes.

Another notable achievement was Governor Keating's approval of the committees' request to name a cabinet-level Oklahoma small business advocate. Lieutenant Governor Mary Falhin was appointed, and her work has already had a major impact

## **Oregon**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Oregon has a state ombudsman office, created primarily to address clean air regulatory requirements. Oregon in the last few years has been active in discussing the reduction of small businesses' regulatory burden: the Governor created a Small Business Advocacy Council in 2000 to analyze this situation. The council recommended regulatory analysis and review, similar to federal RFA laws, but nothing has been finalized yet. There are statutes on the books for regulatory review addressing small business interests, but nothing has been finalized. There are regulatory reviews for all new regulations, but the review board is the legislature; there is concern about its ability to accomplish this task objectively and accurately. There is a public commenting period for review, and agencies are instructed to send new regulations for evaluation to watchdog groups that represent the affected parties. The legislature, however, has the final say on all newly proposed regulations.

## **Pennsylvania**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Pennsylvania has a regulatory review process, including a period for review and public notice. All regulations must go through the Independent Regulatory Review Commission (IRRC) to ensure that the proposal conforms to the Pennsylvania Constitution before it can be put into effect. While this is helpful, nothing is geared specifically to address small business concerns, according to respondents. There is an ombudsman office, but it was created for all businesses and specifically addresses environmental regulations. An executive order also exists concerning the monitoring and review regulatory actions, but again contains nothing specifically addressing small business interests. Secondary research, however, indicates that there are small business provisions in statute designed to

mirror federal RFA laws, and that the ombudsman office is designed to address small business concerns. MRP was unable to interview any state representatives from this office to confirm this information.

### **Rhode Island**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated Rhode Island had any laws mirroring RFA or SBREFA.

### **South Carolina**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

South Carolina does have regulatory review laws, including requirements for public commenting periods of 90 days and a public register, but has nothing to specifically address small business interests. Respondents indicated that there are no initiatives to enact laws addressing small business concerns and that state officials have not indicated that this is a priority.

### **South Dakota**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated South Dakota had any laws mirroring RFA or SBREFA.

### **Tennessee**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Tennessee has regulatory review laws that require a review process through the Tennessee Department of Economic and Community Development. This department is in charge of economic development for the state, and has a small business services group that works with small business issues. This group's main activity is to encourage growth within Tennessee by trying to help small businesses. However, there are no formal regulations or laws that require small business interest review. There is a state register and review period, but agencies do not have to conduct impact statements of small entities. Little specific actions for the benefit of small businesses are taken, and nothing is on the horizon, according to respondents.

### **Texas**

**-RFA/Executive Order 12866 Equivalency Laws: No**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Texas' strategy to reduce regulatory burden is to have a legislature that meets only every other year. Many agencies attempt to make regulations and hope they get approved the next session, but watchdog groups monitor and lobby for change, and regulations must meet the approval of the legislature. The respondents interviewed indicated there may be some regulatory review requirements on the books involving small business interests (our secondary research discovered none), but they did not know of any formal review process. The Texas Department of Economic Development is a "neutered" agency consisting of a two-to-three-person staff that handles small business issues for the entire state of Texas, which has more than 400,000 small businesses. The only state agency with an ombudsman-type position is the Texas Natural Resource Conservation Commission. This position exists because of environmental laws and the need to provide businesses a conduit to government on any environmental regulatory impacts. There has been action to create an ombudsman position in the Department of Economic Development to specifically handle small business economic concerns, but it was killed by the legislature.

### **Utah**

**-RFA/Executive Order 12866 Equivalency Laws: Yes**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: No**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

**Small Business Advisory Council Utah Code Ann. 9-2-302:** The goal of this law is to outline the duties and expectations of the Utah Small Business Advisory Council. The council:

- (1) advises the governor on matters of concern to small businesses;
- (2) reviews and evaluates proposed and existing laws and regulations of the state that affect small businesses, and makes recommendations for regulatory and statutory changes needed to encourage the stability and growth of small business;
- (3) studies any special problems confronting small businesses and recommend solutions to such problems;
- (4) reviews existing programs of assistance to small businesses at federal, state, and local levels of government, and recommends priorities for the delivery of such programs;
- (5) provides a public forum and schedules hearings at which the views of the small business person may be solicited and represented to state government; and
- (6) Maintains communication and cooperation with small business individuals and local, state, and national small business organizations.

## **Vermont**

**-RFA/Executive Order 12866 Equivalency Laws: No**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: Yes**

**-Data Conflict: Secondary Research and Interviews: No**

## **Summary**

In Vermont, the Legislative Committee on Administrative Rules (LCAR) serves as an oversight committee for newly proposed regulations and laws. When a law passes and the administration then promulgates rules, the rules go through a public comment period and then to LCAR for an administrative checkoff. LCAR is supposed to determine if the rule matches the intent of the legislation. LCAR has no “teeth” (enforcement); it can only object to a rule. The rule can still be implemented. Many agencies will heed the recommendations of LCAR, but there have been huge disputes (and even lawsuits) over some of the lack of heeding of LCAR findings. LCAR has been around for a long time. Each agency is tasked with doing a study on the impact of regulations on businesses, but according to some respondents, the analysis is often a sentence or two, and no agency requires more meaningful analysis.

## **Virginia**

**-RFA/Executive Order 12866 Equivalency Laws: Yes**

- SBREFA Equivalency Laws: Yes**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Virginia has a three-step regulatory promulgation process: 1) notice of intended regulatory action (NOIRA), 2) proposed regulation – actual text of the regulation, and 3) final regulation. The second step includes conducting impact studies by independent economists and other experts, who are free to report their findings without agency influence. There is a public commenting period and state register in alignment with the APA, as well as an executive order stating there shall be no regulations that unduly burden small businesses. Respondents were very positive about the usage of independent panels of economists and other Ph.D.'s, as they felt it had a positive impact on keeping agencies in line.

### **Washington**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: Yes**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

The state personnel who were interviewed indicated that Washington has been a leader in regulatory review for many years. The state has a number of programs by statute, as well as some by executive order from previous Governors, that require small business regulatory impact statements on rules. As part of the rulemaking process, agencies must go through a detailed process of detailed small business impact statements. (See [www.access.wa.gov](http://www.access.wa.gov), RCW 19.85.) The procedure starts with a requirement of notice of intent to adopt a rule. It is published. There are mandated hearings. If the rule impacts small business, the agency must complete a small business impact study. If the rule is determined to have significant impact on small businesses, it must go through the significant legislative rulemaking requirements, which are lengthier, have more administrative procedures, and are more closely monitored. Included in this lengthier process is the requirement to perform a cost/benefits analysis of the rule and to determine the least burdensome alternatives. This requirement is supposed to force agencies to coordinate their development and compare their proposed regulation with any comparable regulations or laws within the rules of other state or federal agencies so a thorough analysis can be done. This lengthier requirement also includes the mandate that agencies develop an implementation and an evaluation plan for their newly proposed regulation. They also must develop an education plan to educate those affected by the rule, if implemented. Washington also has a small Business Improvement Council, with members appointed by the Governor and tasked to review agency regulations or laws and advise ways to improve the small business landscape.

However, a small business advocate respondent indicated that the landscape in Washington was the opposite of what the state representatives indicated, and that these



laws were not enforced. He cited a lawsuit by businesses regarding ergonomics regulation, which only exists in California and Washington. The respondent indicated that a state agency passed this regulation without the approval of the legislature, and did not go through the review process outlined above. Hence, small businesses are being extensively burdened by this legislature and the state's processes have provided no protection. The respondent indicated this is an example of good laws but no enforcement.

## **West Virginia**

- RFA/Executive Order 12866 Equivalency Laws: No**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

No information was discovered that indicated West Virginia had any laws mirroring RFA or SBREFA.

## **Wisconsin**

- RFA/Executive Order 12866 Equivalency Laws: Yes**
- SBREFA Equivalency Laws: No**
- Interviews Conducted: No**
- Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Wisconsin does have an RFA law, but according to small business advocate respondents, the laws are not enforced. The exception to this is the Department of Regulation and Licensing. The agency has established a Small Business Advisory Committee, which reviews all regulation for its impact on small business. The committee has developed a form that the committee members review with the attorneys representing the board at meetings. The form exists in order to evaluate 1) if it impacts small business, 2) what the impact is, and 3) how can the impact be reduced so that it is easier to implement and more understandable for compliance. All of the rules of this department are evaluated on this basis. The Governor has recently directed the creation of a special task force within the Department of Commerce to review the Regulatory Flexibility Act in order to reduce the impact of regulations on small business. There are rules that mirror APA comment and review period requirements, as well.

## **Wyoming**

- RFA/Executive Order 12866 Equivalency Laws: Yes**

**-SBREFA Equivalency Laws: No**

**-Interviews Conducted: No**

**-Data Conflict: Secondary Research and Interviews: No**

### **Summary**

Secondary research found no laws addressing monitoring and alleviating small business regulatory burden. Wyoming does have laws set up in compliance with federal environmental assistance laws, similar to other states that help businesses come into compliance with environmental laws. However, no information regarding regulatory analysis and review for small business impact was discovered.

**Case Study:**

**Analysis of Five States' Efforts to  
Mitigate Regulatory Burdens on  
Small Businesses**

## Overview

Considerable discussion and analysis has taken place over the last few decades regarding the impact that government has on entrepreneurial spirit and business growth. Reputable groups, such as the Cato Institute, the National Federation of Independent Business (NFIB) and the Ewing Marion Kauffman Foundation, have studied the impact that government can have on small business success. The Ewing Marion Kauffman Foundation identified several means by which government can positively and negatively influence the success of the entrepreneurial climate. These means included entrepreneurial recognition, tax and regulatory climate, capital access, intellectual capital and entrepreneurial education.<sup>1</sup> The regulatory climate is a topic that has been greatly debated but is universally recognized as potentially destructive to small businesses when the regulations become overly burdensome.

The federal government has recognized that regulatory burdens have a greater impact on small businesses than on large entities. Efforts made by the federal government to reduce regulatory burden date back to the enactment of the Regulatory Flexibility Act (RFA) in 1980. Through the RFA, the Small Business Regulatory Enforcement and Fairness Act (SBREFA), presidential executive orders over the last two decades, and political influence, the federal government has attempted to build protections for small businesses from burdensome regulations. The goal was to ensure government agencies do not hinder small businesses from fairly competing and succeeding in the open business marketplace.

Some states have followed the federal government's lead to protect small businesses from similar burdens created by state agencies. Using the same tools, many states have attempted to address the problematic issue of agency regulations that overly burden small businesses. The Small Business Administration's Office of Advocacy (SBA Office of Advocacy) contracted MRP to study the regulatory climate of state governments in-depth, in order to determine what efforts were being made to reduce that burden and to examine how those efforts helped the small business community at the state level. The summary above produced a report that analyzed each state's efforts to reduce regulatory burden on small businesses. The purpose of this report is to provide a "State of the Union" analysis of what efforts have been made to reduce regulatory burdens, as well as an overview of what future efforts are being considered. Overall, this report discovered a handful of states employing techniques that MRP and the SBA Office of Advocacy determined were potentially effective in reducing these burdens. These states were (in alphabetical order) Arizona, California, Illinois, New York, and Virginia.

The purpose of this Case Study is to identify best practices for reducing regulatory burdens, practices that could be emulated by government entities throughout the United States. This Case Study covers three general areas:

1. It analyzes the five states selected and conducts an in-depth analysis to better understand their efforts in attempting to reduce regulatory burdens, and to better understand the effectiveness of the outcomes.
2. It discusses the three tools used to influence agency actions: legislation, executive orders, and political influence.
3. It draws conclusions regarding the effectiveness of the various efforts toward regulatory review and reform, including the tools used and the overall impact addressing regulatory burdens has on making a state "small business friendly."

Studying the practices of these five states and the executive, legislative, and political influences upon agency regulation allows for the identification of regulatory review and reform indicators. Such indicators can direct government agencies toward practices that appear to best ensure that small businesses and the entrepreneurial spirit are not hampered by regulatory burdens.

## **Regulatory Relief: Federal Overview**

The SBA Office of Advocacy has the responsibility, along with federal regulatory agencies, for ensuring that federal regulations are modified to avert and mitigate the impacts of such regulations on small businesses. These actions are supported under the Regulatory Flexibility Act, amended by the Small Business Regulatory Enforcement Fairness Act, and by the requirements of Executive Order 12866. These laws provide legislative and executive “teeth” to regulatory protection for small businesses, providing protection and venues to mitigate unduly burdensome regulations. An overview of each federal action is necessary to understand and ably compare state actions to federal mandates.

### **Regulatory Flexibility Act (RFA)**

Under the RFA, each agency must analyze how its regulations affect the ability of small entities to invent, to produce, and to compete. Agencies are supposed to balance the burdens imposed by regulations against their benefits, and to propose alternatives to those regulations that create economic disparities between different-sized entities. The RFA, an outline for responsible, deliberate rulemaking, establishes a procedure for the effects of rules on small entities. Regulated small entities are encouraged to participate in the development and consideration of alternate means of achieving regulatory objectives. Federal agencies must consider establishing different compliance or reporting requirements, timetables, or exemptions to take into account the more limited resources available to small entities.

The *Chief Counsel for Advocacy*, appointed by the President and approved by the Senate, is selected from the private sector to lead the *Small Business Administration’s Office of Advocacy* and is charged with monitoring regulatory burden on small businesses. The SBA Office of Advocacy was created by Congress in 1976 and was designated to monitor agency compliance with the RFA, possessing authority to intervene as *amicus curiae* (i.e., “friend of the court”) in court proceedings involving compliance with the RFA. This position, Congress concluded, was needed so small businesses have a voice in the councils of government - a voice that is both independent and credible - to ensure that the influence and well-funded lobbyists of big businesses does not unduly influence public policy. The Chief Counsel’s mandate, therefore, is to be an independent voice for small business in policy deliberations, a unique mission in the Federal government. The law specifically required the Office of Advocacy to measure the costs and impacts of regulation on small business. The Office of Advocacy was given the responsibility for reporting annually to Congress and the President on agency compliance with this law.

## **Executive Order 12866**

In 1993, President Clinton issued *Executive Order 12866*, “Regulatory Planning and Review,” which, among other things, reinforced the RFA. To ensure that agencies’ regulatory programs were consistent with the philosophy of weighing the costs and benefits of available regulatory alternatives, Executive Order 12866 required agencies to abide by a number of principles. A partial list follows:

- 1) Each agency shall identify and assess available alternatives to direct regulation.
- 2) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective.
- 3) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, and taking into account, among other things and to the extent practicable, the costs of cumulative regulations.
- 4) The Office of Management and Budget may require a more extensive and detailed analysis for a rule if it affects a sector of the economy, including one predominantly made up of small businesses.

The Executive Order was further defined to impact “significant regulatory actions,” which are regulatory actions that may:

- 1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;
- 2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- 3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- 4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the executive order.

## **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

In 1996, the *Small Business Regulatory Enforcement Fairness Act (SBREFA)* became law. This law provided new avenues for small businesses to participate in and have access to the federal regulatory arena. Congress had finally been persuaded by 15 years of uneven compliance with the RFA, and by the repeated urging of the small business community, to authorize the courts to review agency compliance with the RFA. “Judicial review” was thought to be the incentive that was lacking in the original statute. SBREFA also reinforced the RFA requirement that agencies reach out to small entities in the development of regulatory proposals, subjecting this outreach to judicial review as well. The following issues are subject to judicial review under SBREFA:

- 1) The agency's decision to certify that a rule will not have a significant impact on a substantial number of small entities, and the factual basis for the certification;
- 2) Agency compliance with the RFA;
- 3) The final regulatory flexibility analysis, including the agency's efforts to evaluate alternative regulatory approaches and reasons for rejecting or accepting them;
- 4) The agency's compliance with a requirement for periodic reviews at the 10-year anniversary of every rule or the enactment of the 1980 law, whichever is first.

Very explicit outreach responsibilities were imposed on the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA). These two agencies are required to convene small business advocacy review panels that consult with small entities on the overall effectiveness and impacts of specific proposals at the pre-proposal stage of rule development. This precedent-setting provision of the law institutionalizes outreach to small entities and ensures that these two agencies identify and consider effective alternatives that accomplish their public policy objectives.

The Chief Counsel for Advocacy and the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) are statutory members of the panels and are mandated to partner with these agencies to consult with small entities on regulatory proposals. They report their findings, jointly with agency staff, to the head of the agency. Advocacy and OIRA have access - by act of Congress - to an agency's earliest deliberations that identify a problem, document the scope of the problem, analyze its various causes, and evaluate how best to address the problem without unnecessary harm to small business or the economy.

## **A Sampling of State Best Practices**

After reviewing the processes of each state via primary and secondary research, five states were selected for an in-depth analysis, because their regulatory protections were deemed to be superior to those of other state processes. Each state had one or more elements that were identified as superior to the "average" state.<sup>ii</sup> A review of each state's process is necessary prior to any analysis of the effectiveness of those processes or comparison to federal processes.

### **Arizona**

Arizona has a Governor's Regulatory Reform Review Council (Arizona Code 41-1052), consisting in part of non-governmental citizens such as small business owners. The council has the power to review and send regulations back to agencies or bills to the legislature for revision if they are determined duplicative or burdensome to the public. Arizona also has a state ombudsman formed under the Governor's Small Business Advocacy Program. This program was started approximately 10 years ago and is the "voice of small businesses" in Arizona, acting as an advocate to speak out on government issues that affect small businesses. Small businesses also have the opportunity to get involved in regulatory reform via appeals processes. Independent law judges provided through the Office of Administrative Hearings preside over appeals of agency regulatory rulings, providing small businesses a venue to object to agency regulations that they

believe hamper their ability to fairly compete.<sup>iii</sup> Analysis of state regulatory review processes indicates that Arizona is ahead of other states because:

1. It has a legislatively mandated review process in place for all agency regulations.
2. An independent review board involves small business advocates in the review process.
3. It has an executive office that reports directly to the Governor, and that monitors and supports small business activities (ombudsman office).
4. The power of the review board is significant in that it has the ability to "veto" regulations if they are deemed unfriendly to small business interests.
5. Political interests stimulate a climate friendly to small businesses and to protect small businesses from anything that would dampen their ability to succeed.<sup>iv</sup>
6. It highly publicizes its processes and avenues to communicate opinions on regulatory matters through the media and other sources.

It is significant that Arizona has not one method of reducing regulatory burden on small businesses, but three: legislative, executive, and political influence/interest. Though regulatory review and reform is but one element in making a state "small business friendly," it is a powerful element. According to an interview conducted with a professor at Arizona State University, 95 percent of Arizona businesses are small businesses.<sup>v</sup> This explains the significant time and effort dedicated to ensuring regulatory reform is in place to protect small business interests. A recent survey by the National Federation of Independent Business (NFIB) indicated that 56 percent of small business owners in Arizona felt the business climate was "good."<sup>vi</sup> *Inc.* magazine, in a recent survey, rated Arizona as the "Best State to Start a Small Business," with a 2001-2002 survey applauding Phoenix as the best city to start and grow a company.<sup>vii</sup>

## **California**

California law requires state agencies proposing regulations to do a cost assessment of those regulations and to state, "in plain English," the impact of the proposed regulation. This is covered under California Government Code 11346.5. Under this code, the Economic Regulation Review Unit was created to review agency cost assessment studies for accuracy from an economic standpoint and to address some of the shortcomings of previous laws.

Agencies must have the legal authority to propose regulations, and administrative law attorneys oversee the process from a legal standpoint. Agencies are required to prepare a package of a variety of materials, including an initial statement of reasons and cost assessments. The Office of Administrative Law (OAL) reviews the package for completeness in meeting legal requirements. Following OAL review, the regulation is published in the California Regulatory Notice Register as an announcement of proposed regulation. This begins a public comment period. Agencies must allow a minimum of 45 days for the public, including small businesses, to comment on the proposals. After the comments are received, they are reviewed and responded to in the public record. At that point, if the agency feels that the proposed regulation is satisfactory and complete, it is then sent back to the OAL for final review. If OAL approves the regulation, it is sent to the Secretary of State for approval and becomes part of the California Code of Regulations.



Small businesses have the opportunity for involvement during the public comment period. Agencies are required by law to notify representative business enterprises or their representatives if a proposal affects small business. The California Register is online and is promoted as the venue for all constituents to review recent proposed regulations and other government matters. The effect each newly proposed regulation will have on small businesses must be noted in the California Register under a specific heading for this information.

California law requires an economic assessment for proposed regulations; however, the law is not precise about the completeness of the assessment.<sup>viii</sup> As common in numerous states and even in the federal government, setting standards and definitions as to what is “significant economic impact” to small businesses proves to be a difficult task for California officials. Further, the makeup of the review council and the backgrounds of its members further cloud the ability to objectively review newly proposed regulations.

Having taken steps to put regulatory review in place, California is superior to most states from the standpoint that it has made attempts to codify into law a review process to ensure that agencies will not pass unduly burdensome regulations impacting small businesses. Fewer than 50 percent of states have made similar efforts.<sup>ix</sup> However, such efforts do not always equate into effectiveness, as discussed more fully in the Analysis section. A study by the Cato Institute, in discussing state regulations, identified California as “more regulated,” while Arizona was “less regulated.”<sup>x</sup> At the same time, California has made positive steps to address regulatory reform. The same report by the Cato Institute lauded California as one of only four states attempting to address this issue.

## **Illinois**

In Illinois, every agency, by law (Section 5-30 [5 ILCS 100]), must conduct an impact analysis on its rules and how they would affect small businesses, communities, and other small entities. Similar to the federal RFA law, Illinois requires analysis of how regulations impact small business and requires the consideration of alternatives to those regulations. Within this law, there is a requirement to publish these proposed regulations in the public register to notify affected parties, putting the proposed regulations in “plain English” and allowing small businesses to voice their concerns, actions that mimic the Administrative Procedure Act (APA).

The analysis must then be provided to the Department of Commerce and Community Affairs (DCCA) for further analysis and/or to the small business community if it wants it. All regulations and laws are reviewed by a panel known as the Joint Committee on Administrative Rules (JCAR), consisting of both House and Senate representatives. This council looks in part for unduly burdensome regulations and alternatives. Further legislation also addresses small business concerns about environmental laws, and gives the board or agency the option to conduct impact studies and public hearings on any new or revised regulations. The operative word is “may,” as agencies can elect to simply report that an economic impact study is not necessary. However, this information must also be made available to the public. Much of the current Illinois regulatory review structure was put into place in 1993 as part of sweeping reforms relating to taxes and

regulatory affairs. Illinois state Rep. Nancy Kaszak commented that “One of the biggest problems facing our businesses, both large and small, [is] the outdated and worthless regulations with the state mandates.”<sup>xi</sup>

A Small Business Ombudsman office was also created within the last year to be the voice of small businesses. According to the interviews conducted within the summary report<sup>xii</sup> of this study, no real authority has been established for this office. The Governor has placed much emphasis on customer satisfaction, and agencies are measured in performance by the scores that constituents give them for their service. This approach is modeled on to the federal Government Performance and Results Act (GPRA).

Interviews with journalists and academic experts in Illinois suggest that the regulatory climate continue to improve there. In fact, the Department of Commerce and Community Affairs has launched its own study analyzing the regulatory process. The journalists and academic experts believe that the Department of Commerce and Community Affairs is improving its monitoring of the regulatory situation, and that the enforcement of current laws is improving the small business landscape. Though improvements can be made, the process is moving in the right direction. Programs like the weekly “Regulatory and Information Alert” publication are helping small businesses through information and protective action. This publication is sent to member small businesses that have expressed interest in keeping up with government affairs, notifying them of regulatory actions.

Illinois has utilized the essential elements of the RFA, created a Small Business Ombudsman office, and implemented customer performance measures for its agencies. By implementing executive and legislative tools to promote regulatory review, as well as political influence through agency customer performance measures and an emphasis on small business needs, Illinois has taken significant steps to reduce regulatory burden. Academic and NFIB respondents attributed many of these initiatives, and the political push to assist small businesses, to Governor George Ryan. Small businesses have communication channels for staying informed and avenues for voicing their concerns, and regulatory review processes do exist. However, government offices manage and monitor themselves to ensure they are being small business friendly. The political climate appears to be the biggest impetus behind the improved regulatory environment for small businesses.

## **New York**

Research indicates that regulatory reform began in New York upon the election of Governor George Pataki in 1994. Governor Pataki was concerned with the tax and regulatory climate in New York and how it was negatively impacting industry, particularly in the rural areas of the state. Two executive orders were created to start the regulatory reform. Executive Order #2 placed a 90-day moratorium on all newly proposed regulations or laws, to stop current regulatory efforts and allow government to evaluate the current regulatory climate. Executive Order #20 created the Governor’s Office of Regulatory Reform (GORR), which monitors and oversees all government regulations and questions their necessity. This only applies to existing regulations that are deemed problematic. It does not review newly proposed regulations or laws. However, new regulations, as required by Executive Order #20 and later law (NY CLS St. Admin.

Act 202), are reviewed under structure similar to those dictated by APA laws. Executive Order #20 and the new law require a review process, a public comments period, and response to public comments, and include verbiage that requires agencies to specifically address small business impacts. There is specific language within the law requiring agencies to address the impacts on small businesses and to consider adapting the regulation for small business needs or exempting small businesses entirely. The comment period is 30 days. These Executive Orders and GORR were built to mirror current federal RFA laws.

New York's efforts have been effective in reducing regulations. Interviews conducted by MRP and other reports indicate that since the creation of the GORR office in 1995, regulations have decreased by as much as 59 percent, saving businesses and individuals an estimated \$1.9 billion annually.<sup>xiii</sup> The political climate is obviously a major factor in this initiative, as Governor Pataki actively campaigned with this as one of his major initiatives, and promoted the successes achieved through the increased number of businesses and the decreased regulations and business taxes that assisted the business growth. His role is so prominent that he actually is the presenter at the New York Small Business Awards ceremony, recognizing outstanding small businesses, non-profits, and other members that impact the small business climate.

New York has implemented political, executive and legislative tools to influence regulatory reform. While these achievements are substantial, concern is real about the empowerment of different political philosophy that is not so pro-business. Similar to other RFA laws enacted by both state and federal governments, there are loopholes that agencies can utilize to increase regulatory burdens, should the current administration choose to ignore or "get around" these laws/acts. By not having any independent review panel or avenue to appeal and rescind unduly burdensome regulations, the opportunity exists for the positive regulatory climate of New York to worsen quickly. Further, regulatory reform does not equate to small business friendliness, as New York has ranked in the bottom 20 percent of states for its friendliness to entrepreneurs, according to surveys by the Small Business Survival Committee (SBSC).<sup>xiv</sup>

## **Virginia**

Virginia employs a unique process that combines elements of APA laws and independent reviews to determine the economic impact of regulations. By drawing public attention to regulations through unfavorable analysis, Virginia has found that "promulgation of regulations in the sunshine is a very good idea" for agencies.<sup>xv</sup>

Virginia has a three-step regulatory promulgation process: 1) Notice of Intended Regulatory Action (NOIRA), which requires agencies to notify the public that they intend to implement a new regulation; 2) proposed regulation – actual text of the regulation for review and public comment; and 3) final regulation. The second step includes the completion of impact studies by independent economists who are free to report their findings without agency influence to the Virginia Department of Planning and Budget, Division of Economic and Regulatory Analysis. A public comment period and a state register in alignment with the APA, as well as an executive order stating there shall be no regulations that unduly burden small businesses, have been implemented to further reduce regulatory burdens. The State Register includes a Web site that posts all activities related to regulation promulgation and that will even auto-mail information to those

signed up to receive it. Respondents were very positive about the usage of independent panels of economists and other academic experts, as they felt it had a positive impact on keeping agencies in line.<sup>xvi</sup> Subsequent interviews with NFIB representatives and journalists indicated that these initiatives and the political leadership of previous administrations, specifically Governor George Allen, have had a tremendous boost on regulatory reform. Small businesses are feeling more positive about their government representation. Governor Allen spoke frequently of the inconsistent application of Virginia's regulatory laws, and created the executive order that addresses the need to ensure regulatory restraint on small businesses (1994 Executive Order).<sup>xvii</sup>

Similar to their counterparts in New York, Virginia officials have exerted political and executive influence toward reducing regulatory burdens. Through executive leadership, regulatory reform has taken hold and the small business community appears to have embraced the environment created by this action. However, both Governor Allen and the Virginia Department of Planning and Budget recognize concerns about unequal implementation of current laws, or even the complete disregard of them.<sup>xviii</sup> The lack of concise laws and/or the unwillingness of government to enforce current laws can leave an opening for increased regulatory actions.

## **Tools of Influence: Regulatory Review and Reform**

Regulatory review and reform are instigated by various means. In a presentation to the Federalist Society in October of 1999, Scott Pattison, director of the Virginia Department of Planning and Budget, discussed three areas of regulatory review and reform: mechanisms for executive policy oversight, economic impact analysis of regulations, and the importance of public participation.<sup>xix</sup> The first area, which we have identified as tools and Mr. Pattison identified as mechanisms, is the starting point for the subsequent discussion on regulatory review and reform.

The three basic tools for regulatory reform are executive orders, laws signed by the legislature, and political influence by either the executive or legislative branch – particularly the executive. Any of these tools can be effective in checking unbridled regulation so long as the commitment is made to maintaining the essence of the effort.

Many state governors have turned to executive orders to attempt to rein in agency regulations. As agencies in general report to the executive branch of government, the influence that a governor can have on the regulatory process is obvious. The impact that executive orders have compared to other tools is often more significant in the short term, but can be decreased or even removed with the election of a new administration. Governors who are small business friendly typically implement executive orders, hoping that regulatory reduction will positively impact the economy of the state and therefore carry momentum into possible future administrations. If actions like the ones taken by Governor Pataki of New York create majority support and praise, it is likely that future administrations will not remand those orders.

State laws are less common and often are modeled after federal efforts like the APA or the RFA. A recent report indicated that only 18 states in the Union have implemented regulatory flexibility laws similar to the RFA. (Recent research suggests this number may have increased slightly).<sup>xx</sup> The difficulty of enacting new laws to address this issue is, of

course, related to the fact that a state legislature must consider this issue important enough to vote on, approve, and submit laws to the governor for ratification. Many state representatives interviewed felt that legislative action was not needed because the entrepreneurial/small business climate was friendly in their states and did not warrant legislative action.<sup>xxi</sup> Their position is supported by surveys such as one by the Small Business Survival Committee (SBSC), which indicated that fewer than 25 percent of the top 15 most entrepreneurial friendly states have laws that address regulatory review, while nearly 50 percent of the worst 13 states do have legislation.<sup>xxii</sup> As noted previously, regulatory review and reform is merely one indicator of a state's "small business friendliness." Regardless, legislation is not a guarantee that regulatory reform will be implemented, much less ensure a favorable state environment for small business success. Federal and state representatives have attested to this fact many times over.<sup>xxiii</sup>

In fact, regulatory review and reform is often found to be hampered, not by ineffective laws or executive orders, but ineffective enforcement. States where governors and/or legislatures actively entreat agencies to follow all elements of their laws or executive orders usually find success in curbing regulation. As with any legal document, the language used in legislation can be interpreted in multiple ways. Tightening that interpretive noose can be difficult. Even more difficult to overcome is the political culture, if it is not supportive of fewer regulations. If the governor does not support such policies, even current laws often are not enforced or are given lip service to facilitate easier regulation creation.

The tool of political influence is far and away the most immediate medium for reducing regulatory burden. Many state correspondents interviewed throughout the United States indicated that the political climate of the state protects the interests of small businesses,<sup>xxiv</sup> particularly through the interests and actions of the governor of that state. Respondents from states without any legal recourse for regulatory reform indicated that laws and executive orders were unnecessary and ineffective. They pointed to other states and the federal government, where regulations continue to grow despite these laws. They believe the use of commonsense laws or legislative restraints are the most effective means to ensure the regulatory burden is reduced. In North Dakota, for example, the legislature meets only three times every other year, which was credited with reducing rule- and law-making by ensuring that only issues of maximum importance are addressed. At the same time, North Dakota respondents also pointed out that they have no laws or executive orders in place that require any legislative or regulatory review for small business concerns.

Clearly, the political influence tool is a powerful one that has the ability to impact the regulatory climate either way. The administration that believes in less government and reducing regulations on small businesses will likely succeed in creating that climate, laws or not. Similarly, there were states that had legislative and/or executive mandates in place to protect small businesses from excessive regulatory burdens but, according to interviews, failed to enforce those laws. The end result was that the regulatory climates in those states were some of the worst in the country.<sup>xxv</sup> Both pro-regulation and anti-regulation gubernatorial administrations clearly demonstrated that their philosophies about regulation was of equal or greater importance in impacting the regulatory climate than legislation or executive orders from prior administrations, *unless the existing legislation was clear and enforceable*. Federal and state lawmakers continue to struggle

with this situation, and with how each of these tools can intertwine to create a strong anti-regulatory environment.

## Conclusion

It is clear that many states, in fact the majority of them, look at the federal model of regulatory reform as a baseline measurement. Many states have emulated federal processes like the APA, RFA, and Executive Order 12866 in addressing regulatory reform. The use of legislation to restrain government agencies has proven to be effective, insofar as having *some impact*. What is unclear is whether it is having the desired impact. Indeed, despite federal efforts through SBREFA, regulatory reform has been viewed by some as stagnant and even declining in effectively reducing regulatory burdens on small businesses.<sup>xxvi</sup> Much of the issue revolves around the terms “significant” and “substantial” in SBREFA legislation regarding economic impact to small businesses, and the ability of federal agencies to interpret those terms in a manner which is counter to the spirit of this law.<sup>xxvii</sup> Similarly, executive orders can be undermined because new administrations can decide to follow the edicts of the order, make new orders, or abolish the old orders outright. Political influence is a constant in that governments supporting small business friendly environments create small business friendly environments, and vice versa.

States also struggle with monitoring regulations and determining how well they protect small business interests. Small businesses have to comply with their own state’s regulations, but also must deal with the federal regulations as well. In a presentation to the Federalist Society on regulatory policy, Mike Gadola, a noted expert on Michigan’s regulatory reform efforts, indicated that “state level regulatory reform effort is hampered” by the fact that “over-regulation, especially in an industrialized state like Michigan, is all federalized.”<sup>xxviii</sup> In understanding the struggle to develop a regulatory reform strategy, it is clear that the best of intentions can still fail to produce the desired effects.

States such as New York have modeled their legislative and executive efforts after some of the practices developed by the federal government. This approach appears to be working. RFA-type laws or executive orders requiring small business impact statements and economic analysis have succeeded in reducing regulatory burden significantly in that state. The leadership provided by Governor Pataki was clearly a factor in turning New York into a more small business friendly state in terms of regulatory burden. The state’s efforts to scrutinize the impact of regulations on small businesses and to set goals to reduce the burden on small businesses have contributed significantly to the improving economic environment there.

However, New York is a classic example of how such programs can falter without pro-small business leadership. When Governor Pataki’s administration ends, will the next administration continue the reduced regulatory environment that he has promoted? No one can be sure. We must then look to other states for new ideas, where new policies can be developed in a less far-reaching environment (*i.e.*, one state’s laws do not affect the other 49, unlike new federal policies). “The states are indeed the laboratories, and many states are now in the process of testing and experimenting with various strategies for regulatory reform.”<sup>xxix</sup>

States such as Arizona, which created an independent review board made up in part of small business advocates, have small business interests in mind and actively seek to ensure that the regulatory burden on small businesses does not increase. Arizona's use of independent administrative law judges also is unique in allowing small business owners a venue to protest new regulations that have an adverse economic impact on them. Arizona's aggressive position in protecting small business interests by actually giving the state's economic review board and judges the authority to "veto" proposed regulations makes it unique, and provides a model that underscores that small business interests are very critical to the state.

Virginia's use of independent economists to evaluate the economic impact of proposed regulations is another unique program that has demonstrated great promise. Having trained economic experts, who do not have vested interest in any political context, evaluate proposed regulations allows small business owners to feel confident that impact analyses will be done fairly and accurately. Although it can be troubling that this review is final and has no decision-making authority on whether the regulation is passed, this unique approach to determining economic impacts on small businesses is a valuable approach to a potentially partisan issue.

As a result of our study, we conclude that the regulatory burden on small businesses can also be reduced by the tools of executive, legislative, and political influence described throughout this study. Each strategy for reducing regulatory burdens on small businesses has value that, when considered alone, will usually fail sooner or later without the other tools for support. States must continue to not only look to the federal model for guidance, but must also learn from the issues that their efforts have created. They must also continue to be innovative in developing solutions to promote a favorable small business environment, because federal regulations on small businesses have economic impacts at both the federal and state levels. The SBA estimates that more than 99 percent of all firms are small, having fewer than 500 employees and less than \$25 million in sales. Of these, 68 percent are owned by sole proprietors. Small businesses feel greater economic impacts from regulations than larger entities do. In a 2001 study on federal regulations, sponsored by the SBA Office of Advocacy, it is suggested that businesses with fewer than 20 employees average costs of roughly \$6,975 per employee from regulations, versus \$4,463 for firms with more than 500 employees.<sup>xxx</sup> As the relationship between business size and burden of a regulation is proportional, maintaining a positive economic climate by not passing unduly burdensome regulations on small businesses is an essential element of success.

Regulatory burdens are but one element over which states have control in creating pro-small business climates. Taxes and small business resources such as capital access are other elements that have an impact. However, the impact of unbridled regulation has proven to be disastrous when left unchecked. Tracking individual economic regulatory impacts is typically difficult, and determining how this process is completed has proven even more challenging. However, regulatory impacts must be continually studied and reduced, as they can silently destroy the small business community if not monitored and revised when overly burdensome. While small businesses need to be aware of their states' regulatory environment, constantly monitoring the situation is something that small business owners cannot afford to do. Efforts by some states to keep the small business community informed about regulatory policies have proven to be a great help. Numerous issues impact a small business owner's ability to influence the process, and

each would require a separate study. Small businesses simply cannot be solely responsible for monitoring the regulatory environment and be politically active in attempting to alter it. The use of existing methods by the federal government and some states has proven successfully that small business interests can be protected from burdensome regulations by state governments. The continued improvement on these models and implementation of these practices by more states will continue to ensure that small businesses are protected from regulatory burdens, and therefore have one less thing to worry about when striving for success. As the economic backbone of our country through their creation of jobs and tax revenue, small businesses need state government processes that foster their economic growth, and state government support to ensure those processes are implemented.



## ENDNOTES

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- <sup>i</sup> “State Entrepreneurship Policies and Programs,” Kauffman Center for Entrepreneurial Leadership, November 1999.
- <sup>ii</sup> “Summary Report: Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses,” Management Research and Planning Corp, February 2002.
- <sup>iii</sup> “State Entrepreneurship Policies and Programs,” Kauffman Center for Entrepreneurial Leadership, November 1999.
- <sup>iv</sup> Interviews conducted by MRP with Governor’s Small Business Advocate Office, Arizona Chamber of Commerce, academic experts at Arizona State University, and representatives at state National Federation of Independent Business (NFIB) office.
- <sup>v</sup> Interview conducted with academic expert at Arizona State University.
- <sup>vi</sup> NFIB Arizona Web site article dated January 22, 2002.
- <sup>vii</sup> *Inc.* magazine article dated March 11, 2002.
- <sup>viii</sup> “Summary Report: Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses,” Management Research and Planning Corp, February 2002.
- <sup>ix</sup> “Summary Report: Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses,” Management Research and Planning Corp, February 2002.
- <sup>x</sup> Edward L. Hudgins, “State Regulatory Measures,” *Regulation*, the Cato Review of Business and Government, Vol. 19, No. 2, 1996.
- <sup>xi</sup> Article written by Beverly Scobell for IPO, referencing materials from August and September 1993 Illinois issues.
- <sup>xii</sup> “Summary Report: Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses,” Management Research and Planning Corp, February 2002.
- <sup>xiii</sup> “Summary Report: Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses,” Management Research and Planning Corp, February 2002; “State Entrepreneurship Policies and Programs,” Kauffman Center for Entrepreneurial Leadership, November 1999.
- <sup>xiv</sup> 1996, 2000, and 2001 studies by Small Business Survival Committee.
- <sup>xv</sup> Scott Pattison, director of Virginia Department of Planning and Budget, Forum on State Regulatory Policy speech, Fall of 1999.
- <sup>xvi</sup> “Summary Report: Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses,” Management Research and Planning Corp, February 2002.
- <sup>xvii</sup> Susan Eckerly, “Virginia’s Deregulatory Challenge, A Promising Start,” *Regulation*, The Cato Review of Business and Government, Vol. 19, No. 2, 1996.
- <sup>xviii</sup> Susan Eckerly, “Virginia’s Deregulatory Challenge, A Promising Start,” *Regulation*, The Cato Review of Business and Government, Vol. 19, No. 2, 1996.
- <sup>xix</sup> Susan Eckerly, “Virginia’s Deregulatory Challenge, A Promising Start,” *Regulation*, The Cato Review of Business and Government, Vol. 19, No. 2, 1996.

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<sup>xx</sup> *State Government News*, May 1999, Vol. 42, Issue 4.

<sup>xxi</sup> “Summary Report: Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses,” Management Research and Planning Corp, February 2002.

<sup>xxii</sup> 2001 study by Small Business Survival Committee.

<sup>xxiii</sup> Congressional Testimony to Committee on Small Business, U.S. House of Representatives, by Victor Rezendes, March 6, 2002; Scott Pattison, director of Virginia Department of Planning and Budget, Forum on State Regulatory Policy speech, Fall 1999; ; George Mason University Mercatus Center Web site article on its Regulatory Studies Program (RSP).

<sup>xxiv</sup> “Summary Report: Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses,” Management Research and Planning Corp, February 2002.

<sup>xxv</sup> “Summary Report: Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses,” Management Research and Planning Corp, February 2002.

<sup>xxvi</sup> Testimony of Dr. Ann Parker Maust to Congress on behalf of NFIB, 105<sup>th</sup> Congress, 1998; Testimony of Victor Rezendes to U.S. House of Representatives Committee on Small Business, March 6, 2002.

<sup>xxvii</sup> Testimony of Victor Rezendes to U.S. House of Representatives Committee on Small Business, March 6, 2002.

<sup>xxviii</sup> Forum on State Regulatory Policy, Fall of 1999.

<sup>xxix</sup> Scott Pattison, director of Virginia Department of Planning and Budget, Forum on State Regulatory Policy speech, Fall 1999.

<sup>xxx</sup> Study conducted for the SBA Office of Advocacy, written by Crain and Hopkins, "The Impact of Regulatory Costs on Small Firms," 2001.