



QUANTIFIABLE IMPACT

Through Successful Collaboration

Office of the
**NATIONAL
OMBUDSMAN**

2015

ANNUAL REPORT TO CONGRESS

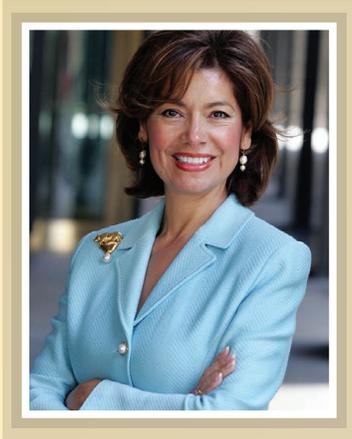
SBA

U.S. Small Business Administration
National Ombudsman

“As the nation’s small business support structure, our mission is always to **hear the diverse voices of America’s small businesses** and to represent their varied insights and experiences with our federal partners.”

*Maria Contreras-Sweet
SBA Administrator*

MESSAGE FROM THE SBA ADMINISTRATOR



“All of the accomplishments enumerated in this report are the result of successful collaboration, a concept that defines the work of our Ombudsman Team and small business stakeholders.”

On behalf of the U.S. Small Business Administration and America’s 28 million small businesses, I am pleased to present our Office of the National Ombudsman’s Annual Report to Congress for Fiscal Year 2015. Our agency’s mantra of being Smart, Bold and Accessible guides our efforts to support the creation, growth and long-term success of our nation’s small businesses and is consistent with the driving theme of this year’s report: “Quantifiable Impact Through Successful Collaboration.”

Enclosed you will find an impressive accounting of the exceptional work of our agency and small business stakeholders to reduce, and in some cases completely eliminate, regulatory requirements that create unnecessary burdens on small business owners.

Through trust, transparency, and an unbridled commitment to America’s small businesses, these groups have come together to affect real change. Our “team of teams” approach has allowed us to leverage new ideas and resources to better serve small businesses as well as to harness the energy and experience of our partners, including federal agencies, state and local small business resource partners, chambers of commerce, and elected officials including many Congressional representatives.

As the nation’s small business support structure, our mission is always to hear the diverse voices of America’s small businesses and to represent their varied insights and experiences with our federal partners. In FY2015 and now well into FY2016, our Ombudsman’s Office exceeded its national engagement target by convening more than 80 outreach events in all 10 SBA Regions. These educational and knowledge-sharing events resulted in our Case Management Specialists directly assisting nearly 400 cases.

Throughout the country, our Regional Regulatory Fairness Board members are serving as feedback conduits for local small businesses to relay their regulatory challenges. These volunteer advisory leaders are successful business owners themselves who are selfless and passionate about executing SBA’s mission of reducing regulatory burdens on small businesses. We are thankful for their continued good guidance and service to our nation.

All of the accomplishments enumerated in this report are the result of successful collaboration, a concept that defines the work of our Ombudsman Team and small business stakeholders. We look forward to continued engagement with Congress as we endeavor to help small businesses survive and grow!

Sincerely,

A handwritten signature in black ink that reads "Maria Contreras-Sweet". The signature is fluid and cursive.

Maria Contreras-Sweet
SBA Administrator



ANNUAL REPORT TO CONGRESS

United States Small Business Administration
Office of the National Ombudsman

MARIA CONTRERAS-SWEET

Administrator

U.S. SMALL BUSINESS ADMINISTRATION

EARL L. GAY

National Ombudsman and Assistant Administrator
for Regulatory Enforcement Fairness

U.S. SMALL BUSINESS ADMINISTRATION

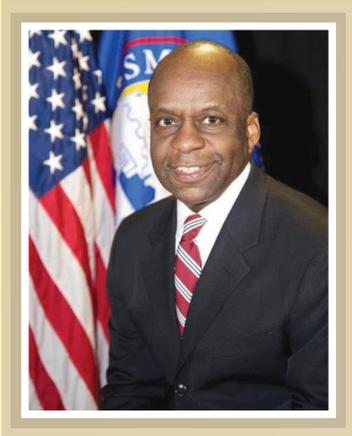
OFFICE OF THE NATIONAL OMBUDSMAN

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www.sba.gov/ombudsman

MESSAGE FROM THE NATIONAL OMBUDSMAN



“Building cohesive coalitions amongst small business stakeholders remains one of our most important missions as we advocate a level regulatory playing field.”

Partnering to ensure regulatory fairness for America’s Small Businesses

Pursuant to the Small Business Regulatory Enforcement and Fairness Act (SEBREFEA Act of 1996), this office was created to serve as a powerful voice for the nation’s small businesses.

In FY2015, your Office of the National Ombudsman worked tirelessly and diligently reducing federal regulatory burdens to America’s 28 million small businesses.

We partnered with and encouraged regulators to address entrepreneurs’ comments and concerns promptly, and wherever possible, to opt for compliance assistance and education rather than moving directly to levying penalties and fines. These interventions enhanced and empowered the continued growth and success of small businesses throughout the country.

Building cohesive coalitions amongst small business stakeholders remains one of our most important missions as we advocate a level regulatory playing field. In fulfilling that role, our staff conducted more than 80 outreach events and several regional Regulatory Fairness hearings, all addressing the urgent concerns of small businesses in their local communities, states and regions.

Our National Ombudsman office also facilitated Regulatory Fairness Boards in each of SBA’s 10 regions. These boards consist of established small business owners who serve as the eyes and ears for small business entities and their local communities. Their empowered engagement has been and continues to be invaluable in removing regulatory barriers.

Your Office of the National Ombudsman is fully committed to its duties and responsibilities to the American people.

We look forward to increasing the synergistic collaboration with all of our teammates and Members of Congress, in eliminating unnecessary regulatory burdens on small businesses as they continue to fuel America’s economic prosperity!

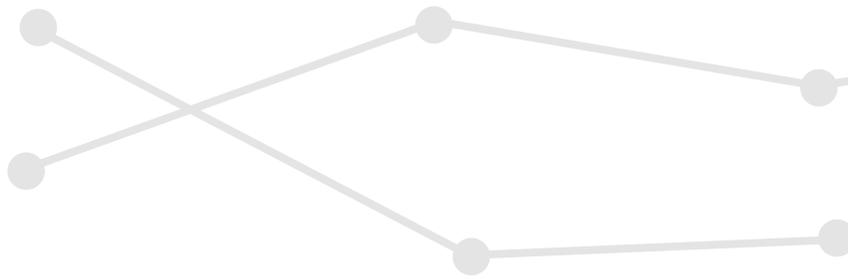
Very respectfully,

A handwritten signature in black ink, appearing to read 'E. L. Gay'.

Earl L. Gay

National Ombudsman and Assistant
Administrator for Regulatory Enforcement Fairness

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EXECUTIVE SUMMARY

As an advocate for small businesses, the Office of the National Ombudsman, working in partnership with federal regulators, assists small businesses to overcome excessive or unfair regulatory enforcement actions involving a federal agency. In FY2015, the Office of the National Ombudsman experienced an environment of growth in all aspects of executing its mission, including collaboration between its case managers, board members, small business owners, partners and federal agencies.

Streamlined Process

In gathering comments or complaints involving a federal agency or regulation, the Office provided several options for filing assistance requests and outlined a clear five-step process for comment resolution after submission. This process proved most used in several states including California, Virginia and Florida, where the highest number of comments were received.

Board Growth

The Regional Regulatory Fairness Boards expanded in depth during FY2015. With the creation of four working groups — access to capital; government contracting; outreach and visibility; and workforce management/labor — board members were able to better identify unfair, unnecessary or inconsistently applied agency rules affecting small business and effect change.

Quantifiable Solutions

From a regional snapshot, the year included more than 80 outreach events and nearly 400 cases across 10 regions, each of which contributed to the ability of the Office to recognize and address the systemic issues facing thousands of small businesses in the U.S.

Some of the systemic issues covered in FY2015 included contracting issues and payment, penalty and fine abatement, refunds, decisions reversed, and claims denied and processing.

Federal Agency Ratings

In FY2015, the Federal Agency Ratings continued assessments in evaluating federal agencies in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). However, in the spirit of collaboration, a few exemplary federal agencies stood out in their commitment to creating a fair and burden-free environment for small businesses. Overall, these agencies consistently provided timely, quality responses to comments, going above and beyond in customer service.

Primed for FY2016

With demonstrated success in FY2015, the Office will continue to pursue increased outreach, push for broad solutions, strive for collaboration opportunities, build on board expertise, grow information technology capabilities, review existing policies and engage in action-oriented dialogue. The Office will continue in its mission to assist small businesses and support a fair, yet competitive environment, for all small businesses in the U.S.

TOP STATES

for case submissions



California



Virginia



Florida



Texas



Maryland



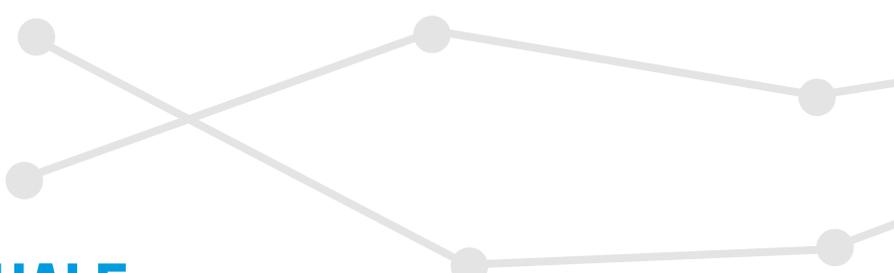
New York



Michigan



Ohio



Chapter 1

COLLABORATION ON BEHALF OF EVERY SMALL BUSINESS

Significant challenges are confronted by small businesses across the country as they try to navigate federal rules, regulations and requirements. The Office of the National Ombudsman, created in 1996 as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA), is mandated to assist small businesses that experience excessive or unfair regulatory enforcement actions involving a federal agency.

Some small businesses deal with contract issues resulting in decreased contract value or unpaid invoices. In other instances, small businesses suffer burdensome penalties and fines or unfair decisions and claim denials that affect the ability to continue work.

No matter the issue, the Office of the National Ombudsman collaborates with federal regulators to deliver fair solutions and quantifiable results to all segments of America's small business community. Together with key federal partners, we provide assistance to support thousands of small businesses in achieving timely, common-sense resolutions of regulatory enforcement and compliance issues.

In partnership with our Regional Regulatory Fairness Boards, we conduct outreach to small businesses across the country. This outreach raises awareness of the Office's role in supporting small business and provides a platform for small business owners and entrepreneurs to bring regulatory and compliance concerns and issues forward.

In addition to the Regional Regulatory Fairness Boards, we also accept comments and concerns directly from small business. When a business has experienced unfair regulatory enforcement involving any federal agency or is dealing with a significant burden due to a particular federal rule, the Office helps to obtain a fair, timely review and response to the issue raised.

Any small business impacted by a federal agency regulation may file a comment, which typically includes the following basic information as well as a signed consent authorizing the Office to pursue the matter:

- *A description of the specific action taken by the agency and the results of this action*
- *The specific resolution sought*
- *Any relevant documentation*

To promote accessibility, comments may be filed online or in paper form and commenters can receive information regarding the comment form or information about the Office of the National Ombudsman by calling the Ombudsman's Regulatory Fairness Helpline at 888-REG-FAIR.

Once a comment is submitted, a case management specialist from the Ombudsman Office reviews the case and any supporting documentation to make sure the necessary authorization and other information is present. The comment is then forwarded to the agency with a request for a prompt, high-level, responsive review of the matter reported.

We ask the federal agency involved to consider the fairness of the case from a small business perspective and to provide a practical, timely response that balances the spirit of the regulation with the specific circumstances of the small business.

All comments are handled on a confidential, protected basis, and can even be raised anonymously, if preferred, by the small business. Examples of the practical resolutions attained through these collaborative efforts for small businesses are detailed in Chapter 3.

TOP AGENCIES

for case submissions:

- Centers for Medicare and Medicaid Services
- U.S. Small Business Administration
- U.S. Citizenship and Immigration Services
- U.S. Department of Labor
- U.S. Department of Defense
- Internal Revenue Service

Helping Small Business Owners Resolve Problems with Federal Regulators



OPTION 1

Submit an online request for assistance at www.sba.gov/ombudsman/comment.

This is the recommended process.



OPTION 2

Download a printable Federal Agency Comment Form (SBA Form 1993) from the Ombudsman's website at www.sba.gov/ombudsman/comment. Submit a signed comment form and supporting documentation by:

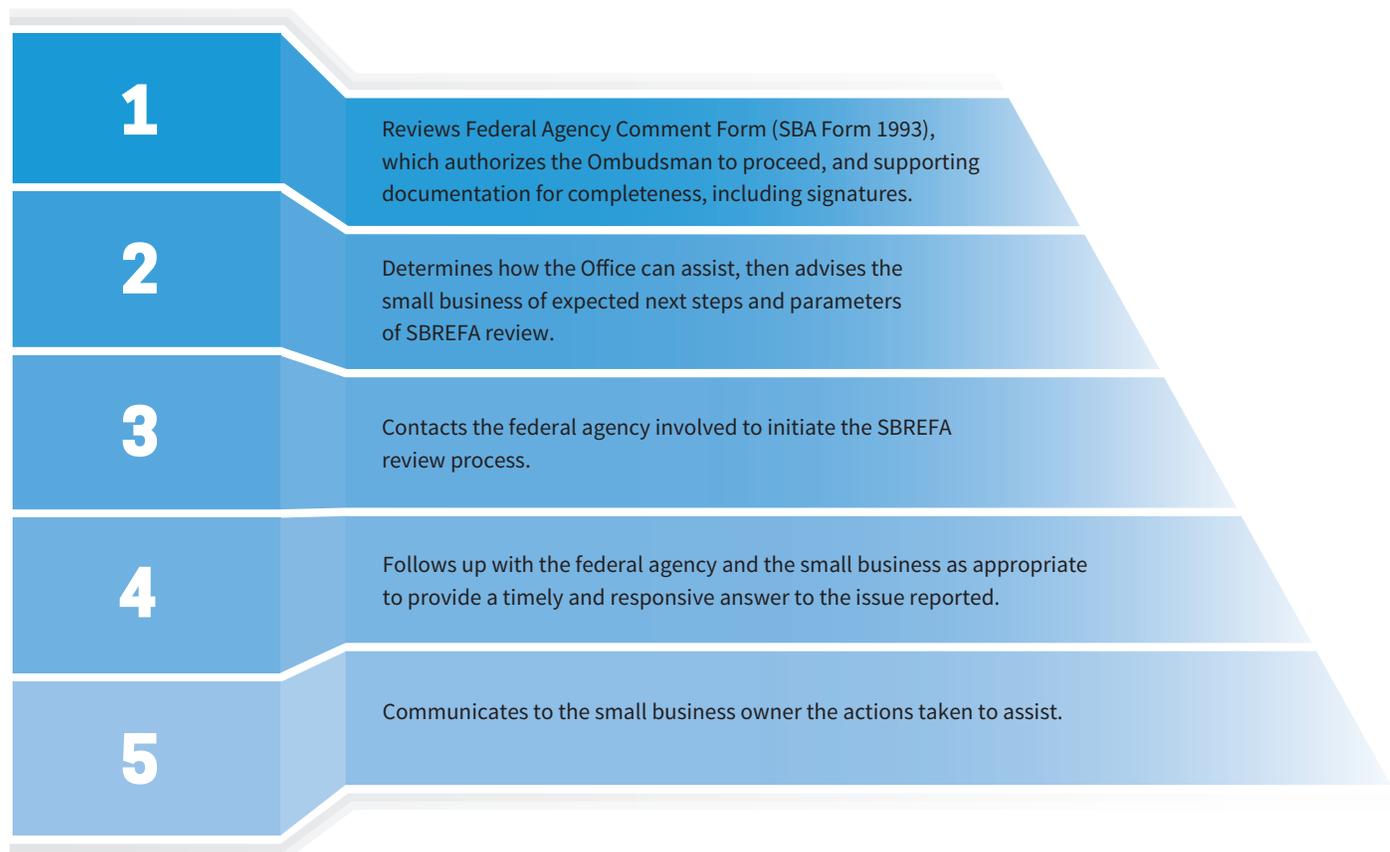
Email ombudsman@sba.gov

Fax 202-481-5719

Mail Office of the National Ombudsman
U.S. Small Business Administration,
409 3rd Street, SW
Washington, D.C. 20416

Steps in Resolving Small Business Problems

After receiving a Federal Agency Comment Form from a small business, the Ombudsman:



“

This was a huge year for the Board. By **collaborating together** we realized we could increase the voice of the office.”

Deborah Osgood, Region 1

4

WORKING
GROUPS

10

REGIONS

36

BOARD
MEMBERS

Chapter 2

REGIONAL REGULATORY FAIRNESS BOARDS

Recognizing that small business owners and leaders in the small business community have firsthand experience with the regulatory challenges confronting small businesses, the Office of the National Ombudsman is advised by 10 Regional Regulatory Fairness Boards across the country. The Regional Regulatory Fairness Boards, each comprised of small business owners, provide critical linkages to small businesses nationwide making them aware of our role as a resource and advocate.

The Boards also help to identify unfair, unnecessary or inconsistently applied agency rules or practices affecting individual small businesses. Though their role is not to resolve individual cases, board members provide critical perspectives on behalf of the small business owners they represent regarding rules with broader systemic impacts on entire segments of the small business community.

The Regional Regulatory Fairness Boards also support outreach priorities of the National Ombudsman who frequently convenes regulatory fairness roundtables and hearings around the country with small business owners. These dialogues offer the small business

community an opportunity to voice their regulatory concerns directly with the National Ombudsman, board members and appropriate federal regulators.

Board members have the power to hold hearings and public meetings throughout the year to collect information and insight from local small business owners across the country.

In FY2015, the Office of the National Ombudsman staff and the Regional Regulatory Fairness Board members established four working groups to address regulatory issues that crossed regional lines.

The four working groups include:

1 ACCESS TO CAPITAL

Addressing issues involving SBA lender and other community banker concerns and alternative capital funding opportunities for small businesses.

- Gary Ezovski (Region 1)
- Christopher Harvell (Region 2)
- David Huller (Region 5)
- Frank Knapp (Region 4)
- Marilyn Landis (Region 3)

2 GOVERNMENT CONTRACTING

Addressing issues involving proposal and bidding, subcontractors and 8(a) eligibility/certifications.

- Mike Anderson (Region 8)
- Tom Briones (Region 6)
- Alison Brown (Region 8)
- Cliftena Carter (Region 4)
- Al Edwards (Region 4)
- Charles Largay (Region 1)
- Carisa McMullen (Region 7)
- Doña A.P. Storey (Region 3)

3 OUTREACH AND VISIBILITY

Addressing opportunities for the Office, including roundtables, hearings and other forums and events.

- Reginald Baker (Region 9)
- Joseph Jindra (Region 7)
- Deborah Osgood (Region 1)
- Doña A.P. Storey (Region 3)
- Muriel Watkins (Region 3)

4 WORKFORCE MANAGEMENT/LABOR

Addressing issues involving joint employer issues for franchisees, independent contractor determinations and contingent workforce issues.

- Reg Baker (Region 9)
- Cindy Brown Rohrer (Region 7)
- James Houser (Region 10)
- Kristine Kassel (Region 9)
- Kevin Maloney (Region 1)
- Mike Mitternight (Region 6)
- Deborah Osgood (Region 1)
- Bobby Pancake (Region 3)
- Anthony Welcher (Region 10)

**REGULATORY FAIRNESS
BOARDS REPRESENTING
SMALL BUSINESS**

CREDENTIALS

- State Economic Development leadership
- Business and trade association leadership
- Elected officials – Mayor, City Councilman
- Professionals – lawyers, engineers, architects
- Award winning business professionals

INDUSTRY DIVERSITY

- Real Estate
- Transportation & Warehousing
- Information Technology
- Professional, Scientific, & Technical Services
- Accommodation & Food Service
- Construction
- Finance & Insurance

Regulatory Fairness Board Chair Bios

GARY EZOVSKI

Lincoln Environmental Properties, Slatersville, Rhode Island

Gary Ezovski has more than 40 years of experience serving in senior leadership roles in civil engineering. Mr. Ezovski also serves on the Board of Directors of a bank and as a Trustee of a financial services company in New England. Since 2007, he has served as Chair of the Regulations Subcommittee for the Rhode Island Small Business Economic Summit. Ezovski received his Bachelor of Science in Civil Engineering from the University of Rhode Island.



CHRISTOPHER HARVELL

Dental Kidz, LLC, Newark, New Jersey

Christopher Harvell is co-founder of the largest pediatric dental practice in New Jersey. Prior to this endeavor, he was an investment banker with Credit Suisse. He brings experience working for small business initiatives and economic development efforts across the state of New Jersey. Mr. Harvell received his Bachelor of Science in Electrical Engineering from George Washington University and Master of Business Administration in Finance and Real Estate from Columbia University.



DOÑA A.P. STOREY

GOVtips.biz, Virginia Beach, Virginia

Doña A.P. Storey has been a successful entrepreneur creating and leading award winning businesses in both the federal and commercial sectors. She is a widely recognized expert on business focusing on federal and corporate procurement and has appeared as an expert on broadcast news shows. She serves as a consultant and featured speaker on supplier diversity issues for ISM (the Institute for Supply Management). She received her Bachelor of Science in Industrial and Organization Psychology from Old Dominion University.



FRANK KNAPP

The Knapp Agency, Columbia, South Carolina

Frank Knapp is the president of The Knapp Agency (an advertising and public relations firm), and serves as the president and CEO of the South Carolina Small Business Chamber of Commerce (SCSBCC). In addition, he serves on the Advisory Board for the South Carolina Small Business Development Center and recently was recognized by SBA as the 2014 South Carolina Small Business Financing Advocate of the Year. Mr. Knapp received his master's degree in Social Psychology from the University of South Carolina and a bachelor's degree from Indiana University of Pennsylvania.



DAVE HULLER

ICAP Enterprises, LLC, *Rocky River, Ohio*

Dave Huller is founder and principal of ICAP Enterprises, LLC and brings over 30 years of sales, operations and business development experience across multiple industries. He sits on the Board of Trustees for the National Small Business Association with numerous board affiliations across his career. Mr. Huller received his bachelor's degree from the University of Richmond, Robins School of Business.



MIKE MITTERNIGHT

Factory Service Agency, Inc., *Metairie, Louisiana*

Mike Mitternacht is the president and owner of Factory Service Agency, Inc., and serves as the secretary of the Board of Trustees for the National Small Business Association (NSBA). In addition, he serves as the chairman of the Louisiana Economic Development's Small Business Advisory Council and is an appointed member of the Louisiana Workforce Investment Council. Mr. Mitternacht received his master's degree in Public Health from the Tulane University School of Public Health and Tropical Medicine.



CYNTHIA 'CINDY' BROWN ROHRER

Brown Germann Enterprises, Inc., *Hazelwood, Missouri*

Cynthia Brown Rohrer is majority owner of Brown Germann Enterprises, Inc., DBA Shred-it. She is a member of the National Association of Women's Business Owners and was named a Distinguished Member by the St. Louis Chapter and member of P.E.O., a women's Philanthropic Educational Organization (P.E.O.) organization. Ms. Brown Rohrer received her Master of Science in Education from Northwest Missouri State University, and her Bachelor of Science in Education from the University of Missouri-Columbia.



BOARD MEMBERS

Zach Adamson, Urban Designs Indy, *Indianapolis, IN*

Reginald Baker, Reg Baker CPA, LLC, *Honolulu, HI*

Michael Ballantyne, Thornton Oliver Keller Commercial Real Estate, *Eagle, ID*

Tom Briones, Briones Business Law Consulting, P.C., *Albuquerque, NM*

Alison Brown, PhD, NAVSYS Corporation, *Colorado Springs, CO*

Cynthia Brown Rohrer, Shred-It, Brown Germann Enterprises, Inc., *Hazelwood, MO*

Mary Lupe Arana-Brownlow, The GFP Group LLC, *San Antonio, TX*

Cliftena Carter, CSCI, *Fayetteville, TN*

Peter M. Corroon, Red Gate Properties, LLC, *Salt Lake City, UT*

Al Edwards, Corporate Environmental Risk Management, LLC, *Atlanta, GA*

Gary S. Ezovski, Lincoln Environmental Properties, LLC, *Slatersville, RI*

Kenneth Franasiak, Calamar Enterprises, Inc., *Wheatfield, NY*

Christopher Harvell, Dental Kidz, LLC, *Newark, NJ*

James Houser, Hawthorne Auto Clinic, Inc., *Portland, OR*

David Huller, ICAP Enterprises, LLC, *Rocky River, OH*

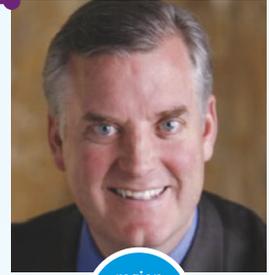
Louis G. Hutt, Jr., CPA Esq., Bennett, Hutt & Co., *Columbia, MD*

Rollie Leo James, Food Enterprises, Inc., *Cherokee, NC*

PETER M. CORROON

Red Gate Properties, LLC, *Salt Lake City, Utah*

Peter Corroon is the managing member of Red Gate Properties, LLC, which he's co-owned since 1995. Mr. Corroon was previously elected Mayor of Salt Lake County serving two-terms, overseeing a \$850 million budget, 8,000 employees and 36 agencies. He holds numerous board positions and leadership roles with local coalitions and chambers of commerce across the state. He holds a Juris Doctor degree from Golden Gate University School of Law, a Master of Science in Real Estate Development and Finance from New York University, and a Bachelor of Science in Civil Engineering from Carnegie-Mellon University. Mr. Corroon also speaks fluent French, intermediate Spanish and some Italian.



region
8

REGINALD 'REG' BAKER

Reg Baker CPA, LLC, *Honolulu, Hawaii*

Reg Baker is managing member of Reg Baker CPA, LLC, former executive vice president and treasurer of Hawaii Medical Assurance Association (HMAA) and former manager of the International Operations for the Bank of Hawaii. He currently serves as the chair of the small and mid-sized Business Committee for the Hawaii Chamber of Commerce. In addition, he serves in a leadership position for the Hawaii Society of CPAs and was named SBA's Accountant Advocate of the Year for the state of Hawaii. Mr. Baker received his Bachelor of Business Administration in Accounting from the University of Central Arkansas, College of Business Administration, studied international business at the University of Hawaii and taught at the University of Nevada, Las Vegas.



region
9

MICHAEL BALLANTYNE

Thornton Oliver Keller Commercial Real Estate, LLC, *Eagle, Idaho*

Michael Ballantyne is managing partner of Thornton Oliver Keller Commercial Real Estate, and serves as a board member for the Boise Valley Economic Partnership with an emphasis on local public/private economic development. In addition, he has received numerous awards and recognition for his leadership and economic impact accomplishments. Mr. Ballantyne received his Bachelor of Arts in International Studies and Spanish from Willamette University.



region
10

Joseph Jindra, KNCK, Inc., *Concordia, KS*

Kristine Kassel, Benefits By Design, Inc., *Tempe, AZ*

Frank Knapp, The Knapp Agency, *Columbia, SC*

Marilyn Landis, Basic Business Concepts, Inc., *Pittsburgh, PA*

Charles Largay, Yankee Logic, LLC, *Grand Beach, ME*

Kevin Maloney, Northeast Express Transportation, Inc.,
Windsor Locks, CT

Juliette Mayers, Inspiration Zone, LLC, *Quincy, MA*

Carisa McMullen, Landworks Studio, LLC, *Olathe, KS*

Alex McQuillen, McQuillen Farm, Inc., *Whitewater, WI*

John A. Michael, Naismith Engineering, Inc., *Corpus Christi, TX*

Mike Mitternacht, Factory Service Agency, Inc., *Metairie, LA*

Moises Montanez, ALTA Home Remodeling, *Miami, FL*

Deborah Osgood, Knowledge Institute, *Exeter, NH*

Bobby Pancake, High 5, LLC, *Bear, DE*

David Rambhajan, Industria, Inc., *Chicago, IL*

Wilfred P. Ryan, Ryan Air, Inc., *Anchorage, AK*

Doña A.P. Storey, GOVtips.biz, *Virginia Beach, VA*

Muriel Watkins, MW Financial, Inc., *Potomac, MD*

Anthony Welcher, 21st Century Communications, *Bellevue, WA*

Isabel Valdés, IVC, *San Francisco, CA*

“ In the past two years, the board members have **gotten more active and have become more visible** in helping small businesses; being that good liaison for small businesses and the federal government agencies.”

Mike Mitternight, Chairman, Region 6

Chapter 3

COLLABORATIVE, QUANTIFIABLE SOLUTIONS

Throughout FY2015, the collaborative efforts of the National Ombudsman’s team, small business owners and federal agencies resulted in quantifiable, successful outcomes while also meeting critical regulatory objectives to assure safe work places for the American people. For the small businesses that filed cases, the collaborations were significant. For cases where systemic issues were discovered, thousands of small businesses nationally were assisted when solutions were implemented.

There are multiple channels through which the National Ombudsman learns of emerging regulatory challenges confronting the small business community. These include connecting with small business owners via telephone calls to the Ombudsman’s Regulatory Helpline, through online case filings, with Regional Regulatory Fairness Board members, Regional and District SBA teams, and at public outreach events, including Regulatory Fairness Roundtables and Hearings; then working together with the appropriate federal agencies to obtain quantifiable resolutions.

Federal regulation and federal agency enforcement actions impact small businesses around the country. To help bridge the gap between federal regulators and the full spectrum of the small business community, the Office of the National Ombudsman, together with SBA Resource Partners and Regulatory Fairness Board members, convenes public forums — roundtables and hearings — in all 10 SBA regions each year.

These public forums bring together Regulatory Fairness Board members, small business owners and operators, and representatives of federal regulatory agencies and provide a unique and direct channel for

small business owners to voice concerns and report hurdles for their businesses that could be relieved by different regulatory approaches.

Roundtables bring together the small business community and business and trade associations for dialogue with the National Ombudsman, Regional Regulatory Fairness Board members, and, often, local representatives of federal regulators. Participating federal agencies explain their regulatory and compliance assistance programs, while representatives of small businesses voice concerns about specific regulatory requirements and the impact of government rules on local businesses.

Hearings are public forums focused on collecting information and receiving testimony from individual entrepreneurs and small business groups, as well as educating the community on the federal regulatory hurdles that small businesses face. Federal agency representatives are invited to attend hearings to keep abreast of small business regulatory issues, particularly when they directly concern an agency’s enforcement responsibilities.

Case Resolution Process

1

SEEKING SUPPORT

A small business encounters a compliance question or other regulatory issue involving a federal agency (i.e. through inspections, contracting, fines).

The small business reports the issue through email, fax, web, mail, public hearing or to a Regulatory Fairness Board Member.

2

COLLABORATIVE RESPONSES

The small business receives confirmation of receipt and the Office promptly contacts the appropriate federal agency.

A designated Case Management Specialist serves as the small business' liaison with the federal agency, ensuring a focus on customer service and timely, responsive review.

3

QUANTIFIABLE RESULTS

The Office supports the small business through issue resolution, remaining engaged and accessible.

Results could include clarification of regulatory requirements, compliance assistance, reduced fines, payment of contracting invoices, regulatory process improvements, penalty abatement and revised decisions, all on behalf of small business.

4

IMPACT

Resolutions of case specific issues and of systemic issues positively impact the ability of small business to compete and thrive, while delivering on the promise of regulatory fairness.

Cases help identify areas for regulatory streamlining and provide channels for small business owners to weigh in and contribute to systemic improvements.

REGULATORY FAIRNESS HEARINGS

- *Salida, Colorado*
- *Washington, D.C.*
- *Orlando, Florida*
- *Virginia Beach, Virginia*
- *Spokane, Washington*

FY2015 EVENT RESULTS

- *Met 140% for events goal*
- *Secured coverage of events in all regions*
- *Completed 81 events total*

SYSTEMIC SOLUTIONS – QUANTIFIABLE RESULTS

In FY2015, the Office of the National Ombudsman collaborated with federal agencies to provide quantifiable impact for small businesses from regulatory policies and practices that create unnecessary burdens on them. The results in these cases led federal agencies to not only remedy the individual cases, but also to reconsider policies, clarify procedures and responsibilities, and adjust processes to ensure regulatory fairness for all small businesses going forward.



ADDRESSING SYSTEMIC ISSUES

By addressing systemic issues through collaborative efforts, the impacts of individual case resolutions are magnified and the entire small business community benefits from smarter, more effective and proportionate regulation.

Examples of successful advocacy efforts that yielded widespread, systemic benefits include:

New York; Centers for Medicare and Medicaid Services (CMS)

A Medicare Recovery Audit Contractor conducted audits on 14 claims from a prosthetic center to recoup \$160,000, including the most expensive prostheses provided. The Recovery Auditor exceeded the medical documentation request limits for this provider, an issue discovered through the efforts of others who had raised this issue. The Recovery Auditor reduced the number of audits to four, consistent with the appropriate limits, at the direction of CMS but still included the most expensive prostheses. The overpayment totaled over \$90,000. After hearing testimony, CMS responded to the provider's remaining Recovery Auditor questions and concerns.

Maine; Centers for Medicare and Medicaid Services (CMS)

A small business encountered problems with an insurance company processing Medicare Advantage claims filed by a doctor. Following Office involvement, CMS indicated that the insurance company's management met with the doctor and as a result, the insurer provided a new contract to address and resolve the doctor's concerns about the facility reimbursement rates and the insurance company's reimbursement rate for a commercial product.

Virginia; Defense Health Agency (DHA)

A health consulting company had a contract with DHA when the company terminated two employees for substandard work. The contracting officer representative (COR) and Director asked to meet with the company and stated their dissatisfaction of the dismissal of the two employees. The Director gave the business a recommended course of action, including elements that the company's management did not feel were proper. Subsequently, the Director advised that the option for their contract would not be exercised and that the contract would be re-competed. After Office intervention, DHA found that the health consulting company was performing and providing excellent service under the support contract and the COR and Director committed to take corrective actions to prevent future conduct of this nature.

Virginia; U.S. Department of Labor

A computer hardware company owner asked about the right to disclose which contracts the small business held with the federal government. The business was told by several federal agencies that their blanket performance agreements (BPAs) are completely confidential and the company was not allowed to disclose any information either verbally or in writing. In its response to the Office, the Department of Labor stated the intent of such a clause is to prevent contractors from claiming that the Department of Labor's Office of Inspector General endorses the products or services of any particular contractor, but did not, contrary to assertions made by the contractor, purport to make the contracts completely confidential or prohibit the disclosure of the existence of such contracts.

Iowa; U.S. Small Business Administration (SBA)

After receiving approval for a two-year extension on a loan, a business owner was denied a subsequent request and informed by the SBA that the loan was cancelled. The business owner was also informed the previous extension should never have been granted. The owner requested the SBA honor the extension requests or reimburse service fees collected during the first extension period, approve a new application, and waive the origination fees for the new loan. After the Office raised the case to the SBA, the agency approved the business owner's request to extend the maturity of the loan and has taken steps to ensure this issue does not occur in the future.

CONTRACTING ISSUES AND PAYMENT

The contracting arena can be daunting for a small business to navigate. With that, the Office works to ensure small businesses receive payment for services rendered on federal government contracts.

Maryland; U.S. Department of Health and Human Services, National Institutes of Health

An architecture firm experienced contract issues with NIH after not being paid for work performed. After review by the Ombudsman's office, NIH made a final decision to allow the firm's Contract Disputes Act (CDA) claim of \$51,933 be paid in full. In addition, NIH requested the company submit any other claims it may have related to the task order, as well as an updated invoice covering the performance period from Sept. 15, 2014, to the suspension of work on Oct. 10, 2014.

Virginia; U.S. Department of Defense, Army

A testing, consulting, and research and development contractor was concerned about non-payment from a prime contractor to the U.S. Army Research Laboratory. According to the business owner, the prime contractor refused to pay the business for its services. The business also alleged the prime contractor most likely defrauded the federal government by charging them in advance for services that hadn't been performed yet, and by not paying the business, the prime contractor invoiced the government for expenses they did not incur. The business requested an investigation into the matter. Upon investigation, the company was paid \$200,682.

Maryland; U.S. Army Corps of Engineers

A landscaping and construction company was in talks with the U.S. Army Corps of Engineers about the no-cost settlement due to the constant threat of termination as well as the need for payment to the company. Following the business owner's comment to the Office, the business reached a legal settlement of the matters raised resulting in further payment of \$375,000.

North Carolina; U.S. Department of Defense, Army

A construction company, subcontractor to another construction company, received a repair bill from the Army's Network Enterprise Center (NEC) that was far too expensive. The company owner could not get paid what he was owed by the prime contractor because they were holding the subcontractor's money in case they have to settle a claim with NEC. The subcontractor could not contact the government because he did not hold the contract, and NEC refused to meet with him about this problem. With help from the Office, the payment issue was resolved and the company received payment under the contract.

“It's so hard for the small community banks to speak out about the regulations keeping them from being able to help small businesses. It was a real breakthrough for them to have the trust to speak out at our roundtable.”

– Marilyn Landis, Region 3



PENALTY & FINE ABATEMENT

Penalties and fines vary based on business size and circumstances. However, in some instances, small businesses are unfairly fined or served penalties not respective to their size, status and compliance. The Office reviews such cases and works to earn adjustments where appropriate, including corrective action for official records.

Oregon; Internal Revenue Service (IRS)

A welding company owner was concerned about his “overdue taxes or tax returns” and assessed penalties. His hired Certified Public Accountants committed several errors and as a result the business received significant penalties. After the Ombudsman’s office review, the IRS removed the late-filing penalties of \$1,602 and \$1,560, including interest, for tax years 2009 and 2010. The IRS adjusted its records showing no balances due for these years.

Michigan; Internal Revenue Service (IRS)

A member of a Lutheran Church testified regarding compliance with electronic filing procedures. According to the business owner, her organization filed taxes in the same manner as they had in the past; however, their income had changed and they now had to file electronically. The business owner said the church did err in not paying the taxes properly, yet they were paid and they had thought on time. After the Ombudsman’s involvement, the IRS Office of Appeals abated 80 percent of the penalty, which resulted in a refund of \$250, including interest, to the church.

Texas; Internal Revenue Service (IRS)

A municipal arts organization was subjected to an unfair amount of punitive engagements initiated by the IRS for late payments on reporting. The business owner stated it was the organization’s intention to pay in a timely manner, but unforeseen circumstances caused them to struggle to achieve that. After the Office drew attention to the issue, the IRS accepted the organization’s reasonable cause for late filing and abated the penalty \$660 in full.

Kansas; Internal Revenue Service (IRS)

A tanning salon received a letter from the IRS stating their records indicate IRS processed the company’s form 2848 (Power of Attorney and Declaration of Representative), the information was on file, and no further action was required. However, the tanning salon owner later received a letter stating the company still owed money. The case prompted a review and the IRS abated the late filing penalty for reasonable cause and issued a refund for \$472. Also, the IRS updated its database with the appropriate power of attorney authorization.

New Jersey; Internal Revenue Service (IRS)

An asset management company had tax issues for tax year 2005-2008, resulting in a total penalty of \$5,228. The company official said the business supplied all the documents requested, but the IRS did not remove the penalty for the tax years 2005-2008. The business owner requested the penalties be removed. The IRS abated the failure to file penalties due to reasonable cause under the revenue procedure for the 2006, 2007 and 2008 tax years.

Colorado; Internal Revenue Service (IRS)

The IRS issued a Notice of Levy for a steel erection company's 2008 tax issues. Although the IRS was provided with enough information to prove that all taxes due for 2008 were paid in 2008, the IRS claimed there was \$833 in penalties and interest due. The Office helped lead to a decision by the IRS to abate the failure to file (FTF) and failure to pay (FTP) penalties imposed against the small business.

California; Internal Revenue Service (IRS)

A chorale organization received a "Reminder of Overdue Taxes for September 2012" for \$541 in penalties plus another \$16.46 in interest related to their payments made through the Electronic Federal Tax Payment System (EFTPS) following the instructions of a customer service agent at EFTPS. The small business owner's claim for refund and request for abatement was denied. After Office involvement, the IRS abated the penalty and interest in full and adjusted the account showing a zero balance owed.

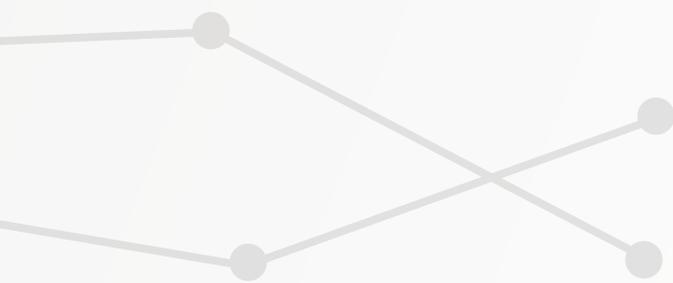
FEATURED CASES

CALIFORNIA; U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION

While a small business owner did submit the required specifications and drawings to an inspector as requested during an annual audit and was awaiting approval, the company still received a Letter of Investigation because the paperwork was not submitted to FAA. With Ombudsman support, the Federal Aviation Administration reviewed the case and took action to resolve the business' concern.

WYOMING; U.S. NUCLEAR REGULATORY COMMISSION

According to a small business, NRC's standard for small entities is inequitable and lower than the U.S. Small Business Administration size standard for a company in this business' North American Industry Classification System code. This made the company ineligible for small entity status, which incurs a higher license fee. Office intervention helped achieve a fair resolution where NRC granted the small business the fee adjustments requested.



REFUNDS

Small businesses often operate on tight cash flow. Therefore, when there are issues with monies owed, loan payments, tax returns and the like, it's difficult for small businesses to continue operations. The Ombudsman's office looks at these cases to liaison between the business and the federal agency to see if refunds are available to help circumvent the burden.

Nevada; U.S. Small Business Administration, Office of Financial Assistance

After one bank purchased the assets of another bank, the owner of a landscaping company wire transferred funds to the first bank to pay off his SBA loan. He received a letter from the bank confirming his payoff. About a year later, he received notice from the U.S. Treasury indicating a balance owed. With the Office's help, the business owner received confirmation that the SBA determined the loan was paid in full and should not have been referred to the U.S. Treasury. The SBA classified the loan as paid in full and requested that the U.S. Treasury refund the payments.

Maryland; U.S. Small Business Administration, Office of Financial Assistance

A man brought to the attention of the Office that he was a personal guarantor for an SBA loan granted to a business that failed. The man alleged his income tax return was taken in violation of a federal court order that discharged all of the his debts, including the balance remaining on the SBA loan. He requested the return of the money, removal from the U.S. Treasury Offset Program and removal of the debt from the credit bureaus. The SBA recalled the debt from the U.S. Treasury and took the necessary steps to process a refund of any offset collected in error.

Florida; U.S. Small Business Administration, Office of Financial Assistance

A small business requested the return of its Federal Tax refund. The business explained it filed for bankruptcy and alleged the refund was taken in error. The business received a check for the full amount of the refund and the matter was resolved.

David Rambhajan, Regional Regulatory Fairness Board Member, Region 5, talks with one of his employees at a jobsite

DECISIONS REVERSED

In some cases, small businesses receive notifications passed down from federal agencies that negatively and unfairly impact operations. In these cases when comments are filed, the Ombudsman works with the agencies to re-review cases and in some instances reverse decisions or amend outcomes in favor of the small business.

Virginia; U.S. Small Business Administration, Office of 8(a) Business Development

The owner of a small wireless Internet business disagreed with the SBA's decision to deny his application. He cited SBA regulations regarding transfers within two years. The Ombudsman's office got results because the SBA determined that since the owner changed the deed based on the medical expenses incurred, he was within the threshold for disadvantaged individuals.

Maryland; U.S. Small Business Administration, Office of 8(a) Business Development

A security company owner sent financial statements from its accountant and documentation, proving a net worth below the required \$250,000 limit for 8(a) certification. After the Office pushed for a review, the SBA's 8(a) Business Development Office reversed its determination that the business owner did not meet the applicable regulatory requirements and accepted the firm as a participant in the 8(a) Business Development Program.

Alaska; U.S. Small Business Administration, Office of 8(a) Business Development

The owner of a government services contractor business refuted SBA's denial of her 8(a) program application. She contended that the SBA denial was based on incorrect statements and assumptions regarding the company. Shortly after testifying at the National Ombudsman's National Hearing, the business received communication from SBA reversing its denial.

Maryland; U.S. Small Business Administration, HUBZone Program Office

Contrary to SBA's denial, the owner of a database recovery company contended the business met the 35 percent eligibility criteria because its employee, on whom the eligibility was based, continued to reside in the same HUBZone that they lived in at the time of application. With the Ombudsman's help, SBA reversed its earlier decision and approved the application based upon the issues raised by the business owner, a review of program policies and the application.

New York; U.S. Small Business Administration, HUBZone Program Office

The owner of a coffee-roasting company believed the business met the principle office requirement because the sole proprietor lived (and the business was located) on an Indian reservation. The Ombudsman's office worked to collaborate with the business owner and federal agencies, and the SBA reversed its earlier decision following clarifications from the Department of the Interior, Bureau of Indian Affairs and the Office of General Counsel and anticipated issuing an eligibility determination.

Texas; U.S. Small Business Administration, Office of 8(a) Business Development

The owner of an engineering services business said the company has the ability to successfully perform in the 8(a) Business Development Program and is not controlled by another corporation. The business owner explained the U.S. Army funding vehicle used a prime contractor administrator to issue work. The only way team-member companies can be funded is to be part of the prime contractor administrator. The business owner disagreed with and requested a reversal of SBA's determination. SBA reversed its decision and approved the request for the firm's participation in the 8(a) Business Development Program.

Utah; U.S. Department of Veteran Affairs, Center for Verification and Evaluation

A small business claimed the decision by the Center for Verification and Evaluation (CVE) to cancel the company's certification was based on an issue determined to not be relevant in the past. The SBA conducted a thorough review and audit of the company and found the company in compliance with certification regulations. With Office assistance, the company received a letter from CVE to indicate that the certification remained verified in the Veteran Affairs business database. As a result, the company was eligible to participate in contracting opportunities with the VA.

CLAIMS DENIED & PROCESSING

The denial of claims processing and payment cause severe issues for small businesses, in some cases the inability to continue work. In FY2015, several cases across multiple industries included issues with Centers for Medicare and Medicaid Services (CMS). As small business claims were denied, the owners filed comments with the Ombudsman's office to request a fair review of the case and resolution to help the small business continue work.

The Ombudsman office worked as a liaison between CMS and the small businesses, resulting in a total of nearly \$400,000 paid back across 18 small businesses.



FEATURED CASES – CONTRACTING ISSUES & PAYMENT

TEXAS; DEFENSE LOGISTICS AGENCY (DLA)

A bioremediation company believed DLA Aviation unfairly decreased the contract value by \$2,357 to re-label material the firm delivered under the purchase order. After the Ombudsman's review, DLA granted the company's claim in its entirety. DLA Aviation paid the firm \$2,357.

"After reviewing the relatively minor nature of the labeling error and the mitigating circumstances (including DLA previously accepting material under the same label and the lack of agreement between the parties on the costs for relabeling), I am granting your claim, in its entirety." – DLA

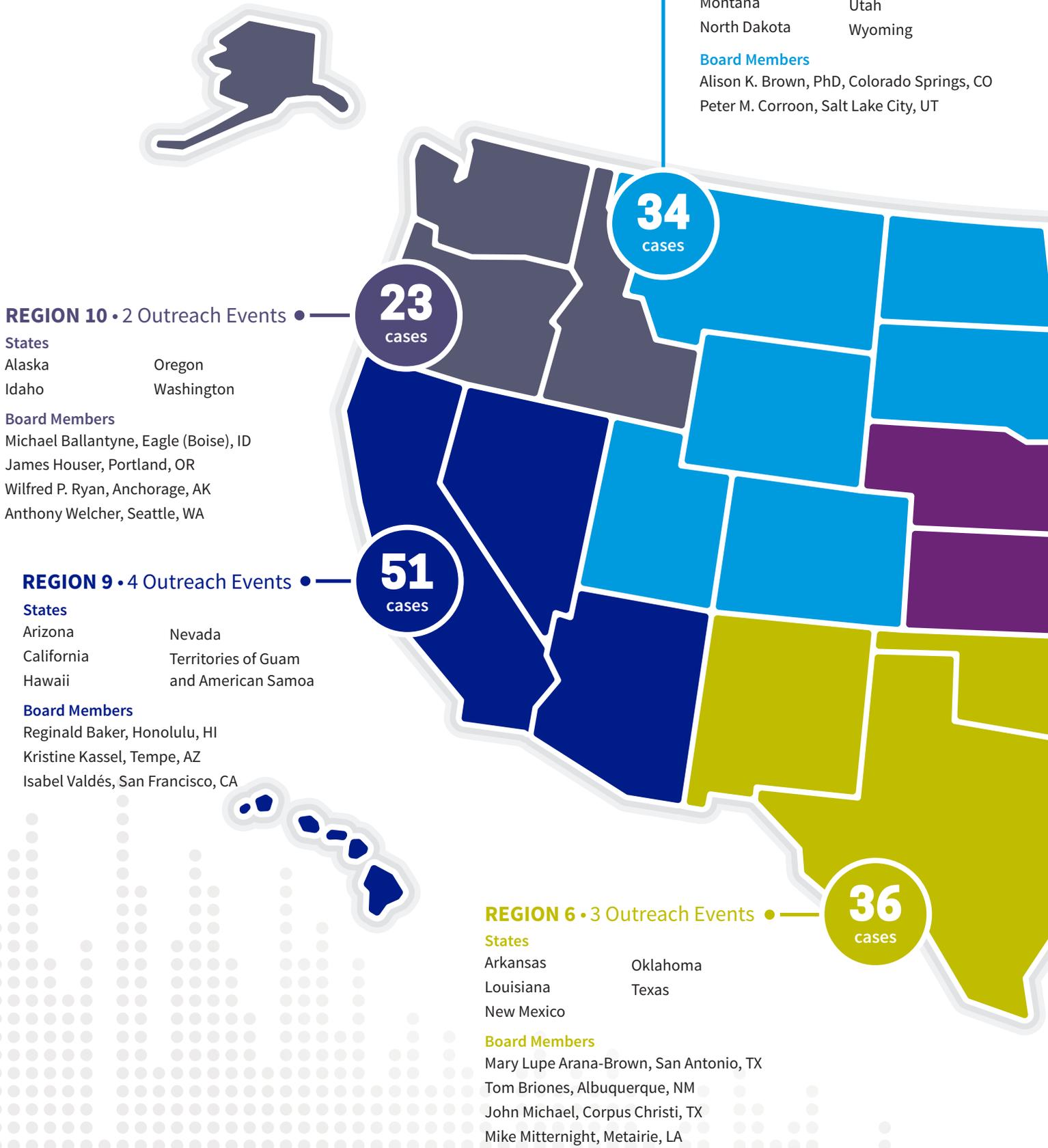
FLORIDA; U.S. DEPARTMENT OF LABOR, JOB CORPS

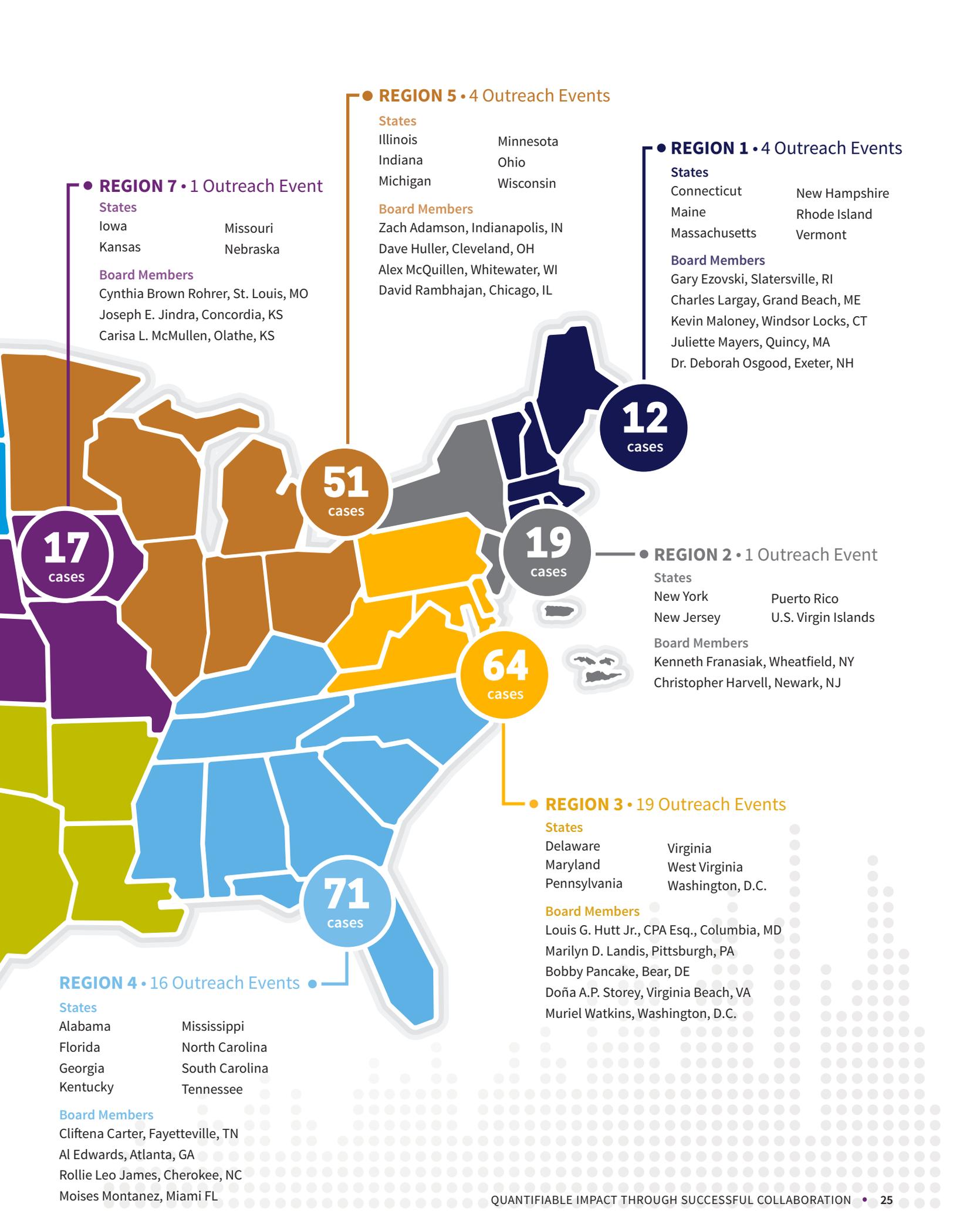
The Department of Labor contacted a construction company to perform an emergency job. The company dropped everything and prioritized the Job Corps project. However, after the owner did not receive complete payment for the work, he tried unsuccessfully for three months to find someone to contact and speak with about the issue. The business owner received a payment in the amount of \$239,328 for services. The U.S. Department of Labor Office of Contracts Management also agreed to process an invoice for the outstanding balance of \$800 upon receipt from the business owner.

FLORIDA; U.S. DEPARTMENT OF DEFENSE, NATIONAL GUARD

An industrial parts company had difficulty obtaining instructions from the Pennsylvania National Guard related to items manufactured. After support from the Office, the United States Property and Fiscal Office (USPFO) for Pennsylvania's Purchasing & Contracting Office eagerly re-established communication with the business in order to negotiate a fair and reasonable settlement. The National Guard paid the company \$130,000.

REGIONAL SNAPSHOT





● **REGION 7 • 1 Outreach Event**

States

Iowa Missouri
 Kansas Nebraska

Board Members

Cynthia Brown Rohrer, St. Louis, MO
 Joseph E. Jindra, Concordia, KS
 Carisa L. McMullen, Olathe, KS

● **REGION 5 • 4 Outreach Events**

States

Illinois Minnesota
 Indiana Ohio
 Michigan Wisconsin

Board Members

Zach Adamson, Indianapolis, IN
 Dave Huller, Cleveland, OH
 Alex McQuillen, Whitewater, WI
 David Rambhajan, Chicago, IL

● **REGION 1 • 4 Outreach Events**

States

Connecticut New Hampshire
 Maine Rhode Island
 Massachusetts Vermont

Board Members

Gary Ezovski, Slatersville, RI
 Charles Largay, Grand Beach, ME
 Kevin Maloney, Windsor Locks, CT
 Juliette Mayers, Quincy, MA
 Dr. Deborah Osgood, Exeter, NH

12
cases

51
cases

19
cases

● **REGION 2 • 1 Outreach Event**

States

New York Puerto Rico
 New Jersey U.S. Virgin Islands

Board Members

Kenneth Franasiak, Wheatfield, NY
 Christopher Harvell, Newark, NJ

64
cases

● **REGION 3 • 19 Outreach Events**

States

Delaware Virginia
 Maryland West Virginia
 Pennsylvania Washington, D.C.

Board Members

Louis G. Hutt Jr., CPA Esq., Columbia, MD
 Marilyn D. Landis, Pittsburgh, PA
 Bobby Pancake, Bear, DE
 Doña A.P. Storey, Virginia Beach, VA
 Muriel Watkins, Washington, D.C.

71
cases

● **REGION 4 • 16 Outreach Events**

States

Alabama Mississippi
 Florida North Carolina
 Georgia South Carolina
 Kentucky Tennessee

Board Members

Cliftena Carter, Fayetteville, TN
 Al Edwards, Atlanta, GA
 Rollie Leo James, Cherokee, NC
 Moises Montanez, Miami FL

17
cases

OMBUDSMAN

Activities FY2015

TYPE OF COMMENTERS

- 325 Small Businesses
- 26 Associations
- 12 Nonprofits
- 10 Other
- 5 Small Government

81 EVENTS IN **24** STATES

FORMAL COMMENTS FILED



224 Online



49 Testimony



46 Email



36 Fax



19 Mail



4 Meetings

Chapter 4

FEDERAL AGENCY RATINGS

Following the close of each fiscal year, the Office of the National Ombudsman rates federal agencies in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). This process lends to the goals of promoting regulatory fairness, lessening unnecessary burdens on small businesses, and enhancing agency accountability. Rating criteria include the responsiveness to small business concerns, the quality of those responses, compliance with SBREFA and facts reported by each agency partner in response to the annual questionnaire. Each agency receives an overall grade for the fiscal year, as well as individual ratings.

RESPONSIVENESS TO SMALL BUSINESS

Regulatory Concerns

Each federal agency earns a letter grade in these areas based on its responsiveness to small business concerns:

- *Timeliness of agency responses*
- *Quality of agency responses*

SBREFA Compliance

Each agency also earns a letter grade on the SBREFA compliance of its policies governing:

- *Non-retaliation against small business commenters*
- *Provision of regulatory compliance assistance to small businesses*
- *Provision of notice to small businesses of their rights under SBREFA, including the right to comment with the Office of the National Ombudsman*

“As a Board we work to create a better dialogue between the businesses and the federal agencies about what kind of improvements and changes to legislation might make for a stronger business environment.”

– Jim Houser, Region 10

Agency Questionnaire Highlights

1

NON-RETALIATION POLICIES

Internal: Does the agency have a written non-retaliation policy available to all employees?

If yes, please provide a copy and indicate how the policy is disseminated and what if any related employee training or education is provided.

YES

NO

Public: Does the agency have a published non-retaliation policy widely available to small entities?

If yes, please provide a copy and indicate how the policy is disseminated (include web link if applicable).

YES

NO

2

COMPLIANCE ASSISTANCE

Internal: Does the agency provide small businesses with regulatory compliance assistance in the form of generally-applicable, written compliance guidance or similar written information?

If yes, please provide copies and indicate how that assistance is disseminated (include web link(s) if applicable).

YES

NO

Public: Does the agency provide small business compliance assistance (e.g., training or counseling) other than generally-applicable, written guidance?

If yes, please describe this assistance, how it is provided (in writing or otherwise), indicate whether individually-tailored compliance assistance is provided to small businesses, and state the name of the designated agency compliance contact.

YES

NO

3

SBREFA NOTIFICATION

Internal: Does the agency provide public notice regarding small entities' rights under SBREFA, including the right to file a comment with the National Ombudsman?

If yes, please provide a copy and indicate how the notice is disseminated (include web link(s) if applicable).

YES

NO

Public: When the agency issues a citation, notice of regulatory violation, charge of violation, or the like to a particular small business, is written notice of small entities' SBREFA rights included in the issuance?

If yes, please include samples of the written notice(s) provided.

YES

NO

Grading Categories

1 *Timeliness of Responses*

Response times are measured from the date the Office forwards a small business comment to an agency to the date the agency's response is received. "Days" are defined as business days.

- 30 days or fewer (A)
- 31-60 days (B)
- 61-90 days (C)
- 91-120 days (D)
- More than 120 days (F)

2 *Response Quality*

The Office considers the specificity and detail provided in each agency's response and determines ratings according to whether:

- *The agency provides detailed information showing that it investigated the facts of the specific case and the actions of the agency personnel involved.*
- *The agency response comes from a high-level representative, such as an agency official with SBREFA responsibilities or someone from the program office with oversight responsibilities related to the comment.*
- *The agency addresses all applicable questions posed and responds to the specific comment made by the small entity.*

When forwarding a comment, the Office of the National Ombudsman may include questions necessary to assessing agency responsiveness. The answers shed light on aspects of responsiveness, including how thoroughly the agency considered the effects of its actions and whether appropriate follow-up occurred. Examples include: "Why and how did you take the enforcement action?" and "Did your agency consider alternatives such as waiving penalties or reducing fines?"

3 *Agency Non-Retaliation Policy*

"Non-retaliation" policies are defined as those designed to prevent acts that punish a small business for complaining or commenting about an agency action. An agency will receive a letter rating of "A" if it demonstrates that:

- *The agency has a written non-retaliation policy that is available to all agency employees.*
- *Small entities have access to the non-retaliation policy at the agency's public website and/or other readily available source.*

Examples of agency non-retaliation policies:

Example 1: Federal Energy Regulatory Commission

The Ombudsman has asked all federal agencies to make clear that if a small business entity requests Ombudsman assistance on a federal agency matter, or complains about a federal agency action, that agency will not retaliate in response. The Commission regards the fair treatment of small businesses, without retaliation, as an obligation of its employees under the standards of conduct applicable to all federal employees by virtue of 5 C.F.R. § 635.101(b).

Example 2: U.S. Coast Guard

The policy is periodically sent as an “ALCOAST” message to all USCG personnel, with timing geared to ensure that personnel are reminded of the policy at least once during a two-year duty rotation. ALCOASTs were distributed in 2006 (ALCOAST 546/06), 2008 (ALCOAST 579/08), 2010 (ALCOAST 536/10), 2012 (ALCOAST 490/12), and 2014 (ALCOAST 446/14). For the full U.S. Coast Guard non-retaliation policy, please contact the Office of the National Ombudsman.

Example 3: Centers for Medicare and Medicaid Services

CMS policy is to encourage small businesses and other small entities to request assistance directly from CMS, or through the Office of the National Ombudsman at SBA, on any matter of concern regarding their treatment by CMS officials or contractors. CMS is committed to maintaining an environment in which small entities are free, and encouraged, to raise complaints, questions, or concerns about any CMS policies, regulations, actions, or practices. No CMS employee is allowed to take any type of retaliatory action against any entity raising a complaint, question, or concern. The Office of Strategic Operations and Regulatory Affairs oversees CMS compliance with this policy. Any allegations of retaliation will be investigated and appropriate action taken to correct the situation. In addition, small entities may comment to the Office of the National Ombudsman if they have any concern about CMS responsiveness or adherence to this policy. The website for the Office of the National Ombudsman can be accessed via the link under “Related Links Outside of CMS” at the bottom of this page. You can also reach the Office of the National Ombudsman by telephone at (202) 205-2417, by facsimile at (202) 481-5719, or by email at ombudsman@sba.gov.

Example 4: U.S. Environmental Protection Agency

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency’s actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA. See Reaffirming EPA’s Policy and Practice Against Using Enforcement as Retaliation.

Example 5: U.S. Department of Commerce

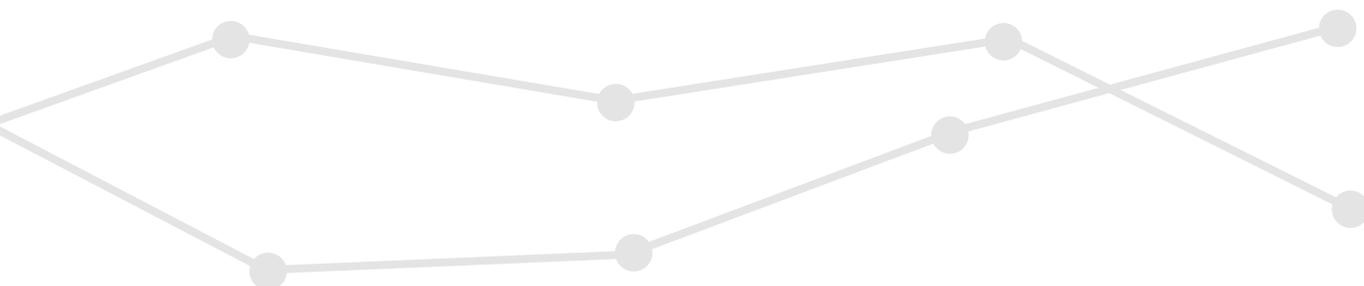
The Department of Commerce is committed to fair regulatory practices, supports the right of the regulated community to raise concerns about regulatory enforcement actions without the fear of retaliation, and will investigate any allegations of retaliation and take appropriate action. We take such concerns and allegations very seriously and strive to avoid even the appearance of impropriety. However, while the Department will investigate any allegation of retaliation, a complaint to the Ombudsman will not stop or delay investigations and legal or administrative proceedings as part of the Departments on going responsibility to enforce relevant Federal laws.

4 Regulatory Compliance Assistance

To receive a letter grade of “A” for providing compliance assistance resources to small business, the agency must demonstrate the availability of:

- *Compliance guides and assistance as required under SBREFA as amended;*
- *A compliance assistance telephone number, website, or other compliance assistance contact for small entities;*
- *Documented compliance assistance education.*

Ratings are reduced for deficient elements.



Examples of agency compliance assistance initiatives:

Example 1: General Services Administration

A small business/public looking for compliance guidance and written communication can easily find this information by going to www.gsa.gov. Visible in the very middle of the home page is an icon indicating “Small Business.” Further, there is a tab immediately visible stating “Doing Business with GSA.” Both areas offer many selections for compliance assistance, etc.

Example 2: U.S. Food and Drug Administration

The FDA is comprised of product centers and a regional field force. Each Center and field force office provides regulatory guidance to all companies. Both the Center for Drug Evaluation and Research (<http://www.fda.gov/Drugs/DevelopmentApprovalProcess/SmallBusinessAssistance/default.htm>) and the Center for Devices and Radiological Health (<http://www.fda.gov/medicaldevices/deviceregulationandguidance/contactus--divisionofindustryandconsumereducation/default.htm>) have robust offices specifically to assist small business. Their respective websites are above.

Example 3: Internal Revenue Service

The IRS continues to develop and deliver compliance assistance programs to assist taxpayers and improve compliance with the tax laws. *The Small Business Taxes: The Virtual Workshop* and *the IRS Tax Calendar for Businesses and Self-Employed*, are valuable resources for small business and self-employed taxpayers. SB/SE’s Communications and Stakeholder Outreach (CSO) continues to find ways to help business owners through leveraged workshops, new partnerships, virtual presentations, national forums and webinars.



5 SBREFA Notice

Compliance with SBREFA's notice requirements remains critical to reaching all entities eligible for assistance through the Office of the National Ombudsman.

Accordingly, the fifth rating evaluates whether an agency has established a policy to inform small entities of their SBREFA rights and whether notice of that policy is distributed generally or only when the agency issues a citation, charge, notice of regulatory violation, or the like.

- *If an agency provides specific written notice of SBREFA rights to small businesses when a citation or notice of regulatory violation is issued, it will receive an "A" rating.*
- *If it does not, but the agency provides general notice to small businesses of the right to comment with the National Ombudsman's office, it will receive a "C" rating.*
- *If the agency provides no notice regarding SBREFA rights or the Office of the National Ombudsman, the agency will receive an "F" rating.*

Agency and Board Input

Federal agencies and members of the Regulatory Fairness Boards were provided the opportunity to comment on a draft of this Annual Report. This final report incorporates any substantive input provided.

EXEMPLARY AGENCIES

U.S. Customs and Border Protection

- From overall grade of "F" in 2013 to "A" in 2014 & 2015
- Shows commitment to improve timeliness and quality of responses to the small business community

U.S. Environmental Protection Agency

- High quality of response – detailed with background information
- Demonstrated timeliness

U.S. Department of Labor — Wage and Hour Division

- Detailed response – addresses small business concerns

Centers for Medicare and Medicaid Services

- Customer service
- Commitment to small business issues

U.S. Housing & Urban Development Department

- Consistently timely
- Quality responses

U.S. Department of Agriculture

- Consistently timely
- Quality responses

Rating Criteria

1

NON-RETALIATION POLICIES

- The agency has a written non-retaliation policy available to all employees and a published non-retaliation policy that is readily available to small entities online or otherwise.
- As used here, “non-retaliation” policies are those designed to prevent acts that punish small business concerns for complaining or commenting about an Agency action. Agency must provide a copy of its policy and provide the web address for those policies available to the public.

2

COMPLIANCE ASSISTANCE

- The agency provides small business compliance guides and assistance as described in § 212, as amended, of SBREFA. The agency provides small entities with a compliance assistance telephone number, compliance assistance website and/or a designated compliance assistance contact available to small business concerns. The agency provides and is able to document compliance assistance education.

3

SBREFA NOTIFICATION

- The agency provides public notice, including the National Ombudsman’s complete contact information, of small entities’ SBREFA rights.
- When each citation or notice of regulatory violation is issued, the agency provides written notice to small entities about their right to comment about the enforcement/compliance process to the Office of the National Ombudsman.

4

SUPPLEMENTAL INFORMATION

Agencies may, and are encouraged to, submit additional information that demonstrates how the agency meets these SBREFA requirements. This may include specific examples illustrating how the agency promotes regulatory enforcement and compliance fairness for small entities, including individualized compliance assistance, the amount of fines abated, or other appropriate accommodations.

FY2015 Agency Ratings

Cabinet Agencies	Comments ^A		SBREFA Compliance			Overall
	Response Timeliness	Response Quality	Non-Retaliation Policies Answers Complete	Compliance Assistance Answers Complete	SBREFA Notification Answers Complete	
Agriculture						
Animal & Plant Health Inspection Service	N/C	N/C	A	A	A	A
Agricultural Marketing Service	N/C	N/C	A	A	A	A
Commerce						
National Oceanic & Atmospheric Administration	N/C	N/C	A	A	A	A
Defense						
U.S. Army	N/C	N/C	A	C	A	B
Education	A	A	A	A	C	A
Energy	N/C	N/C	A	A	A	A
Health and Human Services						
U.S. Food & Drug Administration	A	A	A	A	A	A
Centers for Medicare & Medicaid Services	A	A	A	A	C	A
Homeland Security						
U.S. Coast Guard	A	A	A	A	A	A
U.S. Customs & Border Protection	A	A	A	C	A	A
U.S. Immigration & Customs Enforcement	B	C	A	A	A	B
U.S. Citizenship and Immigration Services	N/C	N/C	A	A	N/A	A
Housing & Urban Development	B	A	A	A	A	A
Interior	N/C	N/C	A	A	A	A
Justice	N/C	N/C	A	A	N/A	A
Labor						
Occupational Safety & Health Administration	A	A	A	A	A	A
Wage & Hour Division	A	A	A	A	A	A
Mine Safety & Health Administration	B	A	A	A	A	A
Employee Benefits Security Administration	B	A	A	A	A	A
Small Business Administration						
8(a) Business Development	N/C	N/C	A	A	A	A
HUBZone	D	D	A	A	A	B
Office of Financial Assistance	A	A	A	A	A	A

FY2015 Agency Ratings (continued)

Cabinet Agencies	Comments ^		SBREFA Compliance			Overall
	Response Timeliness	Response Quality	Non-Retaliation Policies Answers Complete	Compliance Assistance Answers Complete	SBREFA Notification Answers Complete	
State	N/C	N/C	A	A	A	A
Transportation						
Federal Aviation Administration	C	A	A	A	A	A
Federal Railroad Administration	N/C	N/C	A	A	A	A
Federal Transit Administration	N/C	N/C	A	A	A	A
National Highway Traffic Safety Administration	N/C	N/C	A	A	A	A
Pipeline and Hazardous Materials Safety Administration	N/C	N/C	A	A	A	A
Treasury						
Internal Revenue Service*	B	A	A	A	A	A
Veterans Affairs	B	A	F	N/A	F	C

Non-Cabinet Agencies	Comments ^		SBREFA Compliance			Overall
	Response Timeliness	Response Quality	Non-Retaliation Policies Answers Complete	Compliance Assistance Answers Complete	SBREFA Notification Answers Complete	
Consumer Product Safety Commission	N/C	N/C	A	A	C	B
U.S. Environmental Protection Agency	A	A	A	A	A	A
Equal Employment Opportunity Commission	N/C	N/C	A	A	A	A
Federal Communications Commission	N/C	N/C	A	A	C	B
Federal Deposit Insurance Corporation	N/C	N/C	A	A	N/A	A
Federal Energy Regulatory Commission	N/C	N/C	A	C	A	A
Federal Reserve Board	N/C	N/C	A	A	N/A	A
Federal Trade Commission	A	A	A	A	A	A
General Services Administration	A	A	A	A	N/A	A
NASA	N/C	N/C	A	A	A	A
National Credit Union Administration	N/C	N/C	A	A	N/A	A
National Labor Relations Board	A	A	A	A	N/A	A
National Science Foundation	N/C	N/C	A	A	C	B
Pension Benefit Guaranty Corporation	N/C	N/C	A	A	A	A
U.S. Securities and Exchange Commission	A	A	A	A	A	A

See Appendix C for Agency Ratings footnotes and comments

“ Partnership is central.
We must think of all the
entities as one team.
We have **one united
goal to keep America
strong** and make our
regulatory processes
fair for businesses.”

Earl L. Gay, National Ombudsman

Chapter 5

LOOKING AHEAD

As the Office introduced new leadership in FY2015, our goal remains steadfast — to reach out to the small business community and let them know we are ready to assist them when needed and to collaborate with all of the stakeholders of the small business community to find quantifiable solutions to regulatory issues and concerns.

Our efforts in the coming fiscal year include:

- *Increased outreach to the small business community so they know to turn to us as a resource when faced with issues involving regulatory fairness.*
- *Pushing for broad solutions to systemic regulatory problems to meet important regulatory aims without placing impractical burdens on small business.*
- *Collaborating more with interagency partners to work for the benefit of small businesses.*
- *Increasing the number of members, their diversity, their involvement in working groups and the outreach efforts of the Regulatory Fairness Boards because of the vital role they play representing the small business community.*
- *Increasing the information technology capabilities at the National Office to hold more hearings and other outreach events online to assist greater numbers of small businesses.*
- *Reviewing existing policies to determine whether they still make sense under present circumstances or if the conditions that created them no longer exist.*
- *Continuing the excellent dialogue with our small business representatives serving on the Regional Regulatory Fairness Boards and the issue-oriented working groups.*

While we continue to focus on individual, prompt assistance to small business owners who seek our help, we also are in the process of finding ways to measure the direct economic impact of our service for the individual businesses and by the indirect impact of systemic issues resolution on greater numbers of businesses. With a goal of always serving the individuals, we seek to broaden our impact in quantifiable ways by measuring the outcomes of Ombudsman interventions.

Our staff and our Regional Regulatory Fairness Board members serve as our eyes, ears and voice on the front lines to root out unfair regulations. Those efforts will grow even more important as we continue our outreach to the business community. We are one team, working together, to balance important regulatory protections and keep America's small business community strong.

Appendices



Appendix A

Statute 15 U.S. Code § 657–Oversight of regulatory enforcement

(a) Definitions

For purposes of this section, the term—

- (1) “Board” means a Regional Small Business Regulatory Fairness Board established under subsection (c) of this section; and
- (2) “Ombudsman” means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b) of this section.

(b) SBA Enforcement Ombudsman

(1) Not later than 180 days after March 29, 1996, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

(2) The Ombudsman shall—

(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

(c) Regional Small Business Regulatory Fairness Boards

- (1) Not later than 180 days after March 29, 1996, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.
- (2) Each Board established under paragraph (1) shall—
 - (A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;
 - (B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and
 - (C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b) of this section.
- (3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.
- (4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.
- (5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.
- (6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

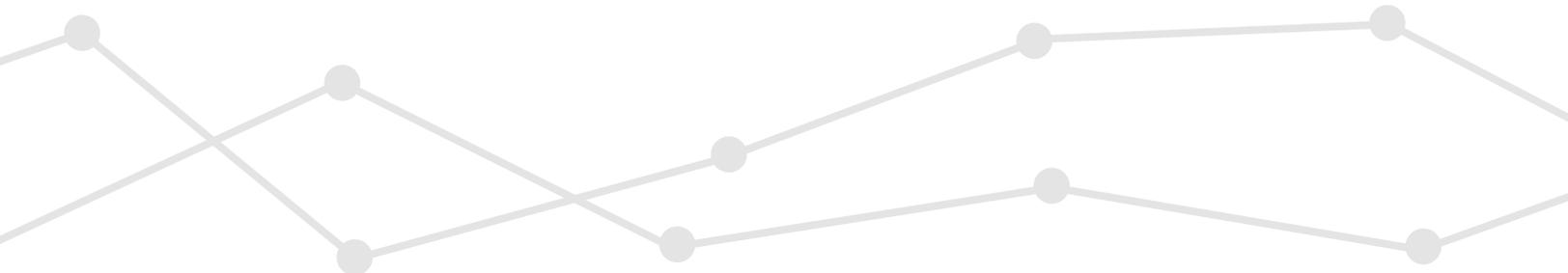
(d) Powers of Boards

- (1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.
- (2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.
- (3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.
- (4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Board.

Appendix B

Miscellaneous Case Summaries

Federal Agency	State	Industry	Issue	Outcome
Centers for Medicare and Medicaid Services	California	Healthcare	Hold placed on Medicare account due to error in processing revalidated enrollment application	Hold now lifted, claims deposited and now processing normally
Centers for Medicare and Medicaid Services	Michigan	Healthcare	Regulations and documentation requirements regarding use of the G0463 procedure code	Contact information provided to answer specific questions about the use of G0463
Centers for Medicare and Medicaid Services	New Jersey	Healthcare	Revocation of Medicare privileges	Reinstatement of Medicare billing privileges; claims rejected now eligible for resubmission
Centers for Medicare and Medicaid Services	South Carolina	Healthcare	Repayment claims denied, stating “appeal was not filed in a timely manner”	Claims should not have been recouped based on guidelines; claims were re-reviewed and adjusted in the amount of \$1,613.19
Internal Revenue Service	Texas	Support services	High penalty, “Currently Non Collectible” status issued and tax lien on property due to issue with payroll taxes	Tax lien released, suspended collection of tax debt and penalty; option offered to pursue lien withdrawal
Internal Revenue Service	Utah	Support services	Delinquent federal debt indicator made in error on records	Indicator corrected
U.S. Department of Army (MEDCOM)	Texas	Healthcare	Cancellation of services	Formal apology and additional information provided to support doing business with MEDCOM and upcoming contract opportunities
U.S. Department of Army	Virginia	Management consulting	Contract award for follow-on services to an 8(a) on a sole source basis, even though the business performed the same services for three years	Acquisition strategy changed from sole source 8(a) to small business set-aside



Miscellaneous Case Summaries (continued)

Federal Agency	State	Industry	Issue	Outcome
U.S. Department of Homeland Security	Florida	Automotive	Visa status extension application denied due to erroneous classification of business as “inactive”	Application reopened
U.S. Department of Homeland Security	Massachusetts	Food service	Denied Visa extension after erroneous legal advice	Visa extension approved
U.S. Department of Homeland Security	Texas	Energy	Visa application denied due to document miscommunication	Application reopened
U.S. Department of Justice	Maryland	Support services	Request for equitable adjustment on contract	Modification filed by contracting officer to adjust contract pricing
U.S. General Services Administration	California	Medical supplies	Denial to add new products to GSA contract, new restrictions/obligations added, attempt to cancel contract, erroneously referred for a certificate of competency	Contract reassigned to the Section Chief to administer future requests, following apology for miscommunication
U.S. Small Business Administration	California	Engineering services	HUBZone application denial with no clarification	Application reopened
U.S. Small Business Administration	Connecticut	Hospitality	Deficiency judgment on SBA loan	New offer in compromise
U.S. Small Business Administration	Minnesota	Banking	Erroneous recording of loan as “Paid in Full,” causing refusal to reinstate loan and honor guarantee	Review of records, discovery of error and agreement to reconsider request to reinstate loan and guaranty purchase request
U.S. Small Business Administration	Virginia	Realty	“Unexplained” foreclosure	Reversed foreclosure and reinstated loan

Appendix C

Agency Ratings Footnotes and Comments

Note A Cabinet Department's subordinate organizational unit is listed separately if it received at least one enforcement action-related comment during the fiscal year.

N/C No comments relating to an agency enforcement action were filed with ONO; consequently, there is no basis for scoring the timeliness or quality of responses provided to such comments.

^ Comment timeliness and quality ratings are based on agency responses, if any, provided to ONO as of 2/1/16, which is 120 days following the close of FY2015 (120 days is the maximum time allowed for a response to receive a timeliness grade other than "F").

X The agency failed to provide the information necessary for this statutorily mandated report pursuant to 15 U.S.C. § 631, et. seq.

N/A Not applicable; the agency asserts that it is not subject to this aspect of SBREFA due to the nature of its charter.

* Response quality rating is based on responses to FY2012, FY2013 and FY2014 cases received in FY2015.

Appendix D

National Ombudsman Directory

Main Number: 202-205-2417 * **Hotline:** 888-REG-FAIR

Gay, Earl • National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness
Earl.Gay@sba.gov

Swift, Yolanda • Deputy National Ombudsman
Yolanda.Swift@sba.gov

Pope, Cynthia • Case Management Specialist
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Zahirieh, Elahe • Case Management Specialist
Elahe.Zahirieh@sba.gov

“Just as important as fighting the big issues is fighting **the thousands of small ones.**”

Marilyn Landis, Region 3

2015

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