

**2011
Fiscal Year
National Ombudsman
Report to Congress**

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U.S. Small Business Administration

**Small Business: Providing
Goods, Services & Solutions**



National Ombudsman's 2011 Report to Congress

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THE ONO MISSION

The National Ombudsman's mission is to assist small business owners when they experience excessive or unfair Federal agency enforcement actions.

The Office of the National Ombudsman (ONO), an office within the U. S. Small Business Administration (SBA), was created by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The law's provisions pertain to all small businesses that receive or are subject to any enforcement-related communication or contact by Federal agency personnel, including audits, on-site inspections, and agency compliance assistance.

SBREFA fosters a small business-friendly enforcement environment by authorizing the National Ombudsman to:

- Work with each Federal agency that has regulatory authority over small businesses to ensure that entrepreneurs have a means to comment on compliance and enforcement activities. ONO encourages agencies to address small business concerns promptly.
- File an annual report with Congress in which ONO evaluates agencies' compliance assistance and enforcement activities. ONO bases these evaluations on substantiated comments received from small business owners and input from the ten Regional Regulatory Enforcement Fairness (RegFair) Boards.
- Establish a process for ONO to receive comments from small businesses about excessive or unfair regulatory enforcement and/or compliance actions by Federal agency personnel. The National Ombudsman refers these comments to the Inspector General of the affected agency in appropriate circumstances.
- Provide affected Federal agencies with an opportunity to comment on the draft version of the annual report to Congress.
- Conduct public events in conjunction with RegFair Board members in each SBA region to listen to and record comments from small business owners and representatives of small business. The public forums provide an opportunity for entrepreneurs to comment on Federal regulatory enforcement and/or compliance activities without fear of retaliation.

What is an unfair enforcement action?

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

ONO REGIONAL REGFAIR BOARD MEMBERS, FY 2011

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) authorizes the creation of ten Regional Regulatory Enforcement Fairness (RegFair) Boards to:

- Meet at least annually to advise the National Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies.
- Report to the National Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the board concerning agency enforcement policy or practice.
- Provide comment to the National Ombudsman on the draft annual report before publication.

RegFair Board members are appointed by the SBA Administrator. All members are small business owners, officers, or operators and serve voluntarily. Achieving diversity is a major goal in selecting RegFair Board members so they are truly representative of the small business communities in which they operate.

Following are the members of the ONO RegFair Boards in each of the ten SBA Regions centered at Boston (for New England states); New York City (for Mid-Atlantic states); Philadelphia (for South Atlantic states); Atlanta (for Southeastern states); Chicago (for Midwestern states); Dallas (for Southern states); Kansas City (for Heartland states); Denver (for Rocky Mountain states); San Francisco (for Western states); and Seattle (for Northwestern states):

Region I

Bernard Featherman
Intergroup
Highland Beach, FL

Robert J. Kane
KarTele
Waterbury, CT

Andrew E. Markowski, Esq.
Gara & Markowski, LLC
West Hartford, CT

Deborah A. Osgood
Knowledge Institute
Exeter, NH

Kathryn M. Weare
The Cliff House Resort & Spa
Ogunquit, ME

Region II

Howard Horowitz
Elite Marketing Group
New Hyde Park, NY

W. Brian Maillian
Whitestone Capital Group, Inc.
New York, NY

Don Perry
Shiva's Karma, LLC
Warwick, NY

Jonathan Weiss
Intermedia Group, Inc.
West Hempstead, NY

Region III

Brooks Hulitt
Droxel Hamilton, LLC
Philadelphia, PA

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

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

Doña A.P. Storey
Quality Technical Services, Inc.
Virginia Beach, VA

Muriel Watkins
MW Financial, Inc.
Washington, DC

Region IV

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

Willie G. Lucas
JSL Development Center, LLC
Wilson, NC

R. Bruce McCrory
Kiker Corporation
Mobile, AL

William Jackson Patton
DEI Services Corporation
Winter Park, FL

Emilio Pérez
Emilio Pérez, LLC
Goldenrod, FL

Region V

Stephen L. Becher
Home Owner's Resource Guide, Inc.
Apple Valley, MN

Iris Cooper
JustAskIris!
Columbus, OH

Craig K. Freedman
Freedman Seating Company
Chicago, IL

Bob Kulp
Kulp's of Stratford, LLC
Stratford, WI

Joseph J. Montel
Coleman Stevenson & Montel
Indianapolis, IN

Region VI

Kay C. Bills
Strategic Native American Partnership,
LLC
Oklahoma City, OK

Dr. Ernest L. Johnson, Sr.
Developers & Managers Group, LLC
Baton Rouge, LA

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

Anna Muller
NEDA Business Consultants, Inc.
Albuquerque, NM

Jim R. Newell
Newell Agency
Little Rock, AR

Region VII

Cynthia (Cindy) Brown
Shred-It, Brown Germann Enterprise, Inc.
Hazelwood, MO

Joseph E. Jindra
KNCK, Inc.
Concordia, KS

Carisa L. McMullen
Landworks Studio, LLC
Olathe, KS

Scott Perkins
Wilson & Company, Inc.
Overland Park, KS

Nate Weaton
Weaton Capital
Fairfield, IA

Region VIII

Alison K. Brown, PhD
NAVSYS Corporation
Colorado Springs, CO

Sheryl Garling
R and D Enterprises, Inc.
Casper, WY

Steven M. Marks
Marks Lumber
Clancy, MT

Danton B. Rice
PrintingForLess.com
Livingston, MT

Michael J. Stransky
GSBS Architects
Salt Lake City, UT

Region IX

Eddy N. Kemp
E.N. Kemp & Associates, Inc.
Kaneohe, HI

Ernest J. Reyes
Network Realty
San Diego, CA

James Settelmeyer
Settelmeyer Ranches Incorporated
Minden, NV

Cynthia Wrasman
Winning Sales Worldwide (DBA)
Paradise Valley, AZ

Paul C. Wright
Berkeley Policy Associates
Oakland, CA

Region X

John Bradshaw
Portland Transmission Warehouse
Portland, OR

Richard G. Gaspar
Gaspar's Construction
Seattle, WA

David M. Hart
Continental Mapping Consultants, Inc.
Portland, OR

Wilfred P. Ryan
Ryan Air Services
Anchorage, AL

Anthony Welcher
Capital Park, LLC
Bellevue, WA

Message from the SBA Administrator

On behalf of the SBA, I am pleased to present the 2011 Report to Congress of our Office of the National Ombudsman.

This Report demonstrates the achievements of the Office of the National Ombudsman, which works to assist America's small business cope with Federal regulations. Many Federal regulations are written with large, sometimes multinational, corporations in mind. Small businesses without the human and financial resources of larger corporations often become impeded by regulations that make little sense when applied to small firms or that entail crippling rather than corrective penalties. Under these circumstances, the ONO can step in to help small businesses deal with Federal agencies for working out reasonable paths forward. It is of exceptional importance that small businesses – the nation's driving force of job creation – not be unreasonably hobbled by unintended consequences of the nation's millions of regulations.

Compared to the year previous, the Office of the National Ombudsman in 2011 more than doubled to 56 the number of public hearings, roundtables, panel presentations, and other events it conducted for listening to Americans who run the nation's small businesses. Additionally, the ONO responded to more than 2,800 public inquiries (again doubling the number from 2010) and delved into 328 cases of varying degrees of complexity.

I am pleased that in the spirit of these efforts on January 18, 2011 President Obama issued Executive Order 13563, the Improving Regulation and Regulator Review. This is the most sweeping order in 18 years for streamlining and making sensible federal regulations, ones that will be crafted taking account of the views of affected parties, and will impose the least burden consistent with their objectives.

Moreover, President Obama initiated Startup America, an effort to assist entrepreneurial small businesses, in part by working to identify and remove unnecessary barriers to their growth.

These Presidential efforts, along with those of the SBA and its Office of the National Ombudsman, have made – and will make – the United States a more fertile country for small business and entrepreneurs to prosper.



A handwritten signature in blue ink, appearing to read 'Karen G. Mills'.

Karen G. Mills
SBA Administrator

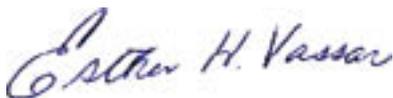
Introduction by the National Ombudsman

I'm pleased to present the National Ombudsman's Fiscal Year 2011 Report to Congress.

Throughout 2011, the Office of the National Ombudsman (ONO) operated to serve as the voice for small businesses when they confronted unfair and excessive Federal regulatory enforcement and compliance. ONO sought to foster a small business friendly environment by encouraging Federal agencies to examine and consider the specific comments and complaints submitted to the National Ombudsman by small businesses.

As I traveled to each region of the country, I listened to the concerns of small business and carried their issues back to each Federal agency involved. Together with members of the 10 Regional Regulatory Fairness Boards, I participated in 56 public events in 20 states. The Office of the National Ombudsman reviewed hundreds of small business comments, complaints, and concerns; held a Federal agency summit, which included 27 distinct Federal agencies and 51 participants; and conducted a national hearing that allowed small businesses from across the country to express regulatory fairness issues having a negative impact on the successful operation of their livelihood.

I am pleased that the President and SBA Administrator Karen Mills have entrusted me and my staff with this important responsibility. This report to Congress reflects the activities of the National Ombudsman and members of the 10 Regional Regulatory Fairness Boards in encouraging Federal agencies to understand the needs and dreams of small business.



Esther H. Vassar
National Ombudsman and
Assistant Administrator for Regulatory Enforcement Fairness



I FY 2011 Highlights

United States small businesses have proved over and over again they are the power and the prod of innovation, dexterity, and flexibility in the nation's economy. They create new products and services, and keep our nation competitive in the global economy. In the process, small businesses create jobs, which raise the standard of living of the employees, their families, and their communities.

Accordingly, it is important that small businesses play on a level regulatory playing field, not being hampered by overly burdensome or inappropriate regulation. Federal agencies issue regulations for the safety of employees and customers, for protecting the environment, and for diminishing the possibility of criminal conduct. These are all major and worthy objectives, but individual agencies often do not see that the totality of regulations from all agencies can create burdens on small businesses that strain their fragile resources and impede them from making progress and hiring more workers. Often an undue weight of regulation stems from inadequate communication or miscommunication, or from technicalities that can be overcome with compromise. But too often in the past small business owners found their

voice and concern gained little traction when seeking consideration by Federal agencies.

To address such situations, the Congress passed and then amended in 2007 the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) so that small businesses could gain a voice concerning individual business issues at regulatory agencies. SBREFA authorizes the Office of the National Ombudsman (ONO) within the Small Business Administration (SBA) to help small businesses with issues stemming from Federal agency regulations, and establish ten Regional Regulatory Enforcement Fairness (RegFair) Boards, which raise small business regulatory issues to ONO and the SBA.

The ONO assists the small business portion of the American economy by:

- Providing a variety of channels through which companies can file comments describing their enforcement challenges; and
- Delivering small business comments to the appropriate Federal agency officials, who are asked to make prompt responses.

The ONO also rates all Federal agen-

cies with regulatory authority over small businesses on such criteria as non-retaliation policy; extent of making available compliance assistance information to small businesses; timeliness of response to small business concerns; quality of response and more. These ratings serve as a mirror to agencies to understand their relationship with small businesses and to encourage ways of improving that relationship.

This *Report to Congress* chronicles the efforts of the ONO in 2011 to help the small business segment of the United States economy voice its concerns about Federal regulations. Its main sections are the following four Chapters.

Chapter II. Agency Ratings Encourage Enforcement Fairness

ONO's annual evaluation of Federal agency compliance and enforcement activities is an important means for encouraging a fair and effective regulatory environment for small business. ONO rates agencies using criteria designed to measure enforcement fairness throughout the regulatory process. The measures are:

1. Timeliness in responding to small entity comments
2. Quality of response to small entity comments
3. Agency non-retaliation policy (from responses to ONO's questionnaire)
4. Agency regulatory enforcement compliance assistance (from responses to ONO's questionnaire)
5. SBREFA notice of small entity rights and of availability of ONO.



As noted in the Introduction, the National Ombudsman participated in 56 public events in 20 states. The Office of the National Ombudsman reviewed hundreds of small business comments, complaints, and concerns; held a Federal agency summit, which included 27 distinct Federal agencies and 51 participants; and conducted a national hearing that allowed small businesses from across the country to express regulatory fairness issues having a negative impact on the successful operation of their livelihood.

Chapter II presents examples of Federal agencies that have worked to smooth the way for small business entities to more readily conform to their agency regulations.

Chapter III. Mission Accomplished: Small Business Success Stories

ONO's comment process offers a forum by which entrepreneurs can present their compliance and enforcement concerns, then work with regulatory agency staff toward a resolution. The National Ombudsman stands ready to act as a liaison between entrepreneurs and Federal agencies through the Regulatory Enforcement Fairness Comment Process.

A small business person initiates the process by filing a comment with ONO that describes the compliance or enforcement problem. The National Ombudsman then contacts the Federal

agency official(s) with the authority to address the situation. The goal is to encourage a resolution that leads to effective regulation, taking into account both small business concerns and the agency's regulatory obligations under the law.

Chapter III describes ONO's comment process, followed by success stories gleaned from ONO case files:

- Communications Challenges
- Errors and Oversights
- Compliance Costs and Rules

Chapter IV. RegFair Boards and Outreach: Fostering Community Connections

Outreach is a critical component of ONO's mission. Outreach activities help ONO connect with entrepreneurs at the local level throughout the United States to let them know they have an ally to turn to when faced with excessive or unfair Federal regulatory enforcement actions. Meeting face-to-face with business constituents also enriches the National Ombudsman's understanding of current regulatory challenges.

ONO strengthens and extends its outreach efforts through partnering with the business community and other Federal government entities:

- ONO's ten Regional Regulatory Enforcement Fairness (RegFair) Boards serve in local communities and make contact with entrepreneurs where they live and work.
- U. S. Small Business Administra-

tion (SBA) resource partners collaborate with ONO to enhance its mission of seeking compliance and regulatory enforcement fairness for small businesses.

- ONO teams with national trade groups to better understand and encourage resolution of members' enforcement issues with open communication channels among small firms, government and elected officials at all levels, and partner organizations.
- ONO continues to increase Federal regulatory agencies' understanding of its mission and partners with them to review small business issues.



Chapter IV describes these and other outreach efforts, including agencies' new and improved national campaigns to promote "prevention over penalty" in the Federal regulatory arena.

Chapter V. Looking Ahead: Building Bridges; Making a Difference

The National Ombudsman continues the agency's bridge-building work of opening lines of communication between small businesses and Federal agencies to promote a fair and effective regulatory environment.

To that end, the National Ombudsman has raised the bar on ONO's response time as an example to Federal agencies across government. ONO has set a goal of submitting small business comments to Federal agencies within four business days of receipt, then sharing the Federal agencies' responses with small business no more than four days after the agencies submit their responses.

A more rapid response time is a single example of ONO's commitment to living our slogan: "It is not enough to just listen to small businesses – what we do must make a difference."

III

Agency Ratings Encourage Enforcement Fairness

The annual rating of Federal agencies is an important part of the Office of the National Ombudsman's (ONO) mission to encourage a fair and effective regulatory environment for small business. The ratings measure Federal agencies' progress toward making enforcement fairness a priority throughout the compliance process. SBREFA is the Small Business Regulatory Enforcement Fairness Act of 1996 as amended in 2007.

The Agency Questionnaire

The rating process begins with a questionnaire sent to Federal agencies inquiring about their regulatory policies and interactions with their small businesses constituents. The ONO gives agencies letter ratings based on answers to the following questions:

- Does your agency have a written non-retaliation policy available to all employees?
 - If yes, how is it disseminated throughout your agency? Please provide a hard copy.
- Does your agency have an online and/or a published non-retaliation policy available for viewing by small business concerns?
 - If yes, please provide the specific web address or a copy of the published policy.
- Does your agency have a compliance assistance website or any published small entity compliance guides or information?
 - If yes, please provide hard copy samples and/or pertinent website addresses and please explain how your agency implements this section.
- Does your agency inform small business concerns about their rights under SBREFA and the availability of the National Ombudsman to receive their comments?
 - If yes, how will a small business owner come by the information?
- Does your agency provide written notice to small business concerns at the specific time a citation, notice of regulatory violation, charge of violation, or any equivalent or like notification is issued?
 - Please include samples of the form, document, charging instrument or similar communication mechanisms that are issued to inform small business concerns about SBREFA rights.

ONO provides additional information on the Questionnaire explaining how ONO judges responses and the criteria used for awarding letter grades “A” through “F.”

Federal Agency Rating Criteria for 2011

The ONO issues agencies a rating of “A” through “F” based on five criteria:

1. Timeliness of response to small entity comments
2. Quality of response to small entity comments
3. Agency non-retaliation policy (from agency questionnaire)
4. Agency regulatory enforcement compliance assistance (from agency questionnaire)
5. SBREFA notice (from agency questionnaire)

ONO also issues each agency a composite rating for the year (see Table II-1).

Timeliness of Response— Criterion 1

- 30 days or less = A
- 31-60 days = B
- 61-90 days = C
- 91-120 days = D
- Over 120 days = F

ONO calculates response time from the

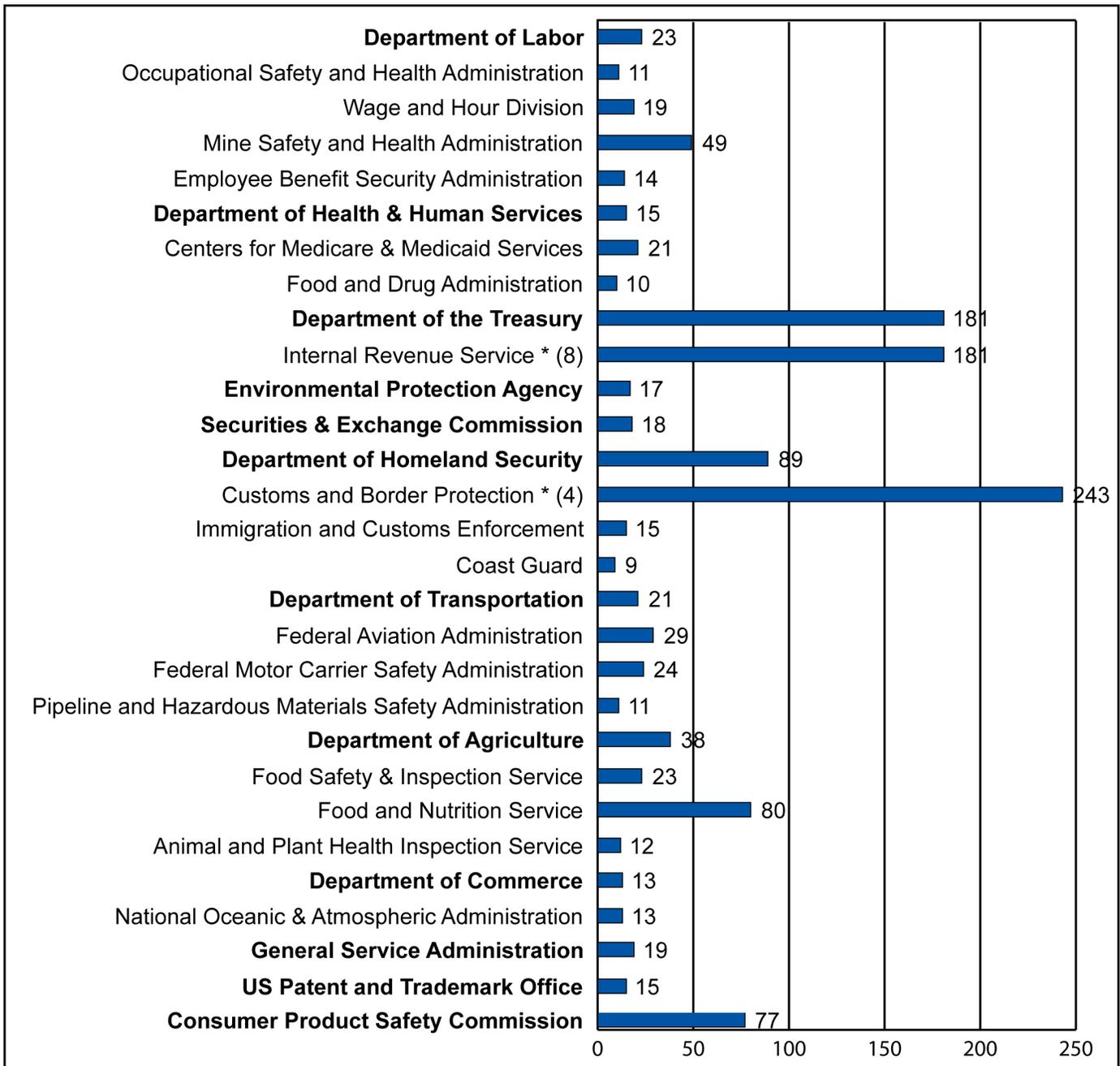
day it forwards a small business comment to an agency until the day it receives the agency’s response. For rating purposes, “days” are defined as business days. If no response is received after 120 days, ONO assesses a grade of “F” for “Timeliness.” Figure II-1 depicts the average number of days that agencies took to respond to small business comments in FY 2011.

If circumstances warrant, ONO may accept justified requests from an agency for additional time to respond and/or to submit an interim response. In these rare instances, ONO will take into consideration the specific circumstances when calculating timeliness.

ONO is sensitive to the fact that agencies need adequate time to thoroughly evaluate compliance and enforcement actions in a way that meets legal requirements. The small business, meanwhile, may be struggling as a result of regulatory proceedings that strain its limited resources. A prompt resolution of the enforcement issues can benefit both parties and foster mutual understanding between the entrepreneur and Federal agency personnel who administer the regulation.

Figure II-1. Response of Federal Agencies

Response of Federal Agencies to Comments
Average Number of Days - FY 2011



* As of February 1, 2012 – (# of cases awaiting response)

Quality of Response— Criterion 2

When the ONO receives a comment from a small business owner concerning a regulatory enforcement or compliance issue, it forwards that comment along with its documentation to the Federal agency involved. At the same time, the ONO may include correspondence with questions such as, “Why and how did you take the enforcement action?” and “Did your agency consider alternatives, such as waiving penalties or reducing fines?” The answers assist the ONO in assessing the agency’s responsiveness, how thoroughly the agency considered the effects of its actions, and whether any follow-up occurred.

The ONO addresses this correspondence to a high-level official within an agency. The ONO may refer any comments to the agency’s Inspector General in appropriate circumstances. The ONO considers the level of specificity and detail provided in each agency’s response and determines ratings according to the following criteria:

- The agency addresses all applicable questions posed in the ONO’s correspondence and responds to the specific comment made by the small entity.
- The agency provides detailed information showing that it looked into the facts of the specific case and the actions of the agency personnel involved in the enforcement activity.
- The agency response comes from a high-level representative (i.e. someone from the agency with SBREFA

responsibilities or someone from the program office with oversight responsibilities related to the comment)

Agency Non-Retaliation Policy— Criterion 3

The ONO defines “non-retaliation” policies as those designed to prevent acts that punish a small business owner for complaining or commenting about an agency action. An agency will receive a letter rating of “A” if it demonstrates that all of the following elements exist:

- The agency has adopted a formal written non-retaliation policy that is available to all agency employees.
- Small entities have access to the non-retaliation policy at a publicly available web address or the agency’s website and/or other readily available public places.

Well-enforced non-retaliation policies are critical if small business owners are to feel free to offer feedback on how Federal enforcement and compliance activities affect business operations, including perceived negative impacts. ONO encourages agencies to establish non-retaliation policies that specifically reference small businesses rather than rely on generalized ethics codes or standardized anti-discrimination rules.

Many agencies routinely distribute copies of non-retaliation policies during enforcement actions and outreach events to advise government employees and small businesses that entrepreneurs should not be punished for raising objections to perceived unfair treatment.

Two examples of agency non-retaliation policy and distribution follow.

The **Centers for Medicare & Medical Services (CMS)** of the **Department of Health and Human Services (HHS)** is clear about its non-retaliation policy. It sends a one-page memo to all employees stating: “No CMS employee is allowed to take any type of retaliatory action against any entity raising a complaint, question, or concern.” The memo also names the office that is responsible for the policy and the course to be followed for allegations of breach of the policy: “The **Office of Strategic Operations and Regulatory Affairs** is responsible for administering CMS compliance with this policy. Any allegations of retaliation will be investigated and appropriate action taken to correct the situation.”

The **Environmental Protection Agency (EPA)** posts on its public website a memo entitled *Reaffirming EPA’s Policy and Practice Against Using Enforcement as Retaliation*, which includes the sentence: “‘Retaliation’ includes threats meant to prevent comments by a regulated entity, adverse actions taken in revenge for comments that were made, or actions designed to impose more rigorous compliance standards than are imposed by law or regulation.” Moreover, EPA at the time of an inspection of a small business provides a copy of the *U. S. EPA Small Business Resource Information Sheet*, which explains that the EPA will not retaliate if a small business comments under SBREFA on an enforcement action taken against it, and it posts this publication on its

public website.

Agency Regulatory Enforcement Compliance Assistance— Criterion 4

Congress amended SBREFA in 2007 by adding stronger, more specific requirements for agency compliance assistance to small businesses. The purpose of compliance assistance is to educate small business owners about regulatory requirements and address concerns before enforcement actions become necessary.

A Federal agency must demonstrate that all of the following elements exist to receive a letter grade of “A.” Ratings are reduced accordingly for missing and/or non-existent elements:

- The agency provides compliance guides and assistance as described in Section 212 SBREFA as amended in 2007.
- The agency provides small entities with a compliance assistance telephone number, compliance assistance website, or a compliance assistance contact.
- The agency provides and is able to document compliance assistance education.

With the National Ombudsman’s encouragement, agencies are finding that prevention is the best prescription for heading off small business enforcement problems. When entrepreneurs understand compliance expectations, regulatory enforcement becomes both fair and effective.

Several examples of agency compliance assistance follow:

The **Consumer Product Safety Commission** (CPSC) sends written guidance to affected firms when it issues a new regulation. It does so in conformance with Section 212 of SBREFA as amended in 2007, which calls for guidance publications for small businesses when new regulations go into effect. CPSC also holds public meetings to explain new rules and their requirements. When CPSC issues a new standard for children's toys to take effect on January 1, 2012, it will have its newly formed Office of Education, Global Outreach, and Small Business Ombudsman conduct an outreach and education program not only for raising awareness of the standard but also for educating manufacturers about it.

In addition, CPSC posts on its website www.cpsc.gov, a page with the title Contact Information: Do You Have Questions about New Requirements under the Consumer Product Safety Improvement Act? This page lists a toll-free Consumer Hotline staffed during business hours and capable of guiding inquirers to the proper agency information. The page also lists telephone numbers for compliance information, the CPSC Small Business Ombudsman, commissioners, executive director, general counsel, and office of public affairs.

The **Department of Education** this year prepared one of its FY 2011 final regulations called Program Integrity: Gainful Employment – Debt Measures, which takes effect on July 1, 2012. The regulation affects educational institu-

tions' academic programs meant to better prepare graduating students for employment or, if students are not better prepared, then those educational institutions risk losing access to Federal student aid. The regulation requires preparation of a final regulatory analysis as called for in the Regulatory Flexibility Act and therefore requires publishing a small business compliance guide for the regulation to be made available at least by the date the new regulation is to take effect. The Department of Education is preparing such a publication. In addition, the Department of Education makes available numerous compliance resources, including ones specifically for small and disadvantaged businesses, small business contracting, financial aid, and other programs. It also gives contact information for the Department's Ombudsman for Small Business Contracting/Procurement Matters. These resources include website pages, mailing addresses, and telephone numbers.

The **Federal Deposit Insurance Corporation** (FDIC) makes similar compliance assistance publications and cites as an example a publication issued to help small businesses. This is its 2005 *Guidelines Establishing Information Security Standards*, which is available through the agency's website section on news. In addition, the FDIC provides a structured compliance educational program in its Directors' Colleges and FDIC-sponsored symposiums. Small bankers are also offered compliance assistance when they meet with senior FDIC officials at industry gatherings. Additionally, the agency runs a Banker

Outreach Program by which FDIC officials, among other things, inform bankers of recent statutory changes. The FDIC also has a toll-free hotline for regulated institutions, and its website contains contact telephone numbers and email addresses for specific questions. Moreover, the agency maintains a compliance assistance employee for each of its regulated institutions, as well as Subject Matter Experts at the regional and national levels.

The **Federal Reserve** has a website page called Compliance Guides for Small Entities at www.federalreserve.gov/bankinfo/cgdefault.htm. The

page references SBREFA and states that the guides reached from this page serve to simplify the language of federal regulations affecting small business and “develop more accessible sources of information on the regulator and reporting requirements for small businesses.” A drop-down menu allows a user to click on any of a score of compliance guides, each titled for a specific regulation (for example, *Regulation C: Compliance Guide*). These guides make clear that the guides themselves are not the regulations (though notes where a reader can find each) and explain in simple language section by section the regulation’s intent.

Table II-1. Rating of Agencies According to FY 2011 Criteria

Cabinet Level Agency (# of comments)	Comments		Non-Retaliation Policy	Compliance Assistance	Informs about SBREFA	Overall	Additional Complaints/Comments Referred
	Timeliness	Quality					
AGRICULTURE							4
Food Safety & Inspection Service (1)	A	A	A	A	C	A	2
Animal & Plant Health Inspection Service (2)	A	A	A	A	C	A	1
Food & Nutrition Service (1)	C	A	A*	A	C	B	1
COMMERCE							
National Oceanic & Atmospheric Administration (47)	A	A	A	A	A	A	7
DEFENSE	N/A	N/A	Did not respond to the ONO questionnaire				11
EDUCATION	N/A	N/A	A	A	A	A	
ENERGY	N/A	N/A	Did not respond to the ONO questionnaire				
HEALTH & HUMAN SERVICES							2
Food & Drug Administration (7)	A	A	A	A	A	A	3
Centers for Medicare & Medicaid Services (4)	A	A	A	A	C	A	32
HOMELAND SECURITY							
Coast Guard (1)	A	A	A	A	A	A	1
Customs & Border Protection (4)	F	N/A	Did not respond to the ONO questionnaire				3
Immigration & Customs Enforcement (3)	A	A	A	A	A	A	2
HOUSING & URBAN DEVELOPMENT	N/A	N/A	A	A	A	A	3
INTERIOR	N/A	N/A	A	A	B	A	
JUSTICE	N/A	N/A	A	A	C	B	1
LABOR							2
Occupational Safety & Health Administration (34)	A	A	A	A	A	A	
Wage & Hour Division (5)	A	A	A	A	A	A	
Mine Safety & Health Administration (10)	B	A	A	A	A	A	
Employee Benefits Security Administration (2)	A	A	A	A	A	A	
STATE	N/A	N/A	A	B	A	B	
TRANSPORTATION							1
Federal Aviation Administration (1)	A	A	A	A	C	A	1
Pipeline and Hazardous Materials Safety Administration (1)	A	A	A	A	C	A	
Federal Motor Carrier Safety Administration (1)	A	A	A*	A*	C	A	
TREASURY	N/A	N/A	Did not respond to the ONO questionnaire				1
IRS (8)	B***	N/A	A	A	A	A	3
VETERANS AFFAIRS	N/A	N/A	Did not respond to the ONO questionnaire				2

Non-Cabinet Level Agency (# of comments)	Comments		Non-Retaliation Policy	Compliance Assistance	Informs about SBREFA	Overall	Additional Complaints/ Comments Referred
	Timeliness	Quality					
Commodity Futures Trading Commission (1)	A	A	A	A	A	A	
Consumer Product Safety Commission (1)	C	A	A	A	C	B	
Environmental Protection Agency (4)	A	A	A	A	A	A	
Equal Employment Opportunity Commission	N/A	N/A	A	A	A	A	1
Federal Communications Commission	N/A	N/A	A	A	C	B	
Federal Deposit Insurance Corporation	N/A	N/A	A	A	C	B	
Federal Energy Regulatory Commission	N/A	N/A	A	A	A	A	
Federal Reserve Board	N/A	N/A	A	A	C	B	
Federal Trade Commission	N/A	N/A	A	A	A	A	2
General Services Administration (12)	A	A	Answered N/A to all questions in the questionnaire				
National Credit Union Administration	N/A	N/A	A	A	C	B	
National Labor Relations Board	N/A	N/A	A	N/A	A	A	
Pension Benefit Guaranty Corporation	N/A	N/A	A	N/A	A	A	
Small Business Administration	N/A	N/A	A	A	A	A	57
Securities and Exchange Commission (2)	A	A	A	A	A	A	

FY 2011 Department and Agency Rating Notes

Cabinet departments have a number of distinct, subordinate organizational units within their areas of responsibility. These units use a wide variety of names such as: Administration, Agency, Bureau, Service, Division, Office or other unique names not listed. In most instances, for rating purposes, if the Cabinet-level agency has a posted policy, it will apply to all of that Agency's organizational units. For example, the USDA has a publicly available *non-retaliation policy* and *information about SBREFA and how to contact the National Ombudsman*. Therefore, for rating purposes all USDA subordinate organizations will receive credit for having the information available to the public (it will be noted by a grade with an asterisk [*]). Conversely, if the Cabinet-level agency does not have a publicly available *non-retaliation policy* and *SBREFA information on how to contact the National Ombudsman* then each organizational unit will be rated on its own. With limited exceptions, a Cabinet Department's subordinate organizational unit will only be listed if it received at least one small business comment during the rating period.

The following Cabinet Departments and Non-Cabinet Agencies did not provide answers to the National Ombudsman's FY 2011 questionnaire: Department of Defense, Department of Energy, Department of Treasury (except the IRS), Department of Veterans Affairs, Customs and Border Protection, Federal Communications Commission, and the General Services Administration.

** These three agencies are Federal Financial Institution Regulators. The agencies have established Ombudsman functions pursuant to the Riegle Community Development and Regulatory Improvement Act. To receive an 'A' rating in this category from the National Ombudsman, an agency must directly make reference to the National Ombudsman at the Small Business Administration on both its public website and at the time a citation or notice or regulatory violation occurs.

*** Agency provides interim responses.

N/A = Not Applicable.

SBREFA Notice— Criterion 5

ONO issues a rating based on whether an agency has established a policy to inform small entities of their SBREFA rights at the same time that the agency issues a citation, notice of regulatory violation, charge of violation, or similar action:

- 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 an agency generally informs small businesses about their right to comment about the enforcement/compliance process to the National Ombudsman’s office but the agency provides no specific notification at the time of citation or notice of regulatory violation or similar action, it will receive a “C” rating.
- If the agency makes no mention of SBREFA and the National Ombudsman, the agency will receive an “F” rating.

Despite the ONO’s commitment to outreach, many small business owners do not know about the National Ombudsman until they receive notice of their SBREFA rights during an enforcement action. The SBREFA requirement is thus an important means of informing entrepreneurs that the National Ombudsman stands ready to assist them with overwhelming regulatory enforcement and compliance complications.

Examples of agency compliance assistance follow:

The Department of the Interior’s **Office of Surface Mining** (OSM) exceeds this criterion because during any inspection or audit of a mine by the OSM, OSM employees give written notification to the audited company that it may contact the Office of the National Ombudsman and comment on the enforcement/compliance process. In addition, the OSM has created a link on its website to ONO’s website so that companies may obtain information about the National Ombudsman’s office and its services.

The **National Credit Union Administration** (NCUA) has sent letters to all of the nation’s small credit unions notifying them of their right under SBREFA to comment to the ONO on NCUA’s regulatory processes. The NCUA also posts the information on webpages written specifically for small credit unions.

The **National Oceanic and Atmospheric Administration** (NOAA) has attached the following language to all its notices of violation: “In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman to receive comments from small businesses about excessive or unfair federal regulatory enforcement actions. If a small business wishes to comment on the enforcement actions of NOAA, it may do so via the internet at www.sba.gov/ombudsman, email

at ombudsman@sba.gov, mail (Small Business Administration, Office of the National Ombudsman, 409 Third St. SW, Washington, D.C. 20416), or by calling 1-888-REG-FAIR. PLEASE NOTE: The right to file comments with the Ombudsman is independent of the rights afforded every respondent, including the right to contest the assessment of a civil monetary penalty or permit sanction. If you wish to exercise any of your rights as a respondent, you must do so in accordance with the procedures described in 15 C.F.R. Part 904, and separately from any comments you may provide to the Ombudsman.”

The Securities and Exchange Commission (SEC) includes the following paragraph with two of its letters to entities requested to supply information: “Small Business Owners: The SEC always welcomes comments on how it can better assist small businesses. If you have comments about the SEC’s enforcement of the securities laws, please contact the Office of Chief Counsel in the SEC’s Division of Enforcement at 202-551-4933 or the SEC’s Small Business Ombudsman at 202-551-3410. If you would prefer to comment to someone outside the SEC, you can contact the Small Business Regulatory enforcement Ombudsman at <http://sba.gov/ombudsman> or toll free at 1-888-REG-FAIR. The Ombudsman’s office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.” The two letters are entitled Supplemental Information for Entities Subject to Inspection by the

Commission and Directed to Supply Information Other than Pursuant to Commission Subpoena and Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena.

Agency Comments Regarding Ratings

ONO presented a draft of this report to the agencies and RegFair Board members for their comments. ONO did not receive any substantial comments.

Enforcement Fairness Conveys Benefits to All

Federal regulations are most effective when small business owners clearly understand their obligations under the law. ONO’s agency ratings are meant to help guide Federal agencies with regulatory authority toward compliance and enforcement fairness. The American people benefit each time an agency provides compliance assistance rather than resorting to enforcement actions. The agency accomplishes its legally-mandated mission, and small businesses have a chance to thrive in an effective enforcement environment.



Mission Accomplished: Small Business Success Stories

The Office of the National Ombudsman (ONO) promotes regulatory fairness through strengthened communication and understanding between small businesses and Federal regulatory agency staff.

Even the most dedicated Federal officials can be unaware of the cumulative effect that multiple regulatory regimes can have on a small business. Entrepreneurs, meanwhile, focus their time and energy on growing their businesses, thereby growing their local economies. Small entities want to play by the rules, but can become overwhelmed when struggling to keep up with all relevant regulations. ONO's comment process offers a forum by which entrepreneurs can present their compliance and enforcement concerns, then work with regulatory agency staff toward resolution.

The process begins when a small business files a comment with the ONO describing unfair compliance or enforcement practices. The ONO seeks a resolution that leads to effective regulation, taking into account both small business concerns and agencies' regulatory obligations under the law.

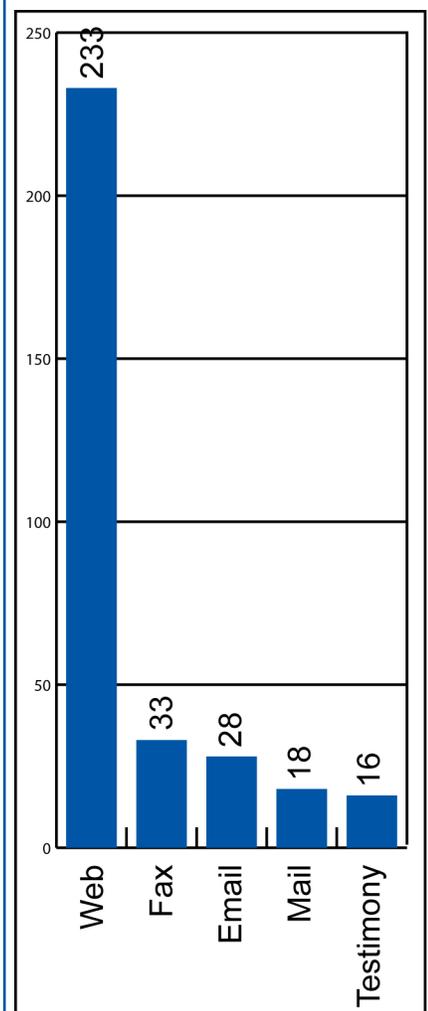
Focusing on Fairness

The National Ombudsman stands ready to act as a liaison between entrepreneurs and Federal agencies through its Regulatory Enforcement Fairness Comment Process (see Figure III-2). The ONO receives comments regarding the enforcement actions of more than 35 Federal departments and agencies and provides small entities with multiple avenues for submitting comments, with online filing generating the largest number of comments in FY 2011 (see Figure III-1).

The National Ombudsman's website (www.sba.gov/ombudsman) is the most popular online filing venue, allowing small business owners to begin the process simply by clicking on "How to File a Complaint or Comment."

After receiving pertinent small business comments and complaints, the ONO directs them to the relevant Federal agency, appropriate SBA office, or other governmental entity for a high-level review (see Figure III-2) and requests that Federal agencies consider the fairness of their enforcement actions. The ONO sends a copy of the agency's response to the small business owner.

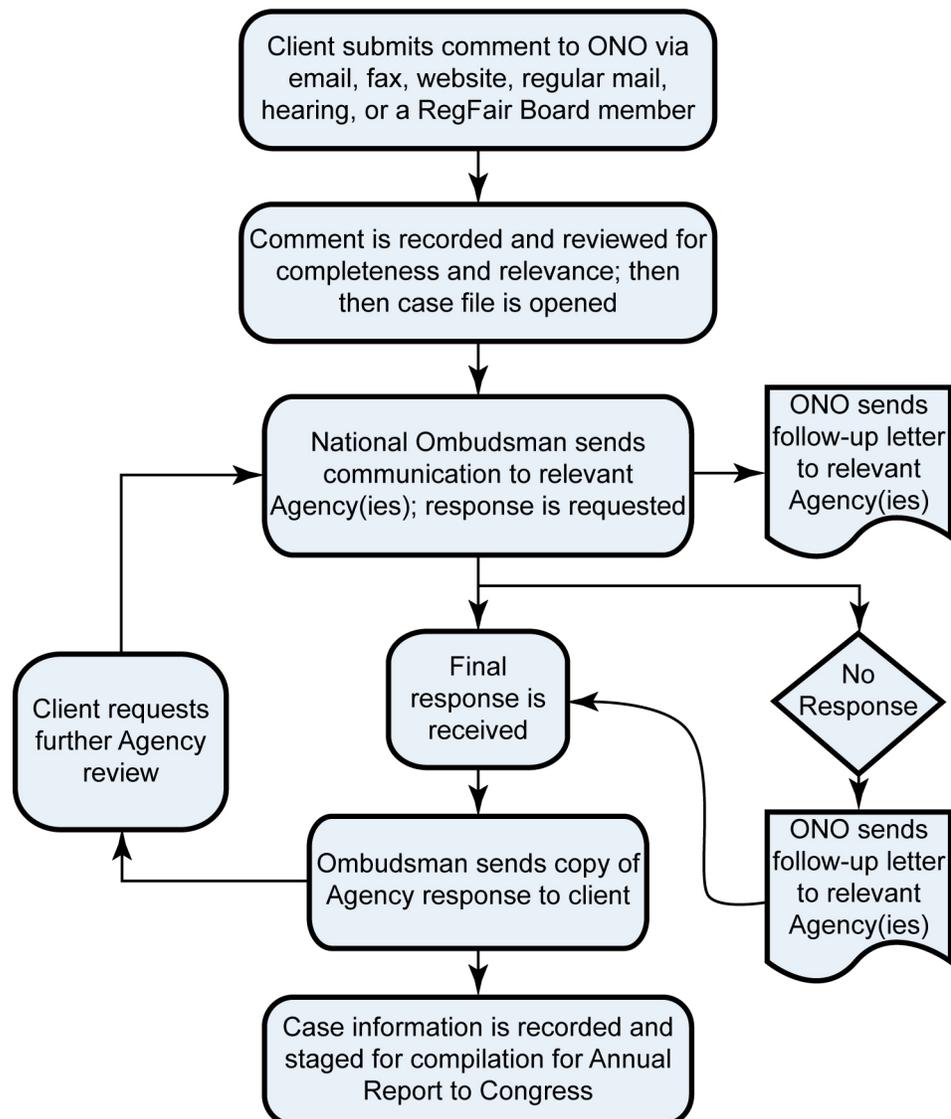
FIGURE III-1. HOW COMMENTS WERE RECEIVED



The National Ombudsman assists businesses with their compliance and regulatory challenges, but ONO and RegFair Board members cannot:

- *Serve as a small entity's attorney. ONO does not legally represent the organization filing the comment.*
- *Guarantee a positive outcome.*
- *Overrule, stop, or delay a Federal action (such as halting an IRS audit). The Federal agency involved is the only one that can change a regulation.*

FIGURE III-2. ONO REGULATORY ENFORCEMENT FAIRNESS COMMENT PROCESS



Giving Small Businesses a Voice

“Unfair and excessive regulation” has a variety of meanings for the small business constituents of Federal agencies. Busy entrepreneurs and diligent agency officials each have their own perspectives on regulatory issues. The comment cases presented in this chapter represent the regulatory dilemmas most frequently addressed by ONO in fiscal year (FY) 2011. These cases illustrate how the National Ombudsman acts as small business ambassador for fair and effective Federal treatment. In each case, a small business sent a comment to the ONO, which initiated a review and communication as illustrated in Figure III-2. A brief précis of the comment is presented along with the outcome after ONO involvement.

- Communication Challenges
- Errors or Oversights
- Compliance Costs and Requirements

Communication Challenges

Despite good intentions all around, some burdens and annoyances placed on small business owners are due to imperfect communication, lack of proper information, or delays stemming from both. In 2011, ONO was involved in numerous situations caused by faulty communication and incomplete information. Generally these were resolved when the proper information was exchanged.

Comment: Commenter was concerned about its application for a National

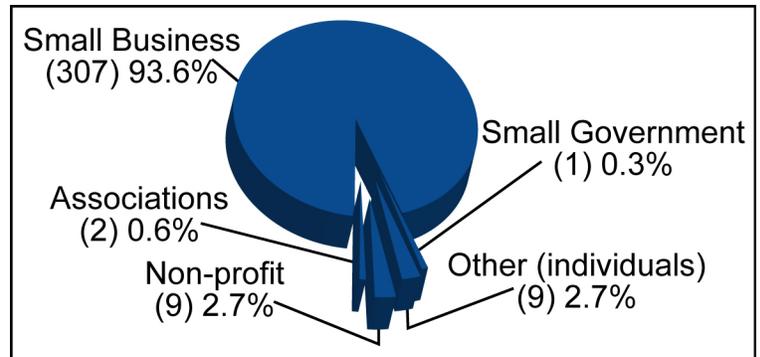
Provider Identifier (NPI) number, which would allow it to be a Medicare and Medicaid provider. It stated, “We have

been trying for 16 months to get our Medicaid number and have been continually rejected and had our applications and forms returned to us regularly without any reason or explanation.”

► **Outcome:** Centers for Medicare and Medicaid Services (CMS) worked with its contractor, which stated the application lacked some information. The contractor was given the contact information of the commenter’s company, reached the company, and was able to quickly receive the missing items.

Comment: Commenter received a Change of Address approval from a CMS contractor and began sending Medicare claims to the contractor. Subsequently, the contractor incorrectly deposited \$17,004.43 to the commenter’s bank account instead of mailing individual checks to patients. The contractor then asked the commenter not to return the money until it rectified its mistake. The commenter experienced difficulties arising from the contractor’s mistake, and wrote checks to repay individual patients from the money erroneously deposited to his/her account. According to the commenter,

FIGURE III-3. BREAKDOWN OF WHO FILED COMMENTS



“Thank you so very much for all your help. I just received a call . . . that we are finally enrolled.”

Commenter’s email

the contractor duplicated the payments to the individual patients and demanded that the commenter pay back the erroneous deposit. Although the commenter had an Extended Repayment Plan in force with the contractor, deductions were being made from his/her Social Security deposits. Commenter said he/she received threats from collection agencies and the Department of Treasury for the full amount.

► **Outcome:** CMS admitted that the commenter’s claims were incorrectly processed as assigned instead of non-assigned, and the payments were sent to the commenter rather than to his/her patients. There was miscommunication between the contractor and the commenter, which resulted in the erroneous deposit. The claims were later adjusted and processed correctly as non-assigned to pay the patients, and the overpayment was requested from the commenter.

The commenter requested an Extended Repayment Plan (ERP) and has been making payments each month. However, by the time the commenter requested the ERP, the case had already been turned over to the U. S. Department of the Treasury. The commenter was asked to send to Treasury a copy of the letter received from the contractor showing he/she had the ERP so that Treasury would stop deducting money from his/her social security deposit.

Comment: Commenter’s Medicare National Provider Identifier number was deactivated. Commenter did not know why this happened and no one

was answering the phone to explain the situation. Because of the deactivation, the commenter could not bill patients.

► **Outcome:** CMS said the commenter had to obtain a Type 2 NPI based on tax documentation. A CMS contractor worked with the commenter to obtain information needed to update the provider profile from a solo provider to a solo group. The new solo group and Provider Transaction Access Number (PTAN) became effective the same day as the old solo PTAN was deactivated, saving a lapse in coverage. The contractor was notified to expedite the commenter’s new Electronic Data Interchange (EDI) enrollment.

Comment: Company has two locations and erroneously billed claims for both locations under the same NPI number. Company corrected the NPI number for one of the locations and resubmitted the erroneously billed claims. Then the company voided the erroneously paid claims, completed a credit balance report, and repaid the money for the voided claims. However, CMS stopped paying for the other claims saying they had not received payment for the voided claims. Company provided CMS with proof of the cashed checks made to Medicare Part A. Company claimed CMS owed them \$45,000.00. They were unable to bill another \$150,000.00 as a result of CMS holding the money back from the company.

► **Outcome:** CMS said the commenter company accompanied its report with a check with other documentation including the credit balance report.

The company had also submitted these claims electronically to be adjusted even though it had remitted the check amount. Therefore the Medicare Credit Balance Report and the claim adjustments produced duplicate overpayments. The appropriate refund due to the company was issued and the company became able to submit claims for payment.

Comment: Commenter submitted an application to a CMS contractor in order to become enrolled as a provider. The contractor said the application lacked required information. The commenter re-submitted the application three times and provided all requested information but there were further delays in processing the application.

► **Outcome:** The commenter's application was expedited and completed.

Comment: Commenter's Medicare PTAN was deactivated because the company did not respond to a mailing. Despite providing documentation which CMS requested and waiting 60 days, the commenter was informed that its application had not been reviewed.

► **Outcome:** CMS completed a site inspection for the company and scored as a pass. The PTAN was reactivated.

Comment: The commenter had two SBA-guaranteed loans that were placed in default status and referred to the U.S. Department of the Treasury. The commenter made payments through the bill-pay system for the correct amount

only to be told the payments were insufficient. The commenter believed the accounts should not be in default, because the law requires written notice of default before any action. The commenter did not receive a delinquency notice even though the lender had his/her correct address.

► **Outcome:** The SBA determined that despite the servicing bank having the correct address, the due process letters had been sent to an incorrect address. The SBA recalled the loans from the Department of Treasury.

Compliance Costs and Rules

Requests for assistance dealing with agency rules, inspections, citations, and penalties are one of the more frequent types of calls to the ONO from small businesses for aid. Often a single rule impedes a company's forward progress, and/or citations with accompanying penalties threaten to cripple operations.

Comment: Commenter wrote that the Food Safety Inspection Service (FSIS) of the U. S. Department of Agriculture furnishes 40 hours of plant inspection weekly at no cost to the company for the meat items it produces and furthermore that FSIS does not charge for label approvals it sends to Washington. But the company was recently charged for a quarterly Agricultural Marketing Service (AMS) audit and complained that because it was never charged for the plant inspection and label approval it should not be charged for the AMS audit.

► **Outcome:** The Department of Agriculture explained it does not receive appropriated funds for administering the CN Labeling Program and thus is obligated to recover the costs of its services. Nevertheless the agency department reviewed the commenter’s situation to see if the costs of conducting future reviews could be reduced. It concluded it could reduce travel cost significantly by using local staff. The agency also said it could not waive the entire cost of the commenter’s bill but agreed to reduce the bill’s travel portion.

Comment: Commenter was diagnosed with cancer and cut back on his/her medical practice, but continued to see and bill for one Medicare patient. Recovered, the commenter resumed his/her practice but was told his/her NPI number had been deactivated. The commenter detailed his/her frustration with unsuccessfully trying to have the number reinstated.

► **Outcome:** The CMS contractor said it routinely deactivated providers that had not billed for 12 consecutive months. It also said the commenter had not complied with their requests for additional information for reactivation. Once the commenter supplied the information, the contractor made the reinstatement and retained the commenter’s original Medicare effective date.

Comment: Commenter was unable to submit its Medicare claims electronically because of the large dollar amount. Consequently, the commenter requested a waiver so it could submit its claims

in paper form. CMS guidelines, however, do not allow claims in paper form unless the company has fewer than 11 employees.

► **Outcome:** A CMS contractor advised the commenter on how she should file claims with a large dollar amount.

Comment: In 50 years of business, commenter had never had an Occupational Safety & Health Administration (OSHA) issue a “Citation and Notification of Penalty.” Commenter felt “unfairly and harshly” punished for violations that should have only merited warnings with the opportunity to make corrections. In this economic environment, commenter was unable to absorb the financial strain incurred by OSHA’s penalties.

► **Outcome:** OSHA said that the maximum penalty would have been reduced after consideration of probability and severity of the hazards causing injuries. It also said: “The employer was afforded a 40% reduction of the proposed penalties because of its small size and a 10% reduction because the company did not have a poor OSHA inspection history.” OSHA sent the commenter a proposed Expedited Informal Settlement Agreement (EISA) that would further reduce the proposed penalty if the commenter signed and returned the agreement to OSHA.

Comment: Since January 2011, commenter has submitted his/her Medicare NPI number application three times with no response.

► **Outcome:** CMS said the application was rejected because it was submitted with no surety bond and with accreditation pending. Later the revised application was rejected because the surety bond did not reflect the correct legal business name of the applicant. The final application was completed and a Provider Transaction Account Number was issued.

Comment: After 23 years in business with no accidents, commenter business suffered one over which it had no control. Occupational Safety & Health Administration (OSHA) inspected and issued the commenter citations and an Invoice/Debt Collection Notice. Commenter argued the OSHA fine could put the company out of business and asked that the fine be waived on behalf of the employees.

► **Outcome:** OSHA's accident investigation resulted in four serious citations, one willful citation, and three other-than-serious citations, resulting in a fine primarily for the willful citation. In an informal meeting with the commenter, OSHA reduced the proposed penalties and allowed the employer to pay the balance interest free.

Comment: Commenter protested three OSHA citations and penalties as well as the seriousness of the violations.

► **Outcome:** At an informal conference one item was reclassified to other-than-serious and another was deleted. The total penalty was reduced.

Errors or Oversights

Despite good intentions and strong quality control, Federal agency officials can make errors and overlook others during their duties to protect workers, the environment, and the public. ONO can help small business owners in voicing concern about errors and oversights so that issues are resolved with a minimum of distress to the small business owners.

Comment: Commenter received Medicare "Gold Letters" requesting documentation to prove patients met medical requirements for all claims of medical transportation; Medicare denied 86% of the claims the commenter was sending to them. Further, CMS' contractor was preventing all their other claims from being paid. Commenter laid off about 40 EMTs and paramedics and was contemplating filing for bankruptcy, which would result in laying off another 50 to 60 EMTs and paramedics.

► **Outcome:** CMS discussed claims issues with its contractor. The contractor completed the prepayment review of claims submitted by the company as well as a series of beneficiary interviews. The results confirmed that the beneficiaries did meet the medical necessity requirement. The claims were scheduled for payment.

Comment: Commenter complained of an OSHA citation and notification of a penalty.

► **Outcome:** Department of Labor's Assistant Area Director (AAD) contacted the commenter company. The AAD

discussed the issue with the commenter company and offered the opportunity for the employer to provide documentation, which it did. The AAD withdrew the citation and penalty and executed an informal settlement agreement, which the commenter company signed. The inspection is now closed with no citation and penalty on the employer's record.

Comment: Commenter complained of an OSHA inspection and subsequent issuance of citations.

► **Outcome:** OSHA participated in an informal conference with the commenter, who provided documentation that he/she is a sole proprietor who hires subcontractors to perform the work. The documentation showed the persons who performed the work were subcontractors. Accordingly, he/she has no employees and is not covered by the OSHA Act. The citations were dismissed.

Comment: Commenter complained of a U.S. Department of Labor's Mine Safety & Health Administration (MSHA) citation of a flat tire, which was the interior of a tandem pair on a trailer pulled by a tractor trailer truck. He said there was no negligence on the part of the company or the driver, and that the flat tire would neither cause the driver to lose control of the truck nor create a fire hazard. Commenter requested a formal conference.

► **Outcome:** MSHA reviewed the matter, found the citation to have been

issued in error and voided it.

Comment: Commenter applied for an SBA disaster loan, noting both spouses' credit records, one being less admirable than the other. After being denied the loan on the joint application, the commenter submitted, as requested, a written explanation why his/her name should be removed from the application. The second application was also denied.

► **Outcome:** SBA incorrectly interpreted its own rules. It contacted the commenter's spouse and corrected the misinformation. The spouse submitted an individual application that was approved.

Comment: After having difficulty obtaining a permit, the commenter cancelled his/her FCC license. The FCC confirmed the license cancellation, but nevertheless the commenter received a bill and threatening calls from a collection agent. Fearing collection efforts and with a promise of a refund if the FCC was incorrect, the commenter paid the bill under duress. The commenter later received another bill as well as a demand notice and threats from the U.S. Department of the Treasury. The commenter requested a refund of the amount paid and a correction to the FCC's records.

► **Outcome:** FCC recalled the case from the Treasury. The matter was closed and settled in the commenter's favor.

Comment: The commenter submitted an offer in compromise on his/her SBA loan. The compromise was denied. The commenter made three payments that had not been reflected on the bills received from the SBA. The commenter requested that SBA correct his/her records and send a corrected bill.

► **Outcome:** The SBA agreed to defer outstanding delinquent amounts and return the loan to regular servicing if the commenter made three consecutive monthly payments.

Comment: Commenter demonstrated delivery of several of its invoices to the Defense Finance and Accounting Service (DFAS), but the invoices were not paid.

► **Outcome:** DFAS investigated and found that the delays were likely due to a failure to post the goods as “received” by the Depots in question. Additionally, some of the invoices were possibly

erroneously returned by DFAS, because the invoices had aged and there had been no reports submitted. DFAS expedited handling of the invoices in question.

Comment: Commenter opened a temporary facility while his/her permanent office was being built. The commenter applied for and received a Medicare NPI number. He/she moved to a permanent facility and sent in the Change of Address Form but Medicare would not issue any payments to his/her company because the new address does not match their records.

► **Outcome:** CMS contacted the CMS contractor about this issue. The National Supplier Clearinghouse found that the supplier is fully enrolled. The contractor then contacted a second contractor and verified it had received the updated address. The issue has been resolved.

IV RegFair Boards and Outreach: Fostering Community Connections

Outreach is a critical component of the Office of the National Ombudsman’s mission. Outreach activities help ONO connect with entrepreneurs at the local level throughout the United States to let them know that they have an ally to turn to when faced with excessive or unfair Federal regulatory enforcement actions. Meeting face-to-face with business constituents also enriches the National Ombudsman’s understanding of current regulatory challenges.

ONO strengthens and extends its outreach efforts through partnering with the business community and other Federal government entities:

- ONO’s 10 Regional Regulatory Enforcement Fairness (RegFair) Boards serve in local communities and make contact with entrepreneurs where they live and work.
- U. S. Small Business Administration resource partners collaborate with ONO to enhance its mission of seeking compliance and regulatory enforcement fairness for small businesses.
- ONO teams with national trade groups to better understand and encourage resolution of members’ enforcement issues with open com-

munication channels among small firms, government and elected officials at all levels, and partner organizations.

- ONO continues to increase Federal regulatory agencies’ understanding of its mission and partners with them to take action on small business issues.

RegFair—Peer-to-Peer Support

RegFair Board members are also small business owners and can view a Federal regulatory enforcement issue from the entrepreneur’s perspective. They can encourage small business people to speak out about unfair compliance and regulatory actions without fear of retaliation. As part of their duties, the National Ombudsman and RegFair Boards host and participate in several types of public activities, including hearings and roundtables.

Hearings are open forums focused on collecting comments and hearing testimony from individual entrepreneurs and/or small business service associations (see Table IV-1 and Figure IV-1), 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.

Roundtables bring together the small business community and business and trade associations for an information exchange. Sometimes Federal agencies participate and explain their regulatory and compliance assistance programs. Business representatives discuss enforcement concerns and the impact of government rules from a small company's point of view.

The National Ombudsman and RegFair Board members often capitalize on publicity surrounding these forums to

give speeches, presentations, and media interviews that extend the ONO message to a larger audience.

Outside of hearings and roundtables, RegFair Boards continue to monitor Federal agency enforcement issues that arise in their regions and use their network of business contacts and affiliations with trade associations to deliver the message that entrepreneurs can call on the National Ombudsman to voice concerns as they cope with compliance and regulatory challenges.

RegFair Board members also brief Congressional small business liaisons and local elected officials to keep government representatives informed about small business enforcement challenges.

Figure IV-1. 2011 RegFair Hearings and Roundtables

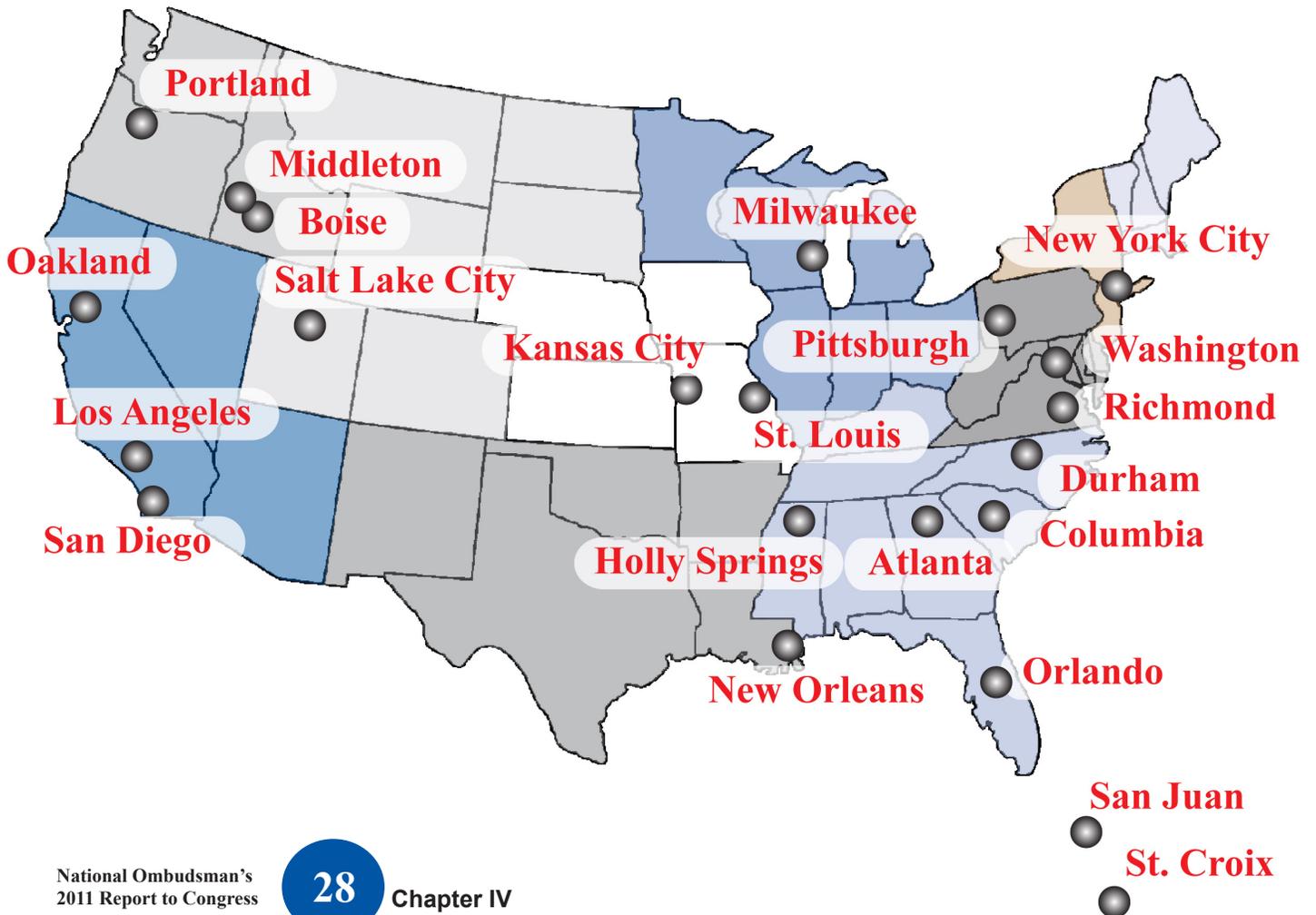


Table IV-1. 2011 RegFair Hearings and Roundtables

SBA Region	Location	Date	Type	Lead	Highlights
5	Milwaukee, WI	October 14, 2010	Roundtable	National Ombudsman	Roundtable and speech for the Wisconsin Small Business Environmental Council
4	Orlando, FL	October 28, 2010	Roundtable	National Ombudsman	Organized by National Board Member with participation of the Internal Revenue Service Meeting with President of Puerto Rican Chamber
9	Oakland, CA	November 3, 2010	Roundtable	National Ombudsman	Roundtable at Port of Oakland
9	Los Angeles, CA	November 4, 2010	Roundtable	National Ombudsman	Discussion on “2010 Jobs Act” and Roundtable for the Black Business Association 100+ participants Participated in the Black Business Association Procurement Exchange Summit
9	Los Angeles, CA	November 5, 2010	Roundtable	National Ombudsman	Meeting with small business owners during the Procurement Exchange Summit by the Black Business Association
3	Richmond, VA	November 10, 2010	Roundtable	National Ombudsman	Roundtable with businesses regarding regulations and the Health Care Bill
2	New York, NY	November 17, 2010	Roundtable	National Ombudsman	Roundtable at Federal Building
2	New York, NY	November 16, 2010	Roundtable	National Ombudsman	Roundtable at Columbia University - Harlem
4	Holly Springs, MS	December 14, 2010	Roundtable	National Ombudsman	Roundtable with small businesses
2	St. Croix, VI	February 25, 2011	Roundtable	National Ombudsman	Banker’s Roundtable Business Community Roundtable
2	San Juan, PR	February 28, 2011	Roundtable	National Ombudsman	Meeting with Barcardi Business Leaders to discuss economic development issues
4	Durham, NC	March 3, 2011	Roundtable	National Ombudsman	Roundtable, “Start Up America: Empowering Entrepreneurs by Breaking Down Barriers”

SBA Region	Location	Date	Type	Lead	Highlights
3	Washington, D.C.	March 4, 2011	Roundtable	National Ombudsman	Speaker for Real Estate group
7	Kansas City, MO	March 10, 2011	Roundtable	National Ombudsman	Roundtable with small businesses and Federal agencies
6	New Orleans, LA	March 14, 2011	Hearing	National Ombudsman	Hearing in conjunction with Regulatory Fairness Board Member Meetings at Xavier University and Dillard University
3	Washington, D.C.	April 4 – 5, 2011	Summit	ONO Staff	Summit with Federal agency representatives
4	Atlanta, GA	May 4, 2011	Roundtable	National Ombudsman	Roundtable 11 Federal agencies, representatives from Congressman Hank Johnson’s Office and Georgia Chamber of Commerce
3	Pittsburgh, PA	May 10, 2011	Roundtable	National Ombudsman	Roundtable
7	St. Louis, MO	May 12, 2011	Roundtable	National Ombudsman	Small Business Roundtable Meeting with 100 black men and NAACP to discuss “Winning the Future” Initiative Small Business Week Activities
3	Columbia, MD	May 24, 2011	National Hearing	ONO Staff	National Hearing 21 small businesses testified 20 Federal agency representatives present
9	San Diego, CA	June 6 -9, 2011	Roundtable	National Ombudsman	Winning the Future White House Roundtable with the Urban League
8	Salt Lake City, UT	June 13, 2011	Roundtable	National Ombudsman	Small Business Roundtable with local District Director
8	Salt Lake City, UT	June 14, 2011	Roundtable	National Ombudsman	Winning the Future White House Roundtable Tour of BioInnovations Gateway
1	Portland, ME	June 23, 2011	Roundtable	National Ombudsman	Small Business Roundtable organized by RegFair Board Member

SBA Region	Location	Date	Type	Lead	Highlights
10	Middleton, ID	August 10, 2011	Roundtable	National Ombudsman	Rural Roundtable hosted by Middleton, Idaho Chamber of Commerce White House Roundtable
10	Boise, ID	August 11, 2011	Roundtable	National Ombudsman	Metro Roundtable hosted by Boise Metro Chamber of Commerce White House Roundtable
4	Orlando, FL	September 7, 2011	Roundtable	National Ombudsman	Small Business Roundtable organized by RegFair Board Members

TABLE IV-2 2011 Speaking Engagements

SBA Region	Location	Date	Type	Lead	Highlights
5	Milwaukee, WI	October 13, 2010	Speaking Engagement	National Ombudsman	Opening Speaker for Governor's Conference on Minority Business Development
4	Orlando, FL	October 27, 2010	Speaking Engagement	National Ombudsman	Speech and discussion with law students at Florida A&M University
4	Orlando, FL	October 28, 2010	Speaking Engagement	National Ombudsman	Speech to students at Ana Mendez University
9	Los Angeles, CA	November 4, 2010	Speaking Engagement	National Ombudsman	Luncheon speaker at the 7th Annual Procurement Exchange for the Black Business Association 200+ participants
2	New York, NY	November 18, 2010	Speaking Engagement	National Ombudsman	Speech at the New York District Office Lender Awards Ceremony
3	Portsmouth, VA	December 5, 2010	Speaking Engagement	National Ombudsman	Speech on the role of the National Ombudsman to the Equipping Businesses for Success Initiative
4	Holly Springs, MS	December 14, 2010	Speaking Engagement	National Ombudsman	Speaker at small business forum
3	Richmond, VA	January 28, 2011	Speaking Engagement	National Ombudsman	Keynote speaker for the Metropolitan Business League's "Women Who Mean Business" Summit
3	Washington, D.C.	March 4, 2011	Speaking Engagement	National Ombudsman	Speaker for Real Estate group

SBA Region	Location	Date	Type	Lead	Highlights
7	Kansas City, MO	March 10, 2011	Speaking Engagement	National Ombudsman	Speech for the Society of American Military Engineers
3	Washington, D.C.	March 23, 2011	Speaking Engagement	National Ombudsman	Speech for National Women's History Month program
3	Pittsburgh, PA	May 9, 2011	Speaking Engagement	Regulatory Fairness Board Member	Risk Management Speech
9	San Diego, CA	June 7, 2011	Speaking Engagement	National Ombudsman	Speaker for National Defense Industrial Association
4	Sevierville, TN	August 25, 2011	Speaking Engagement	National Ombudsman	Speech to Walters State Community College Culinary Arts Program students Tour of Ole Smokey Distillery, LLC Financed in part with SBA 7(a) loan
4	Knoxville, TN	August 25, 2011	Speaking Engagement	National Ombudsman	Featured speaker for Energy Technology and Environmental Business Association Approximately 200 participants
4	Newport, TN	August 26, 2011	Speaking Engagement	National Ombudsman	Meeting with Cocke County Partnership 20 participants Keynote Speaker for Cocke County Partnership Luncheon 30 participants
9	Los Angeles, CA	August 31, 2011	Speaking Engagement	National Ombudsman	Speaker for program with Citizenship and Immigration Services Ombudsman Program to explore small and start-up business immigration issues

SBA Partners Enhance ONO's Mission

SBA partners support the National Ombudsman in working toward a business-friendly Federal regulatory environment.

SBA District and Regional Field Offices support RegFair Board members by publicizing hearings and serving as liaisons to small business owners. Field office staff are often those listed as points of contact for hearings, roundtables, and other ONO-sponsored events.

SBA Office of Advocacy represents the small business viewpoint as laws and regulations are formulated by Congress, the White House, Federal agencies and courts, and state policymakers. As a result:

- Advocacy saved small businesses \$11.7 billion in first-year cost savings and \$10.7 million in annually recurring savings as a result of FY 2011 efforts to help Federal agencies comply with the Regulatory Flexibility Act (RFA). The RFA requires agencies to analyze the economic impact of proposed regulations on small entities and consider less burdensome alternatives that still reach the agencies' regulatory goals.

Small Business Development Centers and SCORE serve as resources when small companies make requests for start-up advice. These SBA resource partners can help entrepreneurs set the stage for success.

Agency Outreach Promotes Prevention Before Penalty

Federal regulations are most effective when small business owners understand their obligations under the law and are comfortable seeking agency assistance to head off compliance difficulties before they develop. ONO's ultimate partners in regulatory fairness are Federal agencies that protect the public good by emphasizing compliance education before resorting to enforcement sanctions. With ONO encouragement, agencies continue to create and improve outreach programs such as those described below to promote an effective regulatory environment:

The **National Oceanic and Atmospheric Administration (NOAA)** website links to the ONO's website through several pages that should be easily found by small entities (see, e.g., <http://www.gc.noaa.gov/enforce-office2.html>). NOAA's **General Counsel for Enforcement and Litigation's** (GCEL's) Frequently Asked Questions page (www.gcel.noaa.gov/faq.html) explicitly answers the question "Who should I contact if I wish to comment on the enforcement activities of NOAA?" The answer describes the Ombudsman's authority and provides a toll-free phone number, internet address, and mailing address to which comments can be made. NOAA's **Office of Law Enforcement (OLE)** has created a flyer containing that same information and posted it in all OLE and GCEL office bulletin boards for public viewing, thus publicizing the information to small

entities that do not have internet access.

The **Consumer Product Safety Commission** (CPSC) offers Compliance Guide Webinars on how companies can comply with laws and regulations affecting their products. Some of these are designed for Spanish-speaking and minority audiences. In addition, the CPSC offers webcasts explaining regulations and compliance. The CPSC also states: “In addition, throughout the course of the year, CPSC works with small businesses to make them aware of the agency’s regulations and the firms’ responsibilities under those regulations. The **Office of Compliance and Field Operations** routinely disseminates copies of regulations, educational/information brochures, testing manuals, and other information to assist small businesses in complying with the CPSC’s statutes and regulations.”

The Department of Justice’s **Office of Special Counsel** (OSC) provides employers with free training materials, including booklets, posters and educational videotapes, on how to ensure they do not engage in discriminatory behavior, and it strongly recommends these materials be used by the employers. An employer hotline number is distributed with all OSC outreach materials for employers. Moreover, every year OSC takes part, at no charge to employers, in numerous employer training sessions throughout the country, providing employers with guidance on how they can comply with anti-discrimination provisions of immigration law. OSC has teamed up with the **Equal Employment Opportunity Commission**

(EEOC) to provide presentations to employers throughout the country at EEOC’s Technical Assistance Program Seminars for employers. OSC attorneys also conduct other outreach events across the nation, including events organized by OSC grantees and specifically designed to address issues concerning employers.

The **Environmental Protection Agency** (EPA) reports that each year millions of entities receive information or assistance regarding how to comply with environmental laws and regulations, either from EPA directly or through the EPA-funded Compliance Assistance Centers. Many of the compliance initiatives and outreach efforts are aimed at sectors heavily populated with small businesses. Compliance Assistance Centers and EPA web sites disseminate compliance guides, fact sheets, checklists, and other materials designed to increase knowledge of EPA’s requirements and improve environmental management practices. In Fiscal Year (FY) 2011, the Compliance Assistance Centers experienced over 3.5 million user sessions, and launched three new web sites. EPA itself reached over 1.5 million entities through its various outreach efforts. EPA offered more than 200 compliance assistance workshops and webinars, and over a thousand compliance assistance presentations at conferences and trade meetings. Moreover, of the approximately 19,000 on-site inspections and evaluations that EPA undertook in FY2011, almost 600 were pure compliance assistance visits. In addition, EPA responded to more than 34,000 inquiries made via telephone, the internet, email,

or in person. Past EPA surveys have shown that nearly 90% of responding users agreed that EPA's compliance assistance helped them improve their understanding of EPA's environmental practices.

As noted previously, the FDIC operates a compliance educational program by means of its Directors' Colleges and through FDIC sponsored sympo-

siums, roundtables, and conferences. The FDIC also provides compliance assistance to bankers by sending senior FDIC officials to state banker association meetings and industry gatherings. And it conducts its Banker Outreach Program, by which FDIC staff contact and meet with bank management to discuss new technologies, product innovations, and recent statutory changes.

V

Looking Ahead: Building Bridges; Making a Difference



2011 was an encouraging year for both the Office of the National Ombudsman and the small business community. Compared to 2010, the ONO doubled its forums, roundtables, and events with the public and the small business community. Compared to 2010, it also doubled the number of inquiries, comments and complaints to which it replied. It helped to resolve hundreds of problems for small businesses and it presented the concerns and ideas of small business persons from around the country to the Federal agencies charged with regulating them.

Moreover, President Obama made two

major initiatives that are going to help small business cut through red tape and be the leading edge of innovation and job creation in the United States. These are Executive Order 13563 and the Startup America program, the first to put the nation on the path of more understandable and reasonable regulation and the second that will boost the nation's entrepreneurs and their businesses.

The ONO will do its part in working to support these worthy efforts. In the coming year, it will:

- Continue to travel the country making presentations and holding

forums to listen to the small business community, to understand its concerns about unfair or excessive Federal regulation and enforcement, and to forward these concerns to the appropriate decision-makers at Federal regulatory agencies.

- Work with Federal agencies to assure that information about SBREFA is disseminated to the small businesses those agencies regulate.
- Conduct at least one meeting with each of the ten Regional Regulatory Enforcement Fairness (RegFair) Boards that are composed of small business owners in various parts of the country.
- Screen and recruit RegFair Board volunteer candidates to three-year terms so that the RegFair Boards present comments on Federal regulations.
- Work to maintain its achievement of submitting comment to the appropriate Federal agency within

four business days of receiving a comment from a small business commenter and to make response to a commenter within four business days of receiving a response from a Federal agency.

- Present to the Congress an annual report on ONO's activities during FY 2012.

The small business segment of the United States economy is vital to the nation. No part of it should face retaliation, undue penalty, or unfair impediment owing to maliciousness, misunderstanding, error, or overzealous interpretation of law. Instead, small businesses should be allowed to flourish within the regimen of sensible regulation. ONO in 2012, as in 2011, will stand for prevention and education before penalty and punishment. It will do its part to see that the nation progresses to a better future under reasonable regulation applied fairly with a goal of social benefit, jobs, and a thriving economy.

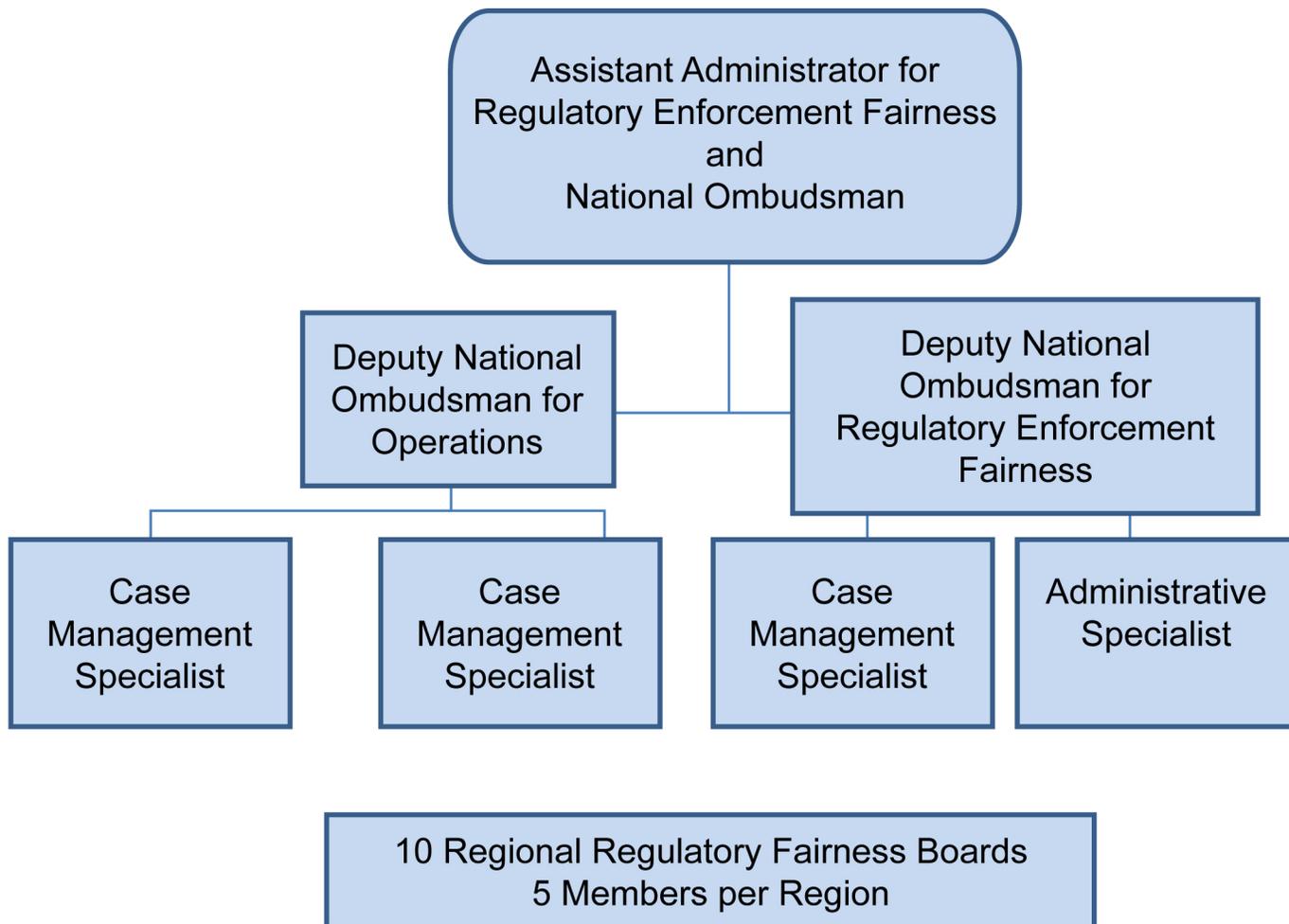


Appendix: Media Outreach

Event	Radio / TV Interviews	Print Media Articles	Internet
Roundtable Milwaukee, WI October 14, 2010		10-13-10 Interview with Eric Decker, Milwaukee BIZTimes 10-13-10 interview with Stacy Vogel, The Business Journal	
Roundtable Orlando, FL October 28, 2010		10-28-10 Interview with the Orlando Business Journal	
Roundtable Richmond, VA November 10, 2010	11-16-10 guest on XM Satellite Radio		
Roundtable St. Croix, VI February 23, 2011	02-23-11 guest on radio talk show, “Money Talk & More” 02-25-11 guest on “Let’s Talk” Radio Show	02-25-11 Interview with “St. Croix Avis” 02-25-11 Interview with “Virgin Islands Source”	
Roundtable San Diego, CA June 10, 2011	06-10-12 National Ombudsman fea- tured in San Diego Newsletter		
Roundtable Salt Lake City, UT June 13, 2011			06-13-2011 Blog on Winning the Future Roundtable posted by Michael O’Malley
Roundtable Portland, ME June 23, 2011		06-23-11 Article in Journal Tribune of Portland	
Roundtable Middleton, ID August 10, 2011		08-11-11 Article in Middleton, Idaho newspaper	

Event	Radio / TV Interviews	Print Media Articles	Internet
Speaking Engagement Morristown, TN August 25, 2011		08-25-11 Interview with The News-Sentinel Business Editor	
Speaking Engagement Knoxville, TN August 25, 2011		08-26-11 Article in Knoxville News Sentinel	
Speaking Engagement Newport, TN August 26, 2011		08-26-11 Front page article in the Newport Plain Talk Newspaper	

Appendix: ONO Organizational Chart





U.S. Small Business Administration

U.S. Small Business Administration
Office of the National Ombudsman
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Washington, D.C. 20416