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Report on the Regulatory Flexibility Act, FY 2016

U.S. Small Business Administration, Office of Advocacy, 80 pages.

Purpose

The Regulatory Flexibility Act (RFA) requires federal agencies to give consideration to small entities when drafting regulations. It also requires the Office of Advocacy in the Small Business Administration to monitor federal regulatory compliance with the statute, and to report on this topic.

The year 2016 marked many milestones for the Office of Advocacy. It has been 40 years since Congress established the office, 36 years since the RFA was enacted, 20 years since the passage of the Small Business Regulatory Enforcement Fairness Act, and 15 years of carrying out the duties of Executive Order 13272.

This report is mandated under section 612 of the RFA. It describes Advocacy's efforts at monitoring agencies' compliance with the RFA during fiscal year 2016, from October 1, 2015 to September 30, 2016. In addition, it reports on agencies' compliance with the requirements of Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," and the Small Business JOBS Act of 2010.

Background

The RFA requires federal agencies to consider the impact of their proposed rules on small entities, which include small businesses, small government jurisdictions, and small nonprofits. It requires agencies to review proposed regulations that would have a significant economic impact on a substantial number of small entities and to consider significant alternatives that would minimize the regulatory burden on small entities while still achieving the rules' purposes. Executive Order 13272 requires agencies to take additional specific steps demonstrating their consideration of small entities in their rulemakings.

The Office of Advocacy's Interagency Compliance Activities

Advocacy encourages agency compliance throughout the year along many avenues. One of the most important means for Advocacy to gather small business input is to host issue-specific roundtable discussions. Participants may include small business owners, federal officials, and congressional staff. The usefulness of roundtables is further enhanced when agency officials participate, either as presenters or simply to hear input firsthand. These roundtables present a unique opportunity for those involved in promulgating federal regulations to hear directly from the public as Advocacy facilitates an open discussion. In FY 2016, Advocacy held 27 roundtables on proposed rules and regulatory topics from seven agencies in Washington, D.C., and around the country.

Advocacy offers training on how to comply with the RFA to federal rule writers. Since 2003, Advocacy has conducted training for 18 cabinet-level departments and agencies, 69 separate component agencies and offices within these departments, and 23 independent agencies.

Advocacy participates in Small Business Regulatory Enforcement Fairness Act (SBREFA) panels convened by three agencies: the Environmental Protection Agency (EPA), the Consumer Financial Protection Bureau (CFPB), and the Occupational Safety and Health Administration (OSHA).¹ In FY 2016,

1. SBREFA panels are named for the Small Business Regulatory Enforcement Fairness Act of 1996 that created them. They are also referred to as "small business advocacy review," or SBAR, panels.

Advocacy participated in seven panels: four EPA panels, two CFPB panels, and one OSHA panel.

Although federal agencies continue to work to improve their rules, there are many examples of proposals that still impose a significant economic impact on small entities. In these instances, Advocacy utilizes the independence afforded it by Congress to submit formal public comments to agencies. In FY 2016, Advocacy submitted 20 public comment letters to agencies calling attention to the small business impacts of proposed rules. Figure 1 summarizes the specific issues of concern raised in these letters. The most frequent purpose was concern that there was an inadequate analysis of small entity impact.

Cost Savings and Success Stories

As a result of Advocacy’s involvement in the rule-making process, FY 2016 regulatory cost savings amounted to almost \$1.4 billion. These represent savings achieved as a result of changes between the initial proposed rule and the final rule. The FY 2016 cost savings come from Advocacy’s work on seven rules that were made final in FY 2016. Some of these rulemakings have stretched over many years. For instance, the Employee Benefits Security Administration’s final rule on the definition of “fiduciary” for investment advisers concluded a rulemaking process that began in 2010 when the agency

first proposed a rule. EPA’s Agricultural Worker Protection Standards concluded a rulemaking process that dates to 2008, when a SBREFA panel was held on the topic.

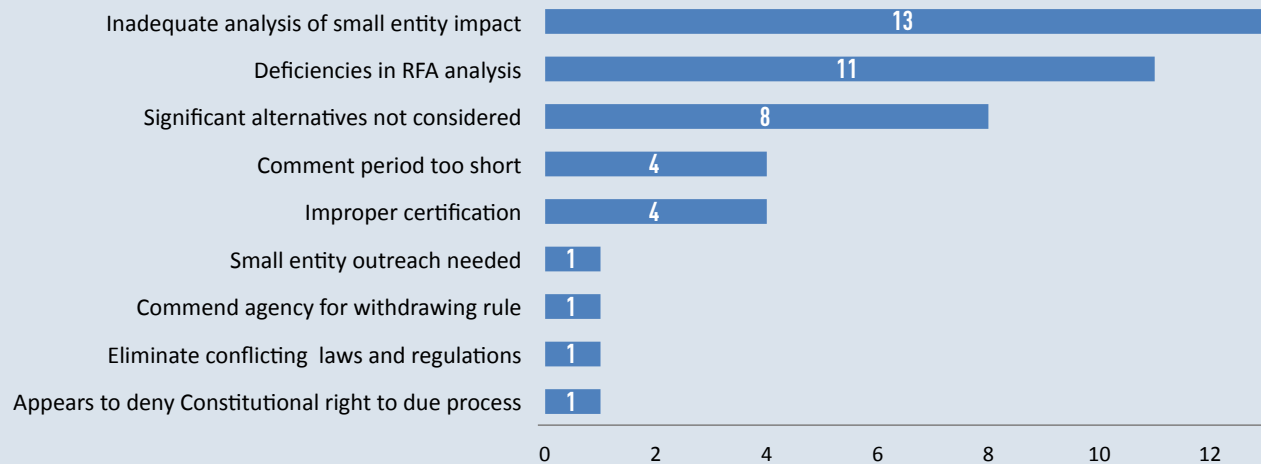
Advocacy also achieved positive regulatory results with impacts that are not readily quantifiable. These small and large successes apply to key issue areas in today’s world, for instance safer bank lending practices, unmanned aircraft systems (or drones), and crowdfunding (an alternative way of raising capital for small businesses). All of these rules are voluminous and extremely complex. Over lengthy timeframes, Advocacy staff has bridged the gap between regulators and small enterprises to balance regulatory goals and new burdens on businesses.

Cost savings are one measure of Advocacy’s effectiveness. While this measure has not been in place over the RFA’s entire history, since the office started tracking savings in 1998, Advocacy’s work on behalf of small businesses has resulted in cumulative small business cost savings of \$130 billion.

Scope and Methodology

This report accounts how Advocacy worked to achieve cost savings for small entities and helped agencies comply with the RFA and Executive Order 13272. It covers Advocacy’s public activities with respect to regulatory development. An important part

Figure 1: Number of Specific Issues of Concern in Agency Comment Letters, FY 2016



Source: *Report on the Regulatory Flexibility Act, FY 2016: Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act and Executive Order 13272*, U.S. Small Business Administration, Office of Advocacy, 2017, p. 27.

of Advocacy's involvement in regulatory development is achieved in direct exchanges with agencies prior to publication of proposed rules. Consequently, the report does not reflect the sum total of Advocacy's accomplishments in this area.

Advocacy bases its cost savings estimates primarily on agency estimates, when available. Alternatively, cost estimates are obtained from the entities affected, their representatives, and/or the public record. Cost savings for a given rule as a result of Advocacy's intervention are captured in the fiscal year in which the agency takes final action on the rule. First-year and recurring annual cost savings are listed where applicable. Where cost savings have accrued during the prepublication draft stages of the rule, they are not publicly available.

Additional Information

This report is available on the Office of Advocacy's webpage at www.sba.gov/advocacy/regulatory-flexibility-act-annual-reports.

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