U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
REGULATION • RESEARCH • OUTREACH

RESEARCH SUMMARY
Advocacy: The Voice of Small Business in Government

Report on the Regulatory Flexibility Act, FY 2018

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, 83 pages.

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Purpose

Because small businesses lack economies of scale and do not have the resources of larger businesses, the effects of regulatory compliance often fall harder on them. The Regulatory Flexibility Act of 1980 (RFA) was enacted to address the disproportionate burden of regulation on small businesses. This law is the key tool allowing small businesses to have a say in regulatory decisions that affect them. The RFA directs the Office of Advocacy to monitor how well federal agencies are complying with the law, and it requires the Chief Counsel for Advocacy to report on this. The report covers fiscal year 2018, from Oct. 1, 2017, to Sept. 30, 2018. 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.

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 whenever they would have a significant economic impact on a substantial number of small entities. In these cases, agencies are required to consider alternatives or flexibilities that would minimize the regulatory burden on small entities while still achieving the rules' purposes. Executive Order 13272 requires agencies to take additional steps demonstrating their consideration of small entities. This year's report includes website links to each agency's procedures for implementing the RFA in their rulemakings, as required by E.O. 13272.

Activities Promoting RFA Compliance

Advocacy monitors federal rulemakings throughout the year. The office's activities promoting RFA compliance included:

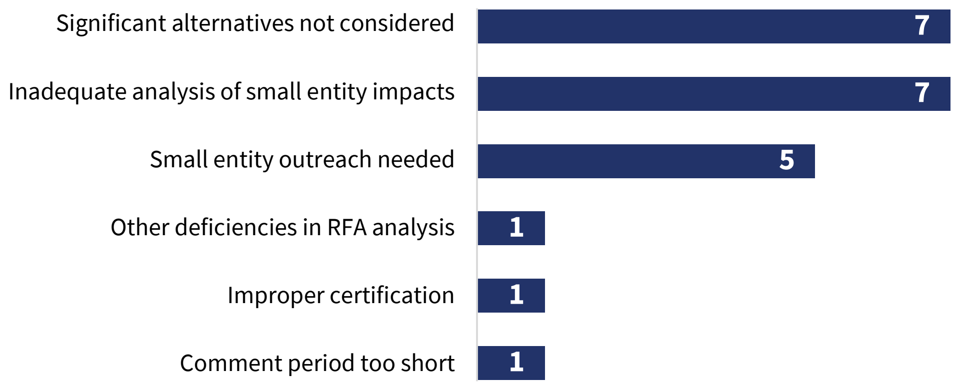
- Hosting 12 small business roundtable discussions to gather the views and concerns of small businesses;
- Conducting RFA training sessions at 6 agencies for 132 officials to familiarize them with the requirements of the law; and
- Filing 17 regulatory comment letters with 16 cabinet departments and independent agencies. These letters publicly register official comments on behalf of small business.

The most frequent concerns cited in comment letters were that agencies needed to consider the impact of their proposed rules on small business (seven letters) and that they did not consider significant alternatives (seven letters). The lack of or need for more small entity outreach was also noted in five of the comment letters. (See Figure 1.)

Small Business Regulatory Success Stories and Cost Savings

Advocacy's overall efforts to promote federal agency compliance with the RFA resulted in changes to 18 specific rules reducing the regulatory burden on

Figure 1. Number of Specific Issues of Concern in Agency Comment Letters, FY 2018



Source: *Report on the Regulatory Flexibility Act, FY 2018,* U.S. Small Business Administration, Office of Advocacy, 2019, p. 27.

small businesses. These include $255.3 million in quantifiable regulatory cost savings for small entities. These represent savings achieved as a result of changes between the initial proposed rule and the final agency action on the rule, as well as from deregulatory actions. Cost savings in FY 2018 came from seven deregulatory actions by five agencies.

- One cost savings resulted from changes to the Department of the Interior's Venting and Flaring Rule. The compliance costs of the earlier rule amounted to 24 to 86 percent of annual revenues from marginal wells, which form the majority of those on agency-administered leases. The revisions yielded small business cost savings of $72,000 per firm, or $127 million.
- Savings also ensued from the one-year delay in implementing the Department of Energy's Ceiling Fan Light Rule. This delay gives small businesses more time to comply with the rule, and saves them as much as $1.7 million.

The RFA in the Era of Deregulation

President Trump marked the start of an era of deregulation in 2017 with Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," and Executive Order 13777, "Enforcing the Regulatory Reform Agenda." These offer significant opportunities for regulatory relief targeted to small businesses.

The RFA requires agencies to analyze their deregulatory actions to maximize small business benefits in the marketplace. To make federal agencies aware of small businesses' priorities for deregulation Advocacy launched the Regional Regulatory Reform Roundtable initiative. These roundtables bring federal agency officials and small businesses together to educate federal agencies about specific regulations that create paperwork, red tape, personnel, and financial obstacles.

- In FY 2018, Advocacy visited 22 states and received input from small businesses in many more. In some cases, agency officials attended roundtables and heard small business concerns directly. And in all cases, Advocacy followed up with agencies in formal letters, teleconferences, and issue roundtables.
- The Regional Roundtable initiative effort has yielded progress toward lightening small businesses' regulatory load.[1]

1 Details appear in the report, *What Small Businesses Are Saying and What Advocacy Is Doing About It: Progress Report on the Office of Advocacy's Regional Regulatory Reform Roundtables,* U.S. Small Business Administration, Office of Advocacy, 2018, pp. 34-37.

Small Business and International Trade

In 2018, Advocacy continued its work coordinating the interagency working group called for by the Trade Facilitation and Trade Enforcement Act. The group of six agencies evaluated the small business impact of the NAFTA renegotiation which resulted in the United States–Mexico–Canada Agreement. The group includes six federal agencies:

- Office of the U.S. Trade Representative,
- U.S. Department of Agriculture,
- U.S. Department of Commerce, International Trade Administration
- U.S. Department of Homeland Security,
- U.S. Department of State, and
- U.S. Small Business Administration, Office of International Trade.

Cost Savings Methodology

Advocacy generally bases its small business regulatory compliance cost savings estimates on agency estimates. Cost savings estimates are derived independently for each rule from the agency's analysis, and accounting methods and analytical assumptions for calculating costs may vary by agency. Regulatory cost savings for a given rule are captured in the fiscal year in which the agency finalizes changes in the rule as a result of Advocacy's intervention. These are best estimates to illustrate reductions in regulatory costs to small businesses. Initial cost savings consist of capital or recurring costs foregone that may have been incurred in the rule's first year of implementation by small businesses. Recurring cost savings are listed where applicable as annual or annualized values as presented by the agency. This year's cost savings resulted from deregulatory actions and included delays and rule withdrawals.

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