

Report on the Regulatory Flexibility Act, FY 2021

U.S. Small Business Administration, Office of Advocacy. 71 pages.

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Purpose

The Regulatory Flexibility Act of 1980 (RFA) was enacted to address the disproportionate impact of regulation on small businesses. The effects of regulatory compliance frequently fall harder on small businesses, who lack the resources of larger corporations. The RFA allows small businesses to have a say in regulatory decisions that affect them. Advocacy is directed by the RFA to monitor how well federal agencies comply with the law. The Chief Counsel for Advocacy reports on those measures through the publication of this report, which covers fiscal year 2021, from October 1, 2020, to September 31, 2021. This report also contains updates regarding 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 each of these cases, agencies are required by law to consider alternatives or flexibilities that would minimize the regulatory burden on small entities while still achieving the purpose of the rule. E.O. 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 in FY 2021 included:

- Submitting 17 comment letters to 8 agencies to publicly register official comments on behalf of small businesses;
- Hosting 20 issue roundtables to discuss the issues facing small businesses; and
- Conducting RFA training at 9 agencies for 290 officials to familiarize themselves with the requirements of the RFA.

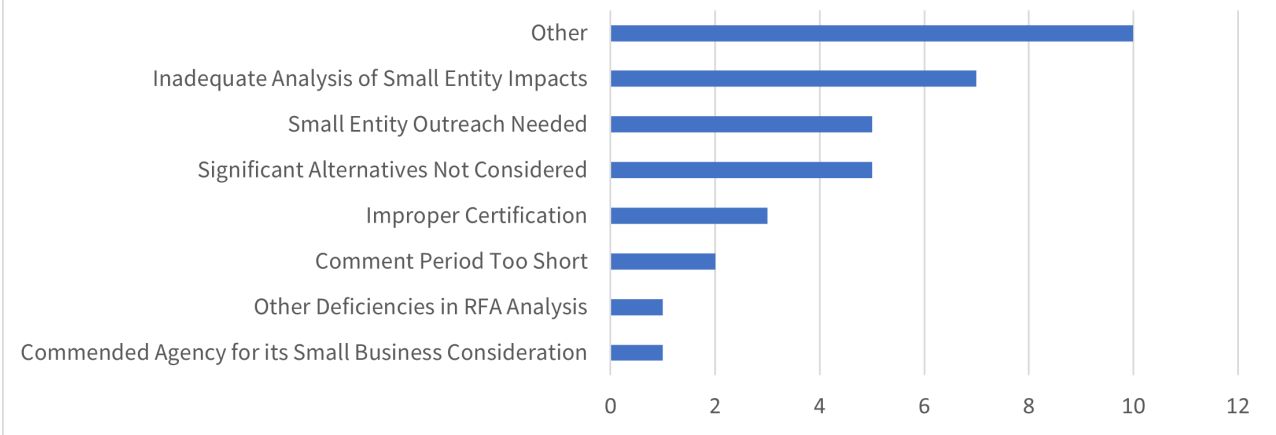
The most frequent concerns, cited in seven comment letters, were that agencies did not adequately analyze small business impacts. In five cases, the agency in question failed to consider significant alternatives. In one instance, Advocacy commended agencies for their small business considerations.

Small Business Regulatory Success Stories and Cost Savings

Advocacy's overall efforts to promote federal agency compliance with the RFA resulted in changes to nine specific rules which total \$3.277 billion in cost savings for small business. Here are two examples:

- One of this year's cost savings included the Occupational Safety and Hazard Administration (OSHA) COVID-19 Emergency Temporary Standard. After President Biden issued an Executive Order on Protecting Worker Health and Safety, OSHA held a series of interagency meetings, including Advocacy, which conveyed the interest of small businesses to all participants. The final standard was limited to employers with ten or more employees

Figure 1: Number of Specific Issues in Agency Comment Letters, FY 2021



in the health care sector where suspected or confirmed coronavirus patients are treated. The standard led to aggregate cost savings of \$3.2 billion.

- Another cost saving included the Environmental Protection Agency (EPA) Multi-Sector General Permit. Advocacy worked with the EPA to eliminate a series of universal monitoring and benchmark tests and encouraged EPA to add other flexibilities for small entities. The changes led to \$22.8 million in estimated cost savings.

Advocacy also achieved seven other success stories that were unquantifiable in FY 2021. Here are two examples:

- In one case, EPA responded to Advocacy’s concerns surrounding a lack of clarity of worker protection standards for agricultural workers. After meeting with stakeholders, Advocacy proposed revisions to EPA’s application exclusion zone standards to help reduce the compliance burden for small entities.
- In another case, Advocacy encouraged the Department of Energy (DOE) to swiftly finalize a rule on the energy efficiency test procedure interim waiver process. The DOE lengthened its response time for waiver applications, but also changed the procedure so that applications not responded to were assumed to be granted.

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 data, 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. These are best estimates to illustrate reductions in regulatory costs to small businesses as a result of Advocacy’s intervention. 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.

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