

## Report on the Regulatory Flexibility Act, FY 2023

U.S Small Business Administration, Office of Advocacy. 83 pages.

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### Purpose

The effects of regulatory compliance frequently fall harder on small businesses, who lack the resources of larger corporations. The Regulatory Flexibility Act of 1980 (RFA) was enacted to address the disproportionate impact of regulation on small businesses. The RFA allows small firms to comment in regulatory decisions that affect them. The RFA directs Advocacy to monitor how well federal agencies comply with the law. The Chief Counsel for Advocacy reports on those measures through this report, which covers fiscal year 2023, from October 1, 2022 to September 30, 2023. 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. Whenever an agency cannot certify that its proposed regulations would not have a significant economic impact on a substantial number of small entities, they are required by law to consider alternative approaches that would minimize that impact 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 2023 included:

- Submitting 46 comment letters to federal agencies to publicly register official comments on behalf of small businesses;
- Hosting 28 issue roundtables to discuss the issues facing small businesses; and
- Conducting RFA training at 9 agencies for 139 officials to familiarize themselves with the requirements of the RFA.

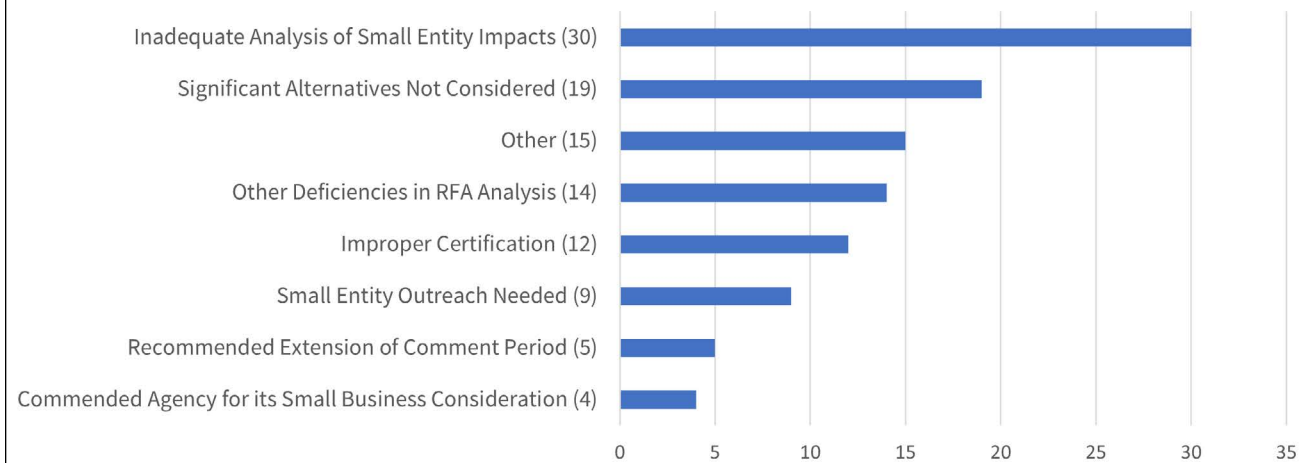
The most frequent concerns were inadequate analysis of small entity impacts (30 letters), significant alternatives not considered (19 letters), and other deficiencies in the RFA analysis (14).

### Small Business Regulatory Success Stories

Advocacy's overall efforts to promote federal agency compliance with the RFA resulted in several specific changes to rules. These included the following:

- One cost savings concerned a Food and Drug Administration (FDA) regulation on the traceability recordkeeping requirements for some categories of foods. After Advocacy made recommendations to explore alternatives that would make compliance easier for small businesses, the FDA changed the effective date of the rule and expanded the exemption for small retail food establishments. This led to \$39.3 million in estimated cost savings.

Figure 1: Number of Specific Issues in Agency Comment Letters, FY 2023



- The Environmental Protection Agency finalized its Clean Water Act Water Quality Certification Improvement rule on September 27, 2023. The rule updates the Clean Water Act’s certification process for states, territories, and tribes potentially impacted by discharges from federally permitted projects. In its comment letter, the Office of Advocacy raised concerns with a requirement in the proposed rule for permittees to include a draft federal permit and/or license to a Certifying

Authority when making a water quality certification request. Advocacy stated that this requirement is largely unfeasible and will lead to unnecessary permitting delays because many federal agencies are not able to prepare individual draft permits or licenses until after a Certifying Authority has made its decision. In the final rule, the EPA removed the requirement for individual permit applications, making the new process easier for small entities to comply with.

## READ THE FULL REPORT ONLINE

This report is available on the Office of Advocacy’s webpage at <https://advocacy.sba.gov>.

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