

Report on the Regulatory Flexibility Act, FY 2019

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, 79 pages.

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Purpose

The Regulatory Flexibility Act of 1980 (RFA) was enacted to address the disproportionate burden of regulation on small businesses. Because small businesses do not have the resources of larger corporations, the effects of regulatory compliance frequently fall harder on them. The RFA is the key tool allowing 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 and for the Chief Council of Advocacy to report on those measures. Advocacy does so through this report, which covers fiscal year 2019, from October 1, 2018, to September 31, 2019. This report also contains updates as to 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. 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.

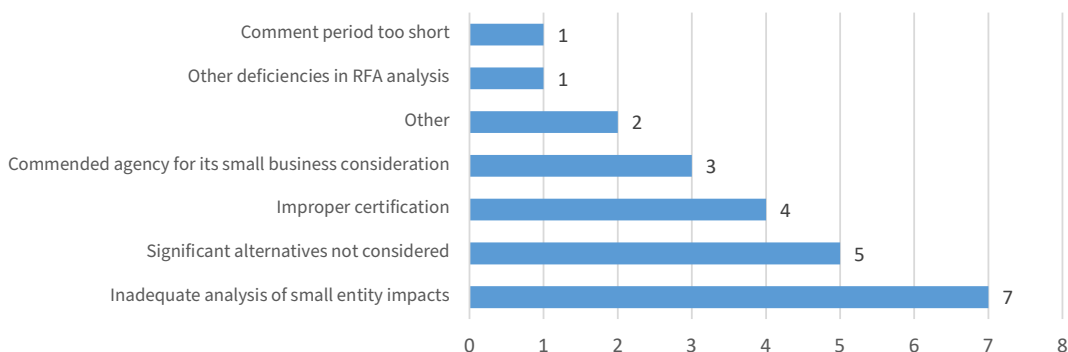
Activities Promoting RFA Compliance

Advocacy monitors federal rulemakings throughout the year. The office's activities promoting RFA compliance in FY 2019 included:

- Hosting 17 issue roundtables, 12 in Washington D.C. and 5 across the country, to discuss the issues facing small businesses;
- Conducting RFA training at 8 agencies for 113 officials to familiarize them with the requirements of the law; and
- Submitting 22 formal comment letters to 10 regulatory agencies to publicly register official comments on behalf of small business.

The most frequent concerns, cited in seven comment letters, were that agencies needed to consider the impact of their proposed rules on small business. Five letters expressed concerns about agencies that did not consider significant alternatives. Four letters addressed situations where agencies improperly certified that a rule would not have a significant impact on a substantial number of small entities (see Figure 1).

Figure 1: Number of Specific Issues in Agency Comment Letters, FY 2019



Source: Report on the Regulatory Flexibility Act, FY 2019, U.S. Small Business Administration, Office of Advocacy, 2020.

Small Business Regulatory Success Stories and Cost Savings

Advocacy’s overall efforts to promote federal agency compliance with the RFA resulted in changes to 10 specific rules which reduced the regulatory burden on small businesses. These include \$773 million in quantifiable regulatory cost savings for small entities, 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. In FY 2019, seven deregulatory actions from five agencies produced significant cost savings. Here are two cost savings examples:

- One cost savings resulted from the Department of Labor’s revision of Overtime Rules under the Fair Labor Standards Act. In 2015, the Department of Labor set the “white collar” overtime pay exemption at \$50,440. After gathering feedback at several roundtables, Advocacy recommended that DOL consider the salary threshold’s impact on small business, especially in the South and in industries with small profit margins. In 2016, DOL released a final rule that set the minimum salary threshold at \$47,476. In September 2019, DOL released a final rule that set the minimum salary threshold at \$35,568, resulting in a \$204.6 million cost saving for small businesses.

- Another cost savings involved the Department of Health and Human Services, Center for Medicare and Medicaid Services’ (CMS) elimination of the “25 Percent Rule,” which reduced Medicare reimbursement rates by 50 percent to 60 percent for long-term care hospitals if more than a quarter of their patients came from a single acute-care hospital. In communications to CMS, Advocacy noted that the rule harmed small facilities because they received a reduced Medicare reimbursement even when providing care to patients that met statutory requirements for a full payment rate. Thanks to Advocacy and small business input, CMS eliminated the 25 percent rule, saving small facilities \$72 million.

The RFA in the Era of Deregulation

In 2017, President Donald J. Trump kickstarted a new era of deregulation with Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda. Both of President Trump’s orders offer significant opportunities for regulatory reform aimed at small businesses. The RFA requires agencies 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 in 2017. 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 for small entities. This year, Advocacy held 10 regulatory roundtables in 10 different states. These roundtables help Advocacy staff learn about the regulatory concerns facing small businesses. Additionally, Advocacy went on 16 site visits in 4 states, providing an opportunity for staff to see how small businesses operate. All these activities help Advocacy in its efforts to aid small businesses faced with excessive federal regulatory burdens.

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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This report is available on the Office of Advocacy's webpage at <https://advocacy.sba.gov>. To stay informed of Advocacy's research, visit <https://advocacy.sba.gov/connect>. By selecting the Small Business Regulation & Research category, you can choose to receive email notices of Advocacy research, regulatory communications, or The Small Business Advocate newsletter.

