



National Ombudsman's 2006 Report to Congress

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The ONO Mission

The Office of the National Ombudsman (ONO) was created pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Specifically, SBREFA authorizes the Ombudsman and the Regional Regulatory Enforcement Fairness (RegFair) Boards to:

- Conduct hearings in each of 10 Federal regions to solicit comments on small business concerns regarding Federal regulatory enforcement activities.
- Work with Federal agencies that have regulatory authority over small businesses to ensure that these businesses have an avenue through which they can comment on agency enforcement activities. Businesses that fall under the SBREFA umbrella include those that receive—or are subject to—an audit, on-site inspection, compliance assistance effort, or other enforcement-related communication or contact by Federal agency personnel.
- Establish a means to receive comments from small businesses regarding actions by Federal agencies or agency employees conducting compliance or enforcement activities. ONO also refers comments to the Inspector General of the affected agency in appropriate circumstances. If requested, ONO will maintain the confidentiality of the person and small businesses making such comments, to the same extent that employee identities are protected under Section 7 of the Inspector General Act of 1978 (5 U.S.C. App.).
- File an annual report with Congress and affected Federal agencies in which enforcement activities are evaluated based on substantiated comments received from small businesses and input from the RegFair Boards.
- Provide affected agencies with an opportunity to comment on draft reports.

What is an unfair enforcement action?

It can be repetitive audits or inspections, unreasonable fines or penalties, or threats by a Federal agency and/or acts of retaliation by a Federal agency.

The Office of the National Ombudsman within the U.S. Small Business Administration seeks to foster a Federal regulatory enforcement environment that is responsive to small business concerns.

ONO Regional RegFair Board Members, FY 2006

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) authorized creation of the Office of the National Ombudsman (ONO) and 10 Regional Regulatory Enforcement Fairness (RegFair) Boards to help small businesses seek fairness in enforcement actions. ONO submits a report each year to Congress on testimony gathered at RegFair Hearings, as well as comments, concerns, and complaints filed with the Ombudsman about Federal regulatory activity. ONO forums around the country enable small business owners to voice their concerns directly to the RegFair Boards, which encourages these entrepreneurs to come forward without having to go to Washington, DC.

RegFair Board members are appointed by the SBA Administrator. All members are volunteers and small business owners, officers, or operators. Achieving a diverse business background is a major goal in selecting RegFair Board members so that they reflect an accurate picture of the small business communities they represent. This diversity extends to profession, business goals, gender, geography, market size (e.g., small, medium, large, rural, and urban), ethnicity, and revenues. There is an ONO RegFair Board in each of 10 SBA regions; and in FY 2006, the following people served:

Region I

Kathryn M. Weare, Board Chairman
The Cliff House Resort & Spa, Ogunquit, ME

Leo R. Blais
P.V. Prescription and Surgical Center, Inc.,
Coventry, RI

James M. Knott, Sr.
Riverdale Mills Corporation, Northbridge, MA

Laura L. Monica
High Point Communications Group,
Bow, NH

David A. Tibbetts
Smith, Segel & Sowalsky, Boston, MA

Region II

Frank L. Misischia, Board Chairman
FLM Graphics Corporation, Fairfield, NJ

W. Timothy Howes
Howes & Howes, Raritan, NJ

Jose M. Garcias-Ramis
Action Service Corporation, San Juan, PR

Gloria Bryant
The Writing Company, Newark, NJ

Region III

Christopher D. Lord, Board Chairman
Chris Lord & Associates, LLC,
Washington, DC

Helen F. Corey
Altenae, LLC, Wilmington, DE

Beverly Donati
Whiteoak Turf Care, Richmond, VA

Timothy R. Rupli
TR Rupli & Associates, Inc., Washington, DC

Frank E. Williams, Jr.
Williams Enterprises of Georgia, Inc.,
Merrifield, VA

Region IV

R. Bruce McCrory, Board Chairman
Kiker Corporation, Mobile, AL

Jane R. Dennis
Specialty Contractors & Associates, Inc.,
Gulfport, MS

Stanley L. King
S.L. King and Associates, Inc., Atlanta, GA

Douglas McFarland
Radio Station 98.9, Charleston,
Mt. Pleasant, SC

Edwin A. Rodriguez
Connectiv Solutions, LLC, Tallahassee, FL

Region V

Stephen L. Becher, Board Chairman
Home Owner's Resource Guide, Inc.,
Burnsville, MN

Edward Aprahamian
Lezk Corporation, Shorewood, WI

John J. Hiller
Hiller Realty Inc., Mequon, WI

Khalid Karadsheh
Mediterranean Island, Grand Rapids, MI

Region VI

James R. Graham, Board Chairman
Hunt Realty Corporation, Dallas, TX

Regina N. Hamilton
Jones, Walker, Waechter, Poitevent, Carrère &
Denègre, LLP, Baton Rouge, LA

Grant C. Humphreys
Humphreys Capital Investments, LLC,
Oklahoma City, OK

Beth Sturgeon
AusTex Development Group,
Dripping Springs, TX

Mary Ann Weems
Weems Galleries and Framing,
Albuquerque, NM

Region VII

Thomas F. Schlafly, Board Chairman
St. Louis Brewery, Inc., St. Louis, MO

Joe P. Balsarotti
Software To Go, St. Peters, MO

Brian E. Johnson
Capitol Consultants, Panora, IA

Dr. Inez Y. Kaiser
Inez Kaiser & Associates, Inc.,
Overland Park, KS

Jeanette Prenger
ECCO Select, Kansas City, MO

Region VIII

Larry A. Olson, Board Chairman
Timberline Resources, Inc., Billings, MT

Salvador Gomez, Jr.
Source One Management, Inc., Denver, CO

Brenda Mosher
Interim Healthcare of Wyoming, Casper, WY

Michael J. Stransky
Gillies Stransky Brems Smith PC,
Salt Lake City, UT

Region IX

Kimberly King, Board Chairman
King Security Services, Inc., San Francisco, CA

Zainul Abedin
Environmental Engineering, Inc., Glendale, CA

Stephen P. Cushman
Cush Enterprises, Inc., San Diego, CA

Ernest J. Reyes
Network Realty, San Diego, CA

Region X

Sue Linford, Board Chairman
Linford of Alaska, Inc., Anchorage, AK

Larry J. Pettingill
Mr. Mom's Fix It, Idaho Falls, ID

Daniel Piccora
Piccora's NY Pizza, Seattle, WA

Shiao-Yen Wu
WPI Real Estate Services, Inc., Seattle, WA

Message from the SBA Administrator

I am pleased to present to you the U.S. Small Business Administration's National Ombudsman's 2006 Report to Congress.

The Office of the National Ombudsman (ONO) plays a direct and active role in achieving the President's Small Business Agenda (PSBA), which calls on government to give entrepreneurs the jumpstart they need to succeed in a thriving marketplace. ONO's mission makes important contributions to the PSBA by striving to:

- Remove unfair regulatory burdens on small businesses.
- Provide small business owners with a voice in the often complex and confusing Federal regulatory process.
- Steer small businesses toward the information they need to succeed.

ONO serves as an ambassador between small businesses and Federal agencies, helping to ensure that policymakers hear the concerns of small businesses and see issues through the eyes of those who are directly affected by regulations. Opening this conduit of communication encourages mutual understanding rather than punitive regulatory enforcement measures. Small business can continue to thrive in a regulatory environment that protects the public, promotes entrepreneurship, and saves taxpayer dollars.

The National Ombudsman's Office is a dynamic example of SBA efforts in 2006 to hone our customer-centric approach toward serving America's small businesses. Web advances and other technologies continued to create an ever-broadening network of communication between ONO, regulatory agencies, and the small business community. Besides helping to resolve regulatory enforcement issues, these outreach efforts also inspired agencies to initiate their own business-friendly practices.

The National Ombudsman played a critical role in 2006 whether it was assisting with the disaster recovery effort of Hurricane Katrina, or assisting small businesses seeking fairness with Federal enforcement actions. In 2006 and beyond, ONO has and will continue to earn its reputation as the resource that small businesses can rely on to respond to their needs and serve as their voice in



the U.S. government. The transformational power of small business is a critical positive force in American commerce. ONO continues to play an important role by working to prevent unfair regulatory burdens from inhibiting the entrepreneurial spirit and creative ideas that are the hallmarks of successful small businesses.

A handwritten signature in black ink, appearing to read 'S. Preston', with a long horizontal flourish extending to the right.

Steven C. Preston
Administrator

Introduction by the National Ombudsman

The year 2006 was a milestone for the Office of the National Ombudsman (ONO) as we marked the tenth anniversary of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), a landmark law for the entrepreneurial community. SBREFA created ONO to give small businesses a voice in a process where their concerns had often not been addressed.

The National Ombudsman's job is to help small business navigate the rough seas of Federal regulatory enforcement, and SBREFA has provided the tools to make ONO equal to the task. We take advantage of every technology available to ensure that entrepreneurs can reach us with their regulatory enforcement concerns. Once ONO receives these comments, SBREFA empowers us to provide assistance in two important ways:

- Each regulatory agency contacted by ONO with a small business enforcement comment is requested to respond.
- ONO evaluates and rates Federal agencies annually and reports to Congress on how well they address specific comments, as well as whether their regulatory enforcement process is small business-friendly.

I recently celebrated a milestone of my own, marking my first year as National Ombudsman. I spent much of that time traveling across the Nation, leading Regional Regulatory Enforcement Fairness Board Hearings, and meeting with state and local government officials and small business representatives. My travels afforded me the opportunity and privilege to hear firsthand the successes and struggles of our Nation's entrepreneurs. These experiences deepened my respect for the hard-working citizens who have become the leading job generators and driving force of the U.S. economy. My "listening tour" underscored the importance of SBREFA and ONO's mission to the small business community:

Small business owners want to play by the rules and comply with Federal regulations. They are often being challenged in resolving their difficulties from lack of resources and fear of challenging regulatory decisions. Entrepreneurs are often at their wits' end when they seek the National Ombudsman's assistance.



Compliance assistance beats a “gotcha” attitude when addressing small business enforcement dilemmas. The National Ombudsman encourages Federal regulators to offer this assistance rather than go straight to the penalty stage. This strategy respects the agency’s mission to protect the public good while freeing small business to invest its precious resources in creating jobs and bolstering the U.S. economy. ONO also encourages Federal agencies that finalize a new rule to alert their small business liaisons and promptly provide compliance assistance, preferably before the rule takes effect.

ONO continues to make progress in fulfilling SBREFA’s goal of an effective, not excessive regulatory enforcement environment for small business. While our annual agency ratings reveal that work remains to be done in calming the regulatory seas, the success stories and best practices described in this report demonstrate ONO’s solid achievements in FY 2006 toward enforcement fairness.

President George W. Bush has said that the role of government is not to create wealth; the role of government is to create an environment in which the entrepreneurial spirit can flourish. Small business does not thrive in a climate of regulatory confusion and uncertainty. With Administrator Preston’s leadership, the National Ombudsman has been empowered to facilitate the key element to position the agency in a customer-centric culture. The U.S. Small Business Administration’s National Ombudsman’s 2006 Report to Congress presents another year of progress in creating a climate for success.



Nicholas N. Owens
National Ombudsman and
Assistant Administrator for
Regulatory Enforcement Fairness

I FY 2006 Highlights

Ten years ago, Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA), creating the Office of the National Ombudsman (ONO) to provide entrepreneurs with a voice in a process where their calls for assistance had too often gone unheeded.

Since that time, small businesses have been able to turn to the National Ombudsman whenever they feel overwhelmed by interactions with Federal regulatory agencies. ONO provides multiple avenues through which businesses can file a comment on their enforcement problems. We then deliver these comments to the appropriate Federal agencies, which are requested to respond. The National Ombudsman files a report with Congress each year rating Federal agencies on how well they address small businesses' enforcement concerns.

In 2006, ONO intensified its efforts to reduce unfair enforcement burdens. We are committed to delivering the highest level of customer service possible. This National Ombudsman's 2006 Report to Congress chronicles our year of progress in serving as entrepreneurs' "troubleshooter" in the Federal regulatory environment.

Encouraging Accountability

ONO's annual rating of Federal agencies serves as our yardstick for measuring progress on regulatory fairness. Under our system, agencies receive an overall letter grade based on how effectively they respond to small businesses' comments, as well as a separate rating in each of six categories:

1. Timeliness.
2. Quality of response.
3. Agency non-retaliation policy.
4. Regulatory compliance assistance.
5. Participation in Regional Regulatory Enforcement Fairness Board (RegFair) Hearings.
6. Notification to businesses of enforcement actions and right to comment to ONO.

PROGRESS
in 2006

Chapter II describes the FY 2006 innovations that improved ONO's communication with Federal regulatory agencies and made our review process more effective:

■ We extended our Internet outreach significantly with the re-launch of Business.gov, the one-stop gateway portal for businesses to locate

Small Businesses Drive Our Economy

Small businesses—those that are independently owned and operated with fewer than 500 employees—represent more than 99.7 percent of all employer firms and were responsible for all net new jobs in 2000–2001, similar to the early 1990s. Numbering 25.8 million in the United States, small businesses represent more than 50 percent of our non-farm gross domestic product. They also:

- ✕ *Employ half of all private sector non-farm employees.*
- ✕ *Have generated 60–80 percent of net new jobs annually over the last decade.*
- ✕ *Employ 41 percent of high-tech workers (according to the Census Bureau).*
- ✕ *Are 53 percent home-based and 3 percent franchises.*
- ✕ *Make up 97 percent of all identified exporters, producing 28.6 percent of the known export value in FY 2004.*

Source: SBA Office of Advocacy, "Frequently Asked Questions," June 2006.

compliance assistance information (see Figure II-2).

- ONO tightened the requirement that agencies must provide a written and/or online copy of their non-retaliation policies. These prevent punitive measures from being taken against small businesses for filing comments with ONO. Agencies are now graded on the specific content of their policies rather than on merely the fact that a policy is in place.

- ONO became a prominent link on key small business trade association websites.

PROGRESS in 2006

ONO's rating system is meant to encourage Federal regulatory agencies to proactively put policies in place that take small business enforcement issues into consideration. Agencies increasingly stepped up to the plate to improve their responses to small business concerns:

- The average number of days that agencies took to respond to small business comments continued to decline, dropping to 52.2 days (see Figure II-3).

- Agencies instituted effective compliance assistance measures that steered small businesses toward understanding rules and complying with regulations:

Combining technology with the ease of access, the **Fish & Wildlife Service**

(FWS) increased use among small businesses of its e-Decs Internet filing system for declaring wildlife imports and exports. The system speeds paperwork and expedites resolution of compliance problems before they delay business activities. FWS spread the word about e-Decs with face-to-face training sessions at ports of entry and at association gatherings.

The **Pension Benefit Guaranty Corporation's** (PBGC) new rule requiring electronic filings for premium-related information has a delayed effective date for companies with pension plans that have less than 500 participants. The final rule also permits PBGC to grant filing exemptions "for good cause in appropriate circumstances" and provides for lower penalties or waivers for the plans of small businesses and for violations that are quickly corrected.

Once a small business does incur penalties for running afoul of regulations, some agencies, such as the Commerce Department's **National Oceanic and Atmospheric Administration** (NOAA), have a policy of continuing to work with the entity to resolve the situation. NOAA is responsible for conserving and managing coastal and marine resources and resolves approximately 250 civil monetary penalty cases each fiscal year. Penalties are reduced or waived in nearly 230 of these cases, for a total of almost \$1 million dollars in reductions.

Small Business Voices Concerns

ONO's core duty is to assist small businesses in presenting their regulatory fairness concerns to the appropriate Federal agencies. Promoting a fair regulatory environment means that ONO often functions as a facilitator between two very different entities.

A regulatory body focuses on protecting the public good and it is important that it takes into account the cumulative impact of its regulations. Small business owners, on the other hand, devote their time and energy to serving customers and competing in a dynamic and ever-changing marketplace. Complying with a maze of rules can threaten a company's economic vitality.

PROGRESS in 2006

Chapter III presents real-life stories about the challenges that some small businesses faced in FY 2006 as presented in comments to ONO and in testimony at RegFair Hearings. The National Ombudsman intervened in these situations to help parties reach a mutually beneficial understanding. In some cases, our intervention resulted in changing the regulatory enforcement culture of the agency involved:

■ The **Internal Revenue Service** (IRS), for example, mailed out Change in Representation forms (CP-548C) to an accounting firm's clients,

declaring that they could no longer be represented by the firm because mail to its office was undeliverable. The firm had been at the same location for more than 25 years, and the IRS confirmed that it had the company's correct address in its database. The firm's president told ONO, "I believe the longer I wait to resolve the issue, the less and less my credibility becomes." The IRS's subsequent investigation revealed that the CP-548C notices were mailed in error because IRS protocol had not been followed. As a result, the agency issued three employee alerts explaining how to avoid the error and removed the phrase "will no longer be permitted to represent you" from letters informing clients that their accountant's mail is undeliverable.

■ In another case, the **Environmental Protection Agency** (EPA) fined a Kansas developer \$60,000 for storm water discharges. The business owner told ONO that he agreed to a settlement offer because it was the only way to avoid "excessive legal costs." EPA discovered that it had failed to identify the developer as a small business and to inform him of his right to contact ONO. The agency changed its procedures to assure that small entities are informed of their rights whenever entering a negotiated settlement.

■ ONO succeeded in raising awareness of excessive enforcement at **U.S. Customs and Border Protection** (CBP) when inspectors repeatedly put holds on an importer's used

heavy truck tires despite the fact that they never failed inspection. CBP discovered that its inspectors were searching for invasive pests clinging to dirt and water on the tires despite the fact that they were used only on highways and carried certification from the Centers for Disease Control that they were steam cleaned and insect free. CBP stopped targeting the shipments and noted that “additional training on the use of risk management procedures when targeting shipments will be provided to our officers as soon as possible.”

Our Ambassadors in the Field

Chapter IV explains how ONO’s success at connecting with the small business community is multiplied many times by the dedicated efforts of our 10 RegFair Boards. RegFair Board members are appointed by the SBA Administrator—all are volunteers and all are small business owners, officers, or operators.

As part of their duties, RegFair Boards host two types of meetings: **hearings** held in an open forum town hall atmosphere that is geared toward collecting comments from individual entrepreneurs, and **roundtables** composed of Federal agency representatives, business and trade associations, and chambers of commerce. At roundtables, agencies explain rules and compliance assistance programs and small business organizations discuss enforcement

concerns. RegFair Board members also serve small business by:

- Monitoring the Federal enforcement issues of small companies in their region.
- Generating pre-hearing publicity to attract media attention to ONO’s mission.
- Assisting Congressional offices with small business liaison responsibilities and briefing local elected officials.
- Networking with business contacts for outreach about the services of the National Ombudsman.



SBA Assistance. ONO collaborated with other SBA offices in 2006 to extend the reach of our service. For example:

- ONO coordinated with SBA’s Office of Disaster Assistance in Washington, DC, to address issues of homeowners and small businesses devastated by Hurricane Katrina.
- SBA district and regional field offices supported RegFair Board members in publicizing hearings and served as information conduits to small business owners.
- ONO relayed entrepreneurs’ comments to SBA’s Office of Advocacy when they requested support for legislation or regulations that are still in the development stage. ONO is responsible for enforcement fairness after a regulation is final. Our

Advocacy office works with small companies so that they have the opportunity to influence the rules and laws that will govern their businesses.

Industry Outreach. ONO and RegFair Board members have traditionally relied on alliances with trade associations and chambers of commerce to broaden our contacts in the small business community. These groups carried on that tradition in 2006 by:

- Speaking on behalf of members. Business organizations have the ear of ONO staff whether they be the 600,000-member National Federation of Independent Businesses or the 300-member Disabled Veteran Business Enterprise Network.
- Regularly posting hearing notices and including RegFair features on websites and in organization publications.
- Attending RegFair Hearings and Roundtables to represent more than a million individual members (see Table IV-3).

PROGRESS in 2006

Agency Outreach. When Federal agencies take responsibility for fostering small business compliance, they become valuable partners in achieving an effective, not excessive regulatory environment, a winning situation for the agency, ONO, and most importantly, the Nation's entrepreneurs. Regulators throughout

the Federal government instituted new outreach efforts in FY 2006, including the following:

The **Center for Medicare & Medicaid Services** (CMS) launched its Open Door Initiative designed to provide interaction with small businesses and other stakeholders that deliver healthcare to seniors and the disabled. Topics discussed at Open Door Forums included Medicare Part D, rural healthcare, low income health access, and end stage renal disease (www.cms.hhs.gov/OpenDoorForums/).

The **Equal Employment Opportunity Commission** (EEOC) conducted 628 no-cost outreach events as compared with 500 in FY 2005. Events included presentations, training, and stakeholder input meetings, reaching 29,577 small business representatives compared with about 25,000 in FY 2005. An additional 1,849 entrepreneurs attended fee-based events. The most popular topics for these small business audiences were an overview of EEOC, the Americans with Disabilities Act, charge processing, mediation, sexual harassment, and Title VII.

Looking Ahead

Small business is America's primary source of new jobs, generating more than 50 percent of the private non-farm gross domestic product. It is vital that entrepreneurs' enforcement issues be heard by the Federal agencies that regulate them. **Chapter V** describes how ONO is committed to

"This year was an exceptional year for the Office of the National Ombudsman, as far as NFIB's members were concerned. Ever dogged in their efforts to protect small businesses from agency over-reaching, the ONO helped a great number of our members in 2006. Though by and large our small businesses tend to look askance at federal agency assistance, our members know they have a great friend in the National Ombudsman's Office."

*— Andrew M. Langer, Senior Manager, Regulatory Policy
National Federation of
Independent Business*

expanding our outreach and improving our customer service so that small businesses will be heard whenever and however they bring regulatory enforcement issues to our attention.

ONO will increase efforts to strengthen partnerships and increase small business awareness by:

- Broadening outreach to Federal partners through activities such as publicizing and encouraging attendance at Interagency Meetings, RegFair Hearings, and Roundtables.
- Broadening outreach to trade associations, state business organizations, and other state agencies. These groups provide forums in which regulators can sponsor compliance seminars and workshops. Forming alliances at the state level encourages enforcement fairness where entrepreneurs live and work—19 states already operate under SBREFA-like laws or executive orders.
- Publicizing RegFair Hearings as “town hall” open forums and coordinating the events with local organizations. An informal town hall atmosphere helps alleviate business owners’ fear of retaliation by Federal regulators for contacting ONO. Coordinating RegFair Hearings with a business-related event—such as the California Hispanic Chamber of Commerce meeting held in Sacramento, CA, in September 2006—raises ONO’s profile among our constituents.

ONO’s board members and SBA partners have also proved a rich source of ideas for increasing outreach and communication. These ideas include:

- Increasing the involvement of SBA District Directors and tapping the public information officer in each district location to promote ONO events.
- Encouraging more inter-regional collaboration among RegFair Board members.
- Increasing promotion of ONO in areas that do not have RegFair Hearings scheduled.

Technology has provided ONO with new opportunities to connect with its constituents and partners. Future improvements include:

- Extensive site analysis to ensure that Business.gov makes optimum use of the Internet for outreach and education (see Figure II-2).
- Future Business.gov services, such as pod casts, blogs, and web chats to strengthen partnerships among SBA/ONO headquarters and field offices, other Federal agencies, trade organizations, and state and local officials.
- New resources on Business.gov, including brochures, fact sheets, PowerPoint templates, business card kits, and other means to assist small businesses with expanding their network of compliance information.

Hurricane Katrina

Hurricane Katrina was an unprecedented disaster requiring an unprecedented response. The drama and devastation of the storm has left in its wake the long and painstaking challenge of disaster recovery. Recognizing the critical role that small businesses play in revitalizing their hurricane-torn communities, SBA's Office of Disaster Assistance under the leadership of Administrator Preston, conducted a major re-engineering of its operations in 2006 to deliver recovery support more effectively. ONO was an important collaborator in this effort, facilitating communication and addressing regulatory barriers that hampered prompt delivery of disaster recovery loans.

Small businesses with limited resources are often at a disadvantage in addressing burdensome regulatory requirements under the best of circumstances. After suffering the fury of Katrina, many Gulf Coast entrepreneurs found themselves struggling to navigate the process of securing SBA recovery loans. The National Ombudsman was an effective player on the SBA team in enhancing the responsiveness to address the residential and small business loans for recovery:

■ A homeowner contacted ONO after securing a \$240,000 SBA loan but struggling for weeks to bring it to closing. There were “always promises” for a firm date, according to the resident, but delays kept pushing back a resolution. Meanwhile, the homeowner was forced to travel daily between New Orleans and Gulfport due to lack of hotel accommodations. The homeowner appealed to ONO for help in clearing the bureaucratic hurdles causing the delays. After ONO coordinated with the Office of Disaster Assistance to resolve settlement issues, the borrower and escrow company were notified that a loan check and closing documents would arrive within a week.

■ A small business applicant in Louisiana contacted ONO after being rejected for a disaster recovery loan because of his current lack of collateral. The entrepreneur argued that SBA should base its decision on his business's pre-Katrina performance and future projections. Twenty-four hours after ONO contacted the Office of Disaster Assistance, the owner was notified that his business was approved for a \$200,000 loan.

■ ONO received a comment complaining about a disaster loan delay.

“Job number one is handling this disaster.”

*– SBA Administrator
Steven Preston*

The National Ombudsman's call to the Office of Disaster Assistance prompted a response to the commenter on August 10 explaining what documents were needed for a \$10,000 unsecured loan.

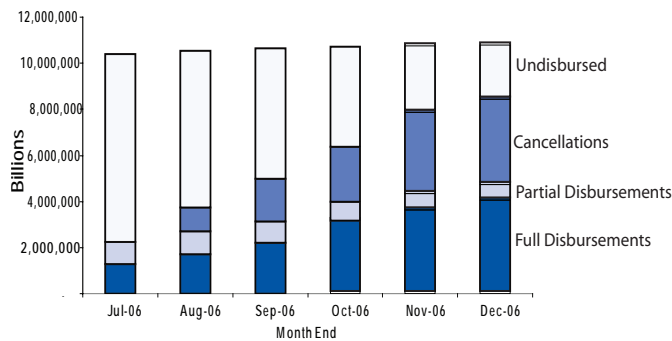
■ A Gulf Coast homeowner sought the National Ombudsman's assistance in getting a 90-day extension on the deadline for accepting his Federal disaster loan while he awaited the outcome of his application for a state grant. ONO consulted with the Office of Disaster Assistance and notified the homeowner that SBA had made a policy decision not to cancel disaster loans for failure to meet closing or disbursement deadlines.

With Administrator Preston's action to reform the SBA's disaster assistance program, the teamwork exhibited by the Office of National Ombudsman

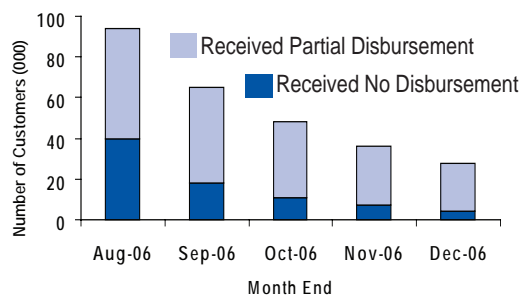
coupled with the Office of Disaster Assistance has realized success with a gratifying decline in the backlog of loan disbursements to Gulf Coast business owners (see following graphs). In August 2006, 40,000 business owners had yet to receive any funds from the disaster loans for which they had applied; by December, that total had dropped to less than 5,000. SBA's disaster portfolio included about \$8 million in undisbursed loans in July 2006; by December, that figure had dropped to less than \$3 million.

"A lot of times they just don't know where to go," commented Administrator Preston in describing his initiative to reform the disaster assistance program. "They don't know who to call, and we're glad to be there for them. I see us as the organization that responds to their needs."

Time Series of Disaster Portfolio (Dollars)



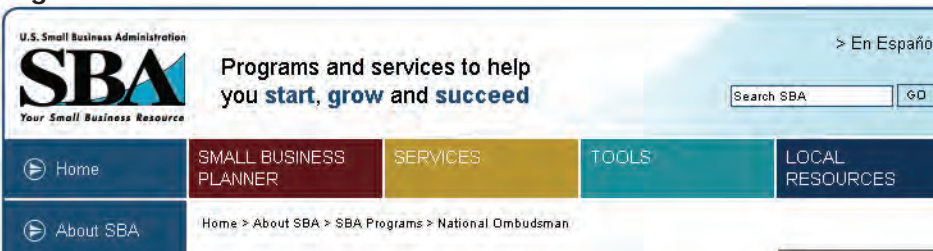
Remaining Customers (a)



II

Rating the Agencies— Encouraging Accountability

Figure II-1. SBA's Resouce Links



One important measure that ONO uses to monitor progress on regulatory fairness is an annual rating of Federal agencies. Each rating is based on how effectively the agency responds to the regulatory enforcement comments received from small businesses and other entities. ONO provides a variety of channels to help ensure that these comments reach the appropriate agencies. By rating their response, we encourage them to listen carefully to small business concerns (see details about the comment process in Chapter III).

The rating system is meant to be an assessment of agencies' performance in addressing small business concerns. We intend to encourage agencies to proactively institute policies that take small business enforcement fairness into consideration throughout the regulatory process.

Chapter II explains ONO's rating system and highlights the positive results we have achieved by encouraging agencies to:

- Promptly respond to small business concerns.
- Attend Regional Regulatory Enforcement Fairness (RegFair) Hearings—especially when a relevant issue is on the table.
- Proactively institute education and compliance assistance efforts that help prevent regulatory misunderstandings before they become enforcement issues.

Communication and Encouragement

As any effective troubleshooter would, we strive to maintain positive, open channels of communication with the Federal agencies. Our goal is to encourage the kind of best practices and success stories presented in this chapter, and we do so through holding interagency meetings, conducting one-on-one discussions about specific issues, and informing agencies when a RegFair Hearing features an enforcement issue pertinent to them.

ONO also stays connected via the Internet by including links from our website to the Federal agencies and sub-agencies with whom we are involved. For example:

- Clicking in the “Services” box near the top of ONO’s home page allows visitors to view links to a number of important information sources.
- One source is the “Compliance” heading, which links visitors to a list of resources available at Business.gov (see “A New Gateway to Government”

below) encompassing compliance information for all Federal regulatory agencies.

- Clicking on the “File a Complaint or Comment” link in the middle of ONO’s home page produces the form for filing a regulatory enforcement fairness comment.

In FY 2006, ONO’s Internet outreach extended significantly with the re-launch of Business.gov, the Federal government’s innovative one-stop gateway portal for the business community (see Figure II-2 below).

A New Gateway to Government

Communication between regulators and small business took a 21st century leap forward in FY 2006 with the re-launching of a new and improved Business.gov, “the official resource to help business quickly find compliance information, forms, and contacts from multiple government Web sites.” SBA manages the site and features prominently on the right hand side of the home page a link to the “SBA National Ombudsman.” Visitors can also click on “Compliance Contacts” and link to a listing of the names, phone numbers, and email addresses of all Federal regulatory agencies’ SBREFA contacts.



Figure II-2. New and Improved Business.gov



Besides compliance information, the site also contains the Business Resource Library, with links to information and services from across Federal, state, and local governments. Its developers believe that improvements to Business.gov’s website will save users \$2.7 billion and 37 million hours every year over the normal expense of filling out paperwork and complying with government regulations.

The Agency Questionnaire

The rating process begins with a questionnaire sent to Federal agencies inquiring about their interactions with the small businesses that they regulate. Based on the answers, ONO gives agencies letter grades according to how promptly they respond to small businesses and how effectively they work to educate their constituents about complying with regulations. In 2006, ONO updated its questionnaire in order to rate agencies' responsiveness. Agencies were graded on answers to the following questions:

- Do you have a written/online non-retaliation policy?
 - How is this policy disseminated throughout the agency (or sub-agency)?
 - How do small businesses access this information?
- Do you have written/online compliance assistance information available for small businesses?
 - How do you provide these businesses with measurable regulatory enforcement compliance assistance?
 - How do you measure compliance assistance from year to year?
- What tools do you use to inform small businesses about their SBREFA rights and how to contact ONO?
 - How do you comply with the Section 212 requirement that all agencies provide compliance

assistance guides in conjunction with new final rules that impact small businesses?

- Please list the ONO hearings where you had agency representation in attendance and note if the participation was in person or by conference call.

Federal Agency Rating Criteria for 2006

Once Federal agencies have returned their questionnaires, ONO conducts the next step in the process—rating agencies' responses to small business with a letter grade of A through F. In FY 2006, ONO graded agencies based on each of six rating criteria, plus an overall grade for the year (see Table II-1):

1. Timeliness

30 days or less	= A
31-60 days	= B
61-90 days	= C
91-120 days	= D
Over 120 days	= F

ONO calculates response time from the day we forward a comment to an agency until the day we receive that agency's response. We calculated timeliness in FY 2006 by defining "days" for rating purposes as business days rather than calendar days. If circumstances warrant, ONO may accept an agency's request for additional response time or for permission to provide an interim response. In these rare cases, we will take circumstances into consideration when calculating timeliness.

2. Quality of Response

When ONO receives a comment from a small business concerning a regulatory enforcement issue, we forward that comment along with its substantiating documentation to the Federal agency involved. At the same time, we may include correspondence with questions, such as “Why and how did you take the enforcement action?” and “Did your agency consider alternatives, such as waiving penalties or reducing fines?” The answers help ONO to assess the agency’s responsiveness, how thoroughly it considered the effects of its actions, and whether any follow-up occurred.

To expedite a response, we typically address this correspondence to a particular official within an agency, ideally the point of contact for small business concerns. ONO refers any comments that allege unprofessional behavior to the agency’s Inspector General. We consider the level of specificity and detail provided in each agency’s response, and determine grades according to the following criteria:

- The agency addressed all applicable questions posed in ONO’s correspondence and responded to the specific comment made by the small entity.
- The agency provided detailed information showing that it looked into the facts of the specific comment and the actions of the agency personnel involved in the enforcement activity.

- The response came from a high-level representative (i.e., someone from the SBREFA office at the agency or someone from the program office directly related to the comment).

3. Agency Non-Retaliation Policy

ONO defines “non-retaliation” policies as those designed to prevent acts that punish a small entity for objecting to an agency action. We raised the rating bar in FY 2006 for this important criterion and now require an agency to provide a copy of its policy, as well as the web address(es) for those policies that are available to the public. If an agency demonstrates that all of the following elements exist, it will receive a letter grade of A:

- The agency has adopted a written non-retaliation policy.
- The agency ensures that its employees are aware of its non-retaliation policy.
- The agency ensures that small entities are aware of and may access its non-retaliation policy.
- Agency employees and small entities are aware of the consequences of not adhering to the agency non-retaliation policy.
- Upon final rule, compliance assistance guides are available.

4. Compliance Assistance

If an agency demonstrates that all of the following elements exist and it has a reliable system for measuring results,

the agency will receive a letter grade of A:

- The agency provides measurable regulatory enforcement compliance assistance and explains how it is measured, on an annual basis.
- The agency provides small entities with a compliance assistance telephone number.
- The agency provides a compliance assistance website.
- The agency makes a compliance assistance employee available to small entities.
- The agency provides and is able to document compliance assistance education.
- The agency makes a compliance assistance guide available when promulgating a final rule.

5. RegFair Participation

ONO grades agencies on their participation in RegFair Hearings and meetings when testimony includes issues relating to the agency's mission. We attempt to notify an agency contact directly or through the ONO event website at least 48 hours prior to such a hearing. An agency representative may appear in-person or through the ReadyTalk conference call system. Here is how agencies are rated regarding their RegFair participation:

- Agency does not miss any pertinent hearings = A
- Letter grades B, C, and D are calculated based on how many pertinent hearings occur combined with how many the agency attends.
- Misses all pertinent hearings = F
- ONO will post a rating of N/A when no agency issues are presented at a RegFair Hearing.

6. Agency Notice to Businesses of Violations and Right to Comment

ONO issues a letter grade based on whether an agency establishes a policy wherein it provides written and verbal notice to small entities when a citation or notice of regulatory violation is issued. Demonstrating that all elements exist and are implemented will result in an A grade rating. The policy should include but not be limited to the following provisions:

- The agency provides written notification of SBREFA rights to small business concerns.
- The agency informs small businesses about their right to comment about the enforcement/compliance process to the National Ombudsman's Office.
- The agency provides to small entities in writing and/or on appropriate website locations the National Ombudsman's Internet address (www.sba.gov/ombudsman) and telephone and fax numbers.

Table II-1. Rating of Agencies According to FY 2006 Criteria

Cabinet Level Agency (# of comments)	Timeliness	Quality	Non-Retaliation Policy	Compliance Assistance	Informs about SBREFA	Hearing	Overall	Additional Complaints/Comments Referred*
AGRICULTURE (5)	C	A	A	C	C	A	B	
Food Safety & Inspection Service	N/A	N/A	A	A	C	N/A	B	
Forest Service (2)	F	A	A	F	C	N/A	C	
Grain Inspection, Packers & Stockyards Administration (2)	C	A	A	B	C	N/A	B	
Farm & Foreign Agricultural Services (1)	B	A	A	F	C	N/A	B	
COMMERCE (5)	A	A	C	A	F	A	B	3
National Oceanic & Atmospheric Administration (3)	A	A	C	A	F	A	B	
Bureau of Industry & Security (2)	A	A	C	A	F	N/A	B	
DEFENSE	See note in box below about Agency's response to the National Ombudsman.							5
EDUCATION	N/A	N/A	A	N/A	N/A	N/A	A	
ENERGY	N/A	N/A	A	N/A	A	N/A	A	
HEALTH & HUMAN SERVICES (77)	B	A	A	A	B	C	B	1
Food & Drug Administration (61)**	C	A	A	A	A	A	A	
Centers for Medicare & Medicaid Services (16)	A	A	A	A	C	N/A	A	1
HOMELAND SECURITY (10)	C	C	C	C	C	F	C	
Coast Guard	N/A	N/A	A	A	C	N/A	B	2
Citizenship & Immigration Services (1)	F	F	F	F	F	F	F	
Customs & Border Protection (9)	A	A	A	A	A	N/A	A	1
HOUSING & URBAN DEVELOPMENT (1)	B	A	A	A	A	N/A	A	
INTERIOR	N/A	N/A	A	A	C	N/A	B	1
JUSTICE	N/A	N/A	A	A	C	N/A	B	1
LABOR (14)	B	A	A	B	A	A	A	1
Occupational Safety & Health Administration (2)	A	A	A	A	A	A	A	
Wage & Hour Division (6)	B	A	A	A	A	A	A	
Mine Safety & Health Administration (6)	B	B	A	B	A	A	A	1
STATE	N/A	N/A	A	A	A	N/A	A	
TRANSPORTATION (1)	A	A	A	A	A	N/A	A	
TREASURY								
Internal Revenue Service (13)	F	A	A	A	A	A	B	2
VETERANS ADMINISTRATION	See note in box below about Agency's response to the National Ombudsman.							2

* Comments that are not regulatory enforcement related.

** Although 7 individual comments regarding a pedigree issue for small pharmaceutical distributors were sent to FDA, ONO received another 49 comments for the same issue.

Non-Cabinet Level Agency (# of comments)	Timeliness	Quality	Non-Retaliation Policy	Compliance Assistance	Informs about SBREFA	Hearing	Overall	Additional Complaints/Comments Referred *
CONSUMER PRODUCT SAFETY ADMINISTRATION	N/A	N/A	A	A	C	N/A	B	1
ENVIRONMENTAL PROTECTION AGENCY (9)	A	A	A	A	A	A	A	1
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (1)	A	A	A	A	A	N/A	A	
FEDERAL COMMUNICATIONS COMMISSION	N/A	N/A	A	A	C	N/A	B	
FEDERAL DEPOSIT INSURANCE CORPORATION (1)	A	A	A	A	***C	A	A	1
FEDERAL ENERGY REGULATORY COMMISSION (1)	A	A	A	A	A	N/A	A	2
FEDERAL RESERVE BOARD	N/A	N/A	A	A	***C	N/A	B	
FEDERAL TRADE COMMISSION	N/A	N/A	A	A	A	N/A	A	2
GENERAL SERVICES ADMINISTRATION	See note in box below about Agency's response to the National Ombudsman.							1
NATIONAL CREDIT UNION ADMINISTRATION	N/A	N/A	A	A	***C	N/A	B	
NATIONAL LABOR RELATIONS BOARD	N/A	N/A	A	A	N/A	N/A	A	
PENSION BENEFIT GUARANTY CORPORATION	N/A	N/A	A	A	N/A	N/A	A	
SECURITIES & EXCHANGE COMMISSION	N/A	N/A	A	A	A	N/A	A	

*** These three agencies are Federal Financial Institution Regulators. The agencies have established Ombudsman functions pursuant to the Riegle Community Development and Regulatory Improvement Act. To receive an 'A' rating in this category from the National Ombudsman, an agency must directly make reference to the National Ombudsman at the Small Business Administration on both its public web site and at the time a citation or notice of regulatory violation occurs.

PLEASE NOTE: As originally stated in the National Ombudsman's 1999 Report to Congress, Section 222 of SBREFA is part of "Subtitle B—Regulatory Enforcement Reforms." Section 221 contains the "definitions" applicable to Subtitle B. Section 221 adopts the Freedom of Information Act (FOIA) definition of "agency." That definition states that agency means "each authority of the Government of the United States, whether or not it is within or subject to review by another agency..." (5 U.S.C. §551). Accordingly, the National Ombudsman, with advice from the regional RegFair Boards, has concluded that Section 222 applies whenever a Federal agency, as defined above, exercises regulatory fairness enforcement or compliance authority with respect to a small business concern (15 U.S.C. Sec 657 (b)(2)(B)).

The Department of Defense and the General Services Administration, despite the broad statutory definition, correspondence, discussions with the National Ombudsman, and a letter from the Subcommittee on Regulatory Reform of the House Small Business Committee, have taken the position that Section 222 of SBREFA does not apply to them (see the National Ombudsman's 1999 Report to Congress).

In addition, the Department of Veterans Affairs, in a 2007 letter to the National Ombudsman, states, "VA is not a regulatory agency..."

Agency Comments Regarding Ratings

ONO presented a draft of this report to the agencies and RegFair Board members for their comments. The Internal Revenue Service (IRS) provided the following comment:

The majority of comments referred from the ONO to the IRS are directed to the Taxpayer Advocate Service (TAS) through the Local Taxpayer Advocate (LTA) in Washington, DC. TAS makes every effort to comply with your expectations in responding to these referrals.

In most cases, TAS notifies the ONO within 30 days that the inquiry has been received and assigned to a TAS office in the same area where the comment filer lives. Within that same timeframe, the comment filer is contacted and advised that TAS is responding to the inquiry and will provide assistance in resolving the problem.

Solving problems with the IRS is a complex and time consuming process. Many cases require extensive documentation and formal requests for assistance from other IRS functions. TAS employees must comply with relevant sections of the Internal Revenue Code (IRC), operate within the limits of their delegated authority, and must utilize normal IRS functions and procedures.

The objective in TAS casework is to resolve cases in a timely manner. While response time is a useful indicator of timeliness, reducing response time is not, per se, a TAS objective. In fact, the use of response time as a quality measure in other IRS functions is sometimes the reason why cases end up in TAS. When response time itself is made the priority objective, an incentive arises for caseworkers to close out cases prematurely, which is directly at odds with TAS's actual quality standards, including the goal of addressing all related issues so that the case is truly and completely resolved.

In the past year, TAS has implemented several changes to the SBREFA program to increase the efficiency of our efforts. Program responsibility was moved into the DC LTA office to focus a greater emphasis on the program and to facilitate a degree of specialization in working these cases. The review process was streamlined by reducing the number of program managers reviewing the cases before they are forwarded to the National Taxpayer Advocate. Through this streamlined procedure, we are more effective and more efficient in engaging the local TAS offices, TAS Counsel, and the TAS Offices of Case Advocacy and Systemic Advocacy, to address issues raised through the SBREFA referral process.

Timeliness of Response — Criterion 1

For many small businesses tangled in regulatory red tape, time and money are precious commodities. Coping with enforcement fines or citations can strain resources to the point that businesses' survival may hinge on a prompt resolution. Enforcement agencies, however, require adequate time to do a thorough job of clearing up complicated cases and meeting all legal requirements. The intervals used by ONO to calculate timeliness ratings (see Figure II-4) are designed to strike a balance between these concerns. The following letter from the **Environmental Protection Agency** (EPA) describes one enforcement entity's efforts to comply:

“Although the public expects and deserves an immediate response to comments, it is often very difficult to quickly provide a truly informative response regarding a complex situation. This problem is heightened by the fact that EPA’s enforcement program is highly decentralized into regional offices, resulting in the need for additional time to locate and work with various legal and scientific staff...Because we believe that a timely response is better than an incomplete one, EPA will continue to strive to provide a response that is most helpful to the commentor [sic] as quickly as possible.”

– Environmental Protection Agency

One method used by Federal agencies to expedite enforcement resolutions is setting up hotlines that connect

small businesses directly to staff who are qualified to address their issues. The Department of Justice's (DOJ) **Employment Benefits Security Administration** (EBSA) hotline is answered by live operators who connect callers to Benefits Advisors trained in compliance assistance. Callers also can request to be connected to the EBSA regional office serving their area. The DOJ's **Office of Special Counsel** staffs its national toll-free line with attorneys and equal opportunity specialists who can provide immediate answers to employers' discrimination concerns.

The **Equal Employment Opportunity Commission** (EEOC) offers mediation in most cases as a first step in promptly resolving job discrimination complaints. The agency has found that 65 percent of mediated charges are resolved. The **Consumer Product Safety Commission** (CPSC) evaluates its small business services every three years. In a survey conducted in 2005, 91 percent of small businesses rated agency response to their inquiries as timely. Figure II-3 reveals the average number of days that agencies took to respond to small business comments.

Figure II-3. Response Timeliness

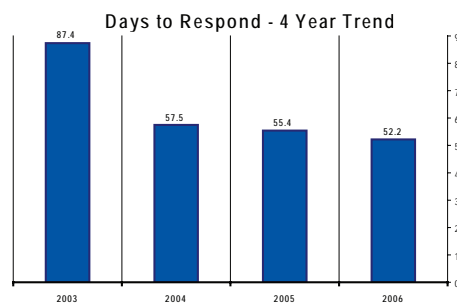


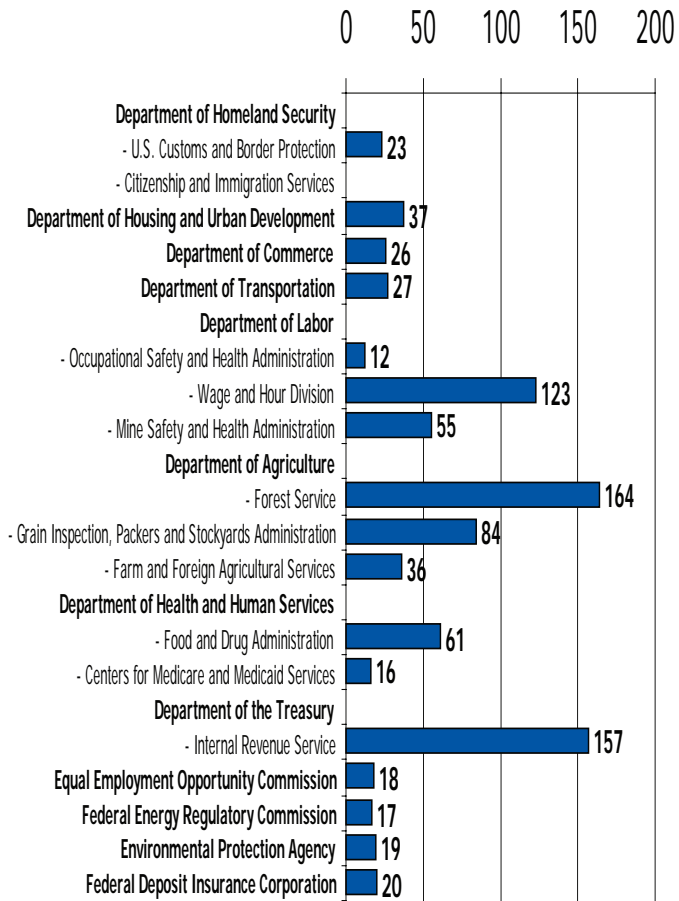
Figure II-4. Rating Rationale for Timeliness

30 days or less	= A
31-60 days	= B
61-90 days	= C
91-120 days	= D
Over 120 days	= F

Figure II-5. Response of Federal Agencies

RESPONSE OF FEDERAL AGENCIES TO COMMENTS - AVERAGE NUMBER OF DAYS

Average Response Time



Quality of Response—Criterion 2

While a prompt agency response to a small business concern is critical, the content of that response is equally as important. Generic, generalized answers often do little to help the entrepreneur understand a regulation or solve his or her enforcement dilemma. What is needed are specific steps provided by an official who has the authority to resolve the situation.

To that end, the Agriculture Department's **Animal and Plant Health Inspection Service** (APHIS) sends a letter and a proposed settlement agreement to each alleged rule violator. The correspondence also describes the violation, penalty amount, right to a hearing, and phone number where an APHIS employee is available to provide more information.

The **CPSC** assigns its Small Business Ombudsman the task of providing a single point of contact for ensuring that entrepreneurs' concerns are addressed promptly and for tracking down the CPSC experts in its Technical Office and Directorates who can address the specific issue. The **Federal Reserve Board** also maintains an Ombudsman's Office to explain the proper avenues of appeal or resolution and mediate between a complainant and the responsible Federal Reserve System staff. A Quality Assurance Manager oversees the Fed's system for tracking complaints and assuring that they are dealt with in a timely manner.

Similarly, the **Federal Deposit Insurance Corporation** (FDIC) assigns senior staff at its regional and field offices to serve as the single point of contact for each specific bank. That person can connect the small entity with subject matter experts at the regional and Washington, DC offices to answer questions in technical areas.

Agency Non-Retaliation Policy—Criterion 3

Non-retaliation policies are an important component in the National Ombudsman's mission to combat unfair regulatory enforcement. Without such policies in place, small businesses would not feel free to speak out about unreasonably burdensome rules. For this reason, ONO has made its evaluation more comprehensive by requiring agencies to produce written and website copies of their non-retaliation policies for our review.

We encourage agencies to establish standalone non-retaliation policies that specifically reference small businesses rather than rely on generalized ethics codes or standardized discrimination procedures. A useful approach taken by many agencies is to routinely hand out copies of non-retaliation policies during enforcement actions and outreach events. This practice reminds agency employees, as well as small businesses about the policy.

Although the **Department of Interior** (DOI) is still in the process of approving a department-wide policy,

DOI's **Fish & Wildlife Service** (FWS) issued a new chapter in the FWS Manual titled, "Nonretaliation Against Small Entities" (<http://pdm.fws.gov/sba/sbindex.html>). The chapter defines in simple outline form what constitutes a small entity, what constitutes a retaliatory action, and the sanctions for such actions. The policy applies to all FWS employees who interact with small entities in any way, including issuing licenses or permits, administering conservation agreements, carrying out enforcement actions, or administering contracts.

The **National Labor Relations Board** (NLRB) recently released its own non-retaliation policy (www.nlr.gov – About Us/Public Notices/Small Business Regulatory Enforcement Fairness Act) along with a memo announcing the measure to all field personnel. The following policy exemplifies the open, non-confrontational approach that ONO hopes to foster between Federal agencies and small businesses:

"NLRB is committed to maintaining an environment in which small entities, and all other parties to its proceedings, are free to raise questions or concerns, or complain about NLRB actions or policies. No NLRB employee shall take any type of retaliatory action against a small entity or any other party solely for raising questions, concerns, or complaining about NLRB actions or policies."

– *National Labor Relations Board*

The policy then directs small businesses how to contact the NLRB Office of Inspector General or ONO to report violations or comment on NLRB enforcement.

The **Department of Transportation** (DOT) recently published its non-retaliation policy in the *Federal Register*, including the requirement that employees must undergo annual training (http://dmses.dot.gov/docimages/pdf98/422990_web.pdf). DOT directs administrators to circulate the policy via websites, rulemaking documents, inspection handouts, guidance materials, pamphlets, and trade association information.

Agency Regulatory Enforcement Compliance Assistance— Criterion 4

Effective compliance assistance steers small businesses toward understanding and following rules to avoid landing in regulatory hot water. With the National Ombudsman's encouragement, many Federal agencies are discovering a variety of multi-media approaches to boost compliance before enforcement becomes an issue.

The **Federal Trade Commission** (FTC) is one example of an agency that continued in FY 2006 to expand its outreach from individualized assistance to multi-media, multi-agency programs in the following ways:

■ **Individual help:** At ONO's prompting, the FTC advised one

entrepreneur that the agency's Do Not Call Registry does not cover most business-to-business phone calls. The agency also assured another small business owner that the Children's Online Privacy Protection Rule is flexible enough to accommodate his proposed online songwriting contest.

■ **Live in the field:** Staff conducted public workshops and seminars on subjects such as truth in advertising, e-commerce, and frauds that commonly affect the Hispanic community.

■ **In print:** FTC developed several new publications designed to help consumers and small businesses protect themselves, including "Securing Your Wireless Network" (<http://www.ftc.gov/bcp/conline/pubs/online/wireless.pdf>) and "Financial Institutions and Customer Information: Complying with the Safeguards Rule" (<http://www.ftc.gov/bcp/conline/pubs/buspubs/safeguards.htm>).

■ **Online:** FTC extensively revised its Identity Theft microsite (<http://www.ftc.gov/bcp/edu/microsites/idtheft/index.html>).

■ **Multi-media:** Along with other Federal and technology industry partners, the FTC initiated an OnGuard Online project (www.onguardonline.gov) to educate consumers and businesses about basic computer security practices.

Continuing its emphasis on small/very small plant outreach, the Agriculture Department's **Food Safety and**

Inspection Service (FSIS) announced in FY 2006 a strategic implementation plan that also employed various media to specifically respond to small business needs. Accomplishments during the last fiscal year include:

■ An overhaul of the small/very small plant outreach section of the FSIS website for one-stop shopping and accessibility directly from the agency's home page (www.fsis.usda.gov).

■ Regulatory Education Sessions attended by both industry and inspection personnel (16 as of September 2006).

■ Outreach visits to small/very small plants to prepare them for Food Safety Assessments (219 as of September 2006).

Combining technology with the ease of access also worked for **FWS**. The agency wanted to increase use among small businesses of its e-Decs Internet filing system for declaring wildlife imports and exports. Besides speeding paperwork, the system is also a way to expedite the resolution of compliance problems before they delay or derail business activities, according to FWS. The agency effectively spread the word about e-Decs with face-to-face training sessions at ports of entry and at association gatherings.

Agriculture's **Marketing Order Administration Branch** (MOAB), which oversees fruit and vegetable marketing orders and agreements, works to alleviate regulatory complications by issuing informational

packages to 3,400 businesses at least once a year or whenever regulations change. In FY 2006, MOAB also responded within two business days to 1,000 inquiries about product import compliance.

When the **IRS** scored successes with taking the personal approach at the national level, the agency decided to expand its outreach locally. Small Business Forums (SBFs) held in partnership with national small business associations provided the IRS with feedback on how its policies and procedures affect entrepreneurs. In FY 2006, the agency decided to launch local SBFs, partnering with chambers of commerce, financial institutions, state taxing authorities, minority groups, practitioner organizations, and other local/regional/state organizations representing the small business/self-employed taxpayer (<http://www.irs.gov/businesses/small/article/0,,id=106266,00.html>).

The IRS also added more face-to-face outreach to IRS Nationwide Tax Forums, one of the agency's largest and most effective outreach programs for tax professionals. The forums traditionally encourage "frank and wide-ranging" discussions of tax issues and the latest filing information. In FY 2006, participants were also offered a hands-on e-file exercise and invited to bring difficult tax cases for on-the-spot resolution by IRS personnel.

Reaching out to the broadly diverse American work force, the **Department**

of Labor (DOL) provided a toll-free compliance hotline with live operator assistance in English and Spanish, with additional services available in more than 140 languages through a translation service. Small businesses can seek compliance information about issues such as pay and leave, workplace safety, and pension and health benefits. All calls are confidential.

Another way that agencies work to head off enforcement problems is to structure regulations and policies with the specific purpose of anticipating and avoiding compliance difficulties. The **Pension Benefit Guaranty Corporation** (PBGC) promulgated such a rule in FY 2006 by requiring electronic filings for premium-related information and instituting a delayed effective date for companies with pension plans that have less than 500 participants. The final rule also permits PBGC to grant electronic filing exemptions "for good cause in appropriate circumstances" and provides for lower penalties or waivers for the plans of small businesses and for violations that are quickly corrected.

One reason that ONO encourages agencies to measure enforcement compliance year-to-year is because hard numbers can demonstrate the value of reaching out to small businesses. The **Department of State**, for example, found that its Office of Small and Disadvantaged Business Utilization has the third highest number of hits on its website and is ranked 215 out of more than 60,000 pages.

The **EEOC** has grown its outreach program from 289 education and compliance events that reached 11,042 businesses in FY 2001 to 662 events reaching 31,426 businesses in FY 2006. EEOC continues to expand its outreach because “smaller employers are often without the resources and infrastructure that exist in large companies to address employment disputes. The training and materials that we provide to these employers gives them the information they need to comply with federal EEO laws.”

Employees at the **FDIC’s** Division of Supervision and Consumer Protection devoted more than 100,000 hours in FY 2006 to outreach and education, up from 80,000 the previous fiscal year. Outreach occurred as part of examinations, as well as during structured programs.

One important way that agencies assist small businesses in meeting regulatory obligations is to issue guidance when a new major rule becomes final. The **FDIC**, for example, published a Small-Entity Compliance Guide in FY 2006 (<http://www.fdic.gov/news/news/press/2005/pr12705.html>) to assist businesses with interpreting their responsibilities under the new Interagency Guidelines Establishing Information Security Standards. The **Federal Reserve Board** operates an ongoing web page that catalogs its regulations and offers a specific link if the rule has a compliance guide for small entities (<http://www.federalreserve.gov/Regulations/>).

Once small businesses do incur penalties, some agencies, such as the Commerce Department’s **National Oceanic and Atmospheric Administration** (NOAA), have a policy of continuing to work with the entity to resolve the situation. NOAA is responsible for conserving and managing coastal and marine resources and resolves an average of 250 civil monetary penalty cases each fiscal year. Penalties are reduced or waived in almost 92 percent of these cases, for a total of almost \$1 million dollars in reductions. This total does not include the many cases resolved before their conclusion through several agency programs established specifically to provide businesses with the chance to have penalties reduced or waived.

Commerce’s **Bureau of Industry and Security**, which enforces export controls and treaty compliance, has a policy of suspending civil penalties based upon a company’s proven inability to pay or significant financial hardship. The agency reported that it typically suspends in whole or in part, 20 percent of cases involving small businesses for a total value of \$200,000.

Agency Participation in RegFair Hearings—Criterion 5

EPA noted two ONO improvements that helped the agency make the most of its RegFair Hearing attendance in FY 2006. The first is ONO’s effort to notify agencies when a comment on one of their enforcement actions is likely to be discussed. The second

is our ReadyTalk conference call capability, which allowed EPA to “expand our ability to participate and helped us use our limited travel funds for those hearings where our representation would be most important to the small businesses attending.”

The agency made it a practice of contacting the local SBA office prior to a RegFair Hearing to identify the types of small businesses in the area required to comply with environmental regulations, then provide the SBA contacts with hard copies of relevant EPA compliance assistance materials for small business hearing attendees. One example where this hearing strategy made a difference is with the construction industry, which was

experiencing a boom in FY 2006 in several hearing locations. EPA supplied information on controlling storm water run-off from construction sites, a common issue in this sector. The agency expressed appreciation for “the [SBA’s] assistance in our effort to go the extra mile at these hearings to reach the right audience with the right compliance assistance information.”

Some agencies attend RegFair Hearings even when no enforcement issue is pending so that entrepreneurs can familiarize themselves with Federal entities before problems arise. The seven agencies of **DOL**, for example, participated in a total of 30 RegFair Hearings to ensure a presence in the small business community.

Table II-2. Breakdown of Agency Attendance at ONO RegFair Hearings, 2006

<i>Event</i>	<i>Little Rock, AR, (11/10/05)</i>	<i>San Francisco, CA (1/18/06)</i>	<i>Jacksonville, FL (3/23/06)</i>	<i>Cincinnati, OH (3/29/06)</i>	<i>Pierre, SD (4/13/06)</i>	<i>San Antonio, TX (5/16/06)</i>	<i>Boston, MA (7/14/06)</i>	<i>San Diego, CA (7/20/06)</i>	<i>Anchorage, AK (8/18/06)</i>	<i>Denver, CO (9/26/06)</i>	<i>Sacramento, CA (9/29/06)</i>
<i>Agriculture</i>											
<i>Food Safety Inspection Service</i>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<i>Commerce</i>											
<i>Natl. Oceanic Atmospheric Administration</i>							✓				
<i>Environmental Protection Agency</i>		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<i>Equal Employment Opportunity Commission</i>	✓					✓			✓		✓
<i>U.S. Army Corps of Engineers</i>	✓					✓					
<i>Federal Communications Commission</i>											✓
<i>Federal Deposit Insurance Corp.</i>			✓								
<i>Federal Trade Commission</i>											
<i>Food and Drug Administration</i>							✓			✓	✓
<i>Homeland Security</i>											
<i>Customs and Border Protection</i>			✓	✓	✓					✓	
<i>Treasury</i>											
<i>Internal Revenue Service</i>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
<i>Bureau of Alcohol, Tobacco, and Firearms</i>											
<i>Labor</i>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<i>Occupational Safety and Health Administration</i>		✓	✓	✓	✓			✓	✓	✓	✓
<i>Wage and Hour Division</i>				✓	✓	✓		✓		✓	✓
<i>Mine Safety and Health Administration</i>						✓					
<i>Federal Contract Compliance Program</i>											
<i>Small Business Administration</i>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<i>Transportation</i>											
<i>Federal Aviation Administration</i>											
<i>Veterans Affairs</i>											

Agency Notice to Businesses of Violations and Right to Comment—Criterion 6

Despite ONO's own extensive outreach efforts, too many small businesses are unaware that we stand ready to assist them when they find themselves overwhelmed by a regulatory compliance matter. This underscores the importance of Federal agencies providing small entities with written and verbal notice when issuing a citation or notice of regulatory violation. DOI's **Office of Surface Mining** (OSM), for example, trains employees to provide written notification of businesses' SBREFA rights at the time of an inspection or audit. As with many agencies, OSM also posts a link on its web page to ONO's website.

Because the overwhelming majority of the 1 million health care providers regulated by the Department of Health and Human Services' **Center for Medicare & Medicaid Services** (CMS) are small entities, the agency has gone beyond providing notification during its compliance processes. CMS also gives providers time for corrective actions as they go through survey and certification procedures and gives them the option of contacting payment contractors directly to resolve disputes without entering a formal enforcement process.

The Drug Enforcement

Administration (DEA) cites its status as a law enforcement agency as the reason that it does not provide written or oral SBREFA notification during its actions. The agency instead posts a SBREFA Advisory Notice on its website at www.DEAdiversion.usdoj.gov under the "Publications" heading. The notice directs small businesses to contact their local DEA Diversion Group with concerns about regulatory activity or directly inform ONO at its toll free number. The SBREFA Advisory Notice also appears in the back of each new and revised manual and presents DEA's legislative and regulatory requirements "in a plain language format."

Every effort that a Federal agency makes on its own to recognize and address small business compliance concerns takes both regulators and entrepreneurs closer to ONO's goal of an effective, not excessive regulatory climate. ONO's agency ratings are meant to be a measure of how close Federal regulators are to that goal. The following NOAA memo on SBREFA enforcement—submitted with the agency's questionnaire—exemplifies the approach that ONO has worked to encourage:

“Although we may believe that we have legitimate reasons for taking action against a small entity, the small entity may believe that it has a legitimate explanation. Any delay in our response to the small entity could cause serious financial hardship or other problems (e.g., because its reputation is adversely affected based on public knowledge of our allegations). Small entities may be especially vulnerable in such situations. It is important that our enforcement personnel be sensitive to the concerns of all businesses, including small businesses.”

– National Oceanic and Atmospheric Administration

III

Small Business Speaks— Success Stories From Main Street

A regulatory body is generally focused on protecting consumers and the public good. It is often unaware that the cumulative effect of regulations promulgated by numerous agencies can strangle a small business. “I never met a regulator who did it out of meanness or spite,” one entrepreneur told the 2006 national meeting of RegFair Board members. “They don’t realize what it does out there. They don’t understand how that one regulation fits in with everything else that applies to your business and what you do.”

Small business owners, on the other hand, focus their time and energy on growing their business, thereby growing their local economy. Limited resources are often unequal to the task of keeping up with all relevant regulations. Complying with a maze of rules can seem like an insurmountable burden that can threaten a company’s economic well-being.

Chapter III presents real-life stories about the challenges that small businesses faced in 2006 as presented in comments to ONO and testimony at RegFair Hearings. The words and experiences of company owners illustrate the importance of ONO’s ability to step in as their ambassador to Federal regulators.

ONO—along with a dedicated cadre of Regional RegFair Board members—listen carefully to these small business concerns, then convey the issues to the relevant regulatory agency. *Our aim, as always, was to reach a mutual understanding and fair resolution.*

ONO and our Board members continued to place a high priority on outreach, using technology to deliver the message to as many entrepreneurs as possible that we help navigate regulatory enforcement challenges. We continued to expand our presence on the Internet (Figure II-2) and through RegFair Hearings, trade association meetings, and media outlets. We also encouraged the Federal agencies themselves to open direct channels of communication with their small business constituents.

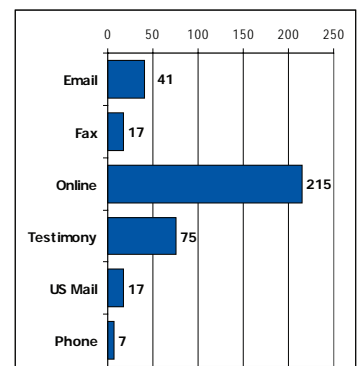
Comments Tell the Story

ONO provides multiple avenues through which small entities can reach us with their claims of unfair regulatory enforcement. Online methods are by far the most popular, followed by RegFair Hearing testimony, email, fax, and U.S. mail (see Figure III-1). The largest group of comments in 2006 came from

“To make our economy stronger and more competitive, America must reward, not punish, the efforts and dreams of entrepreneurs. Small business is the path of advancement, especially for women and minorities.”

— President George W. Bush

Figure III-1. How Comments Were Received



When a Case Exceeds Our Jurisdiction

It is ONO's goal to ensure that small businesses, small nonprofits, associations, and small government entities receive a response to the comments that they file with us on enforcement fairness—as long as the regulatory issue is within our statutory authority. We have helped thousands of businesses with their regulatory challenges, but ONO and our Board members cannot:

- ❏ *Serve as a small entity's attorney. We do not legally represent the organization filing the comment.*
- ❏ *Guarantee a positive outcome.*
- ❏ *Overrule, stop, or delay a Federal agency action (such as halting an IRS audit). The agency is the only one that can change a regulation.*
- ❏ *Intervene for a small entity while it is suing a Federal agency.*
- ❏ *Handle harassment claims—these are forwarded to the appropriate Federal agencies.*

small businesses, followed by small nonprofits, associations, individuals, and small government entities (see Figure III-2).

The National Ombudsman forwarded all comments within its jurisdiction to the relevant Federal agency. If the regulatory issue was not within our jurisdiction—e.g., contracting issues, state issues, loan denials—we directed the comment to the appropriate SBA office or other governmental entity (see sidebar: “When A Case Exceeds Our Jurisdiction”).

These comments not only provide an outlet for small businesses to express concerns, but help Federal agencies carry out their regulatory missions with fairness and balance. ONO relies on comments to help evaluate regulatory enforcement activity (see Chapter II), measure agency responsiveness to small business, supply agencies with information they need to access enforcement concerns, and keep Congress apprised of progress through ONO's Annual Report to Congress.

The small business cases presented in this chapter—from the companies' own testimony and background files—reveal some common themes and perceptions that run through regulatory dilemmas:

Confusing/Changing Regulations –

Small businesses often struggle to interpret regulatory complexities and keep up with new requirements.

Crossed Signals/Lack of

Communication – Busy entrepreneurs

and Federal regulators inhabit separate worlds, and some miscommunication might be expected. The trouble arises when misperceptions or misplaced messages seriously impact the vitality of a small company.

Costly Agency Errors – Even minor mistakes in the regulatory enforcement process can produce a heavy financial or logistical burden for a small business.

Costly Compliance Conditions – A rule that appears reasonable to regulators can result in costly and frustrating hurdles for businesses with small staffs and limited financial resources.

Regulatory Overkill – Fines and inspections meant to foster good business behavior and protect the public good can result in serious financial setbacks to a small business.

Confusing/Changing Regulations

Rules that appear reasonable and clear to regulators can confound and frustrate a small business, especially when it struggles to interpret complex requirements only to find itself in non-compliance. Entrepreneurs can also feel unfairly burdened when they invest precious time and resources complying with a regulation that then changes significantly. The burden is even greater when new rules make compliance more difficult.

Faced with such situations, small businesses can come to view regulators as adversaries rather than protectors of the public interest. ONO carried on its mission in FY 2006 of intervening in these often contentious situations to help parties reach a mutually beneficial understanding.

The National Ombudsman stepped in to resolve a case that began in 2004 when an aircraft delivery company was fined \$10,000 by U.S. Customs and Border Protection (CBP) for violations relating to filing a false manifest for transporting a plane from Miami to Costa Rica as a private aircraft. CBP declared that the flight was for commercial purposes.

The heart of the dispute centered on the definition of a “commercial aircraft.” The delivery company asserted that the plane should be defined as “private” because it was being ferried to Costa Rica for maintenance purposes only. CBP countered that the plane itself constituted “commercial cargo” and could not be defined as “private.” CBP mitigated the fine to \$750, however, because it was the small business’s first violation.

The company owner refused to accept the lowered fine, declaring that he had not violated the law and wanted a clean record. He continued working through the CBP’s appeal process, and although the agency lowered the fine to \$100, the entrepreneur turned to the National Ombudsman for help. “I am not concerned about the money,”

he commented. “It is simply a matter of right and wrong.” CBP examined the case one more time, decided in the delivery company’s favor, and canceled the fine. The owner attributes the final positive outcome to ONO’s intervention:

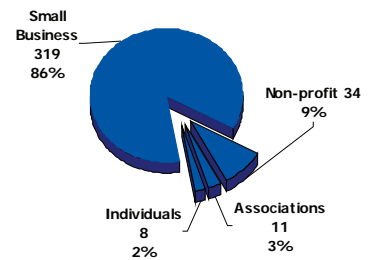
“Until I discovered your office, I had tried every avenue with the CBP to defend my company’s reputation, but to no avail... Your intervention caused the upper management and legal staff to review the case and come to the correct decision. I believe your office provides an invaluable service and is one government agency that has earned my respect.”

– Aviation Small Business Owner

Although onsite inspections by Federal regulators are a routine part of many operations, the events can be stressful for small businesses, particularly when they disagree with the findings of a government representative. In these cases, company owners can contact the National Ombudsman.

One such case involved a gravel mining company and the owner’s contention that an inspector from the Mine Safety and Health Administration (MSHA) delivered contradictory citations and behaved unprofessionally. The owner asserted that during a routine inspection, an MSHA supervisor arrived on the scene and took over from the regular inspector, issuing citations for equipment that had been in compliance two months earlier. The owner asked for ONO’s help with what she termed unfair citations and asked,

Figure III-2. Breakdown of Who Filed Comments



“Is there anything that we can do to improve relations between MSHA inspectors and our...employees?”

MSHA responded that it reviewed the incident, determined that the inspectors had “engaged in inappropriate behavior during their time at the mine,” and took appropriate disciplinary action. The MSHA district manager reviewed the citations and vacated two of them. He directed the company owner to MSHA’s Small Mines Office, where businesses can receive help tailoring safety and health programs to fit small mining operations. MSHA concluded:

“All mine operators deserve a regulatory enforcement program that is reasonable, predictable, and fair. They also deserve to be inspected by Agency personnel acting appropriately and professionally.”

– Mine Safety and Health Administration

Crossed Signals/Lack of Communication

ONO receives numerous comments from small companies whose crossed communications with regulatory agencies are hurting their business. ONO continued its mission in 2006 of setting the signals straight, whether the glitch resulted from a lost message, a misunderstanding, or an entrepreneur’s fruitless search to locate an agency representative who can resolve a regulatory difficulty.

In the case of one physician, the ripple effect of crossed communications adversely affected her patients and her practice. The physician told us that the Centers for Medicare and Medicaid Services (CMS) stopped paying her office’s Medicare claims, citing different reasons during her multiple attempts to find out why. She reported that after she tried for several months to rectify the situation, CMS cancelled her Medicare number. Because her practice was made up of predominately Medicare patients, she was driven to close down due to unpaid claims. Based on these denials, her patients’ secondary insurers were denying their claims as well.

ONO’s involvement prompted CMS to investigate the tangle of communications to find that its contractor committed several paperwork errors that led to the termination of the physician’s Medicare number. The contractor updated its files, reinstated the physician’s number, and processed \$38,000 in unpaid claims.

Sometimes an incident as seemingly insignificant as one lost piece of mail can have a major impact on a small business. A mining company received an MSHA citation for failure to file a quarterly employment report. The owner contested the citation, claiming that she had never received the report form in the mail. After being contacted by ONO, MSHA discovered that the owner’s suite number was not included in her address. This database

oversight may have led to the form never being delivered, concluded the agency.

Although the owner knew of the report requirement and could have obtained the form online, according to MSHA, the agency vacated her citation because she had no previous record of failure to report.

Costly Agency Errors

Even agencies with the best intentions and strongest quality control can make mistakes. ONO strived to raise regulators' awareness of the fact that even a seemingly insignificant error in the enforcement process can have a major impact on a small business operating with a razor-thin profit margin.

A wholesale/retail company in Baltimore contacted the National Ombudsman when CBP seized a shipment of handbags and levied a \$64,000 fine for importing counterfeit goods. The company president argued that the handbags were not counterfeit and that CBP should have seized only a representative sample from the shipment for comparison.

After receiving the ONO comment, CBP researched the complaint, found that the shipment was not counterfeit, and canceled the civil penalty. The agency noted, however, that it has the authority to seize "confusingly similar" goods until it determines whether or not they are counterfeit.

One of the most nerve-racking regulatory tangles in which a small business can find itself is an enforcement dispute with the Internal Revenue Service (IRS). In the case of one certified public accounting firm, ONO's intervention led the IRS to not only correct its error, but change its rules to avoid the same mistake in the future.

The IRS mailed out Change in Representation forms (CP-548C) to 127 of the accounting firm's clients, declaring that they could no longer be represented by the firm because mail to its office was undeliverable. The firm had been at the same location for more than 25 years, with the same letter carrier for 10 years. Neither the firm's president nor the letter carrier knew of any returned mail. Furthermore, the IRS confirmed that it had the company's correct address in its database.

Clients expressed "abandonment and confusion" over being informed that their accountant could no longer represent them, the firm's president told National Ombudsman Owens. "One client said he thought he had done something wrong. I believe the longer I wait to resolve the issue, the less and less my credibility becomes."

The IRS's subsequent investigation revealed that the CP-548C notices were mailed in error because IRS protocol had not been followed—no attempts were made to contact the CPA or his clients before forms were

"The National Ombudsman's Office is an integral and valuable part of the regulatory process. Outreach efforts by this office provide an avenue by which small businesses can voice concerns to Congress about overzealous compliance officers and also relay the unintended consequences of the impact of finalized regulations on real businesses. The U.S. Chamber of Commerce strongly supports a robust and active National Ombudsman's office."

*— Giovanni Coratolo,
Executive Director,
Council on Small Business,
U.S. Chamber of Commerce*

“When small businesses take their complaints to the Office of the National Ombudsman, they don’t simply address their own problems, as important and pressing as these might be. They also improve the regulatory environment for everyone else.”

– Tom Schlafly, Chairman, Region VII, St. Louis, MO

mailed. As a result, the IRS issued three employee alerts explaining how to avoid the error and the agency removed the phrase “will no longer be permitted to represent you” from letters informing clients that their accountant’s mail is undeliverable.

In another case, a Medicare provider urgently contacted ONO to say that she was in danger of losing her home and practice and laying off employees because her Medicare payments were being withheld. She noted that since filing a change of address application with CMS, she had received no payments, and the form had been returned multiple times. ONO’s involvement triggered a CMS investigation, revealing that a Medicare contractor’s incorrect handling of the change of address application was resulting in payment delays. The contractor updated the physician’s enrollment record and processed delayed unpaid claims.

Costly Compliance Conditions

Compliance costs that large companies take in stride as a cost of doing business may place a small firm in financial jeopardy, a point that ONO continued to convey to the agencies with which we came in contact. Our ombudsmanship in the regulatory arena sometimes goes beyond helping a single entrepreneur to changing the regulatory culture of enforcement.

One such example is the case of a Kansas developer who sought ONO assistance after the Environmental Protection Agency (EPA) fined him \$60,000. EPA cited storm water discharges from a property being developed for new house construction, declaring that they violated Clean Water Act limits. The developer told ONO that he agreed to a settlement offer “for the sole reason that no other expeditious alternative is available to small business owners without resulting in excessive legal costs.”

Due to ONO involvement, EPA discovered that it had failed to identify the developer as a small business and inform him of his right to contact the National Ombudsman. The agency stood by its citation for the Clean Water Act violation but changed its enforcement approach:

“As a result of the concern raised by this comment, EPA, Region 7 has changed its procedure...Region 7 has modified its practices to assure that small businesses are informed of their right to contact [ONO] whenever a negotiated settlement is reached...”

– Walker Smith, Director, Office of Civil Enforcement, Environmental Protection Agency

ONO can assist small businesses and impact enforcement even when the issue raised in a comment is not within our jurisdiction. In fact, part of our mission is to serve as small companies’ reliable first contact with their Federal regulators. The Region I RegFair Board Hearing held in July

2006 allowed an active small business advocate to air an issue important to all small companies—a comment that we then passed on to the appropriate office of the IRS.

A Boston accounting firm owner raised the general issue of the mounting costs of complying with tax laws and the IRS's specific plan to conduct an "audit study" on 5,000 S Corporations and their shareholders. The businessman noted that "many of the regulations and internal decisions of the IRS have added to the compliance costs of our clients." He added that some new laws are so confusing that even though they are intended to benefit small businesses, the cost of figuring out how to get the benefit outweighs the tax advantage.

He emphasized the belief that all businesses should pay their fair share of taxes and that flagrant violators should be punished.

"Our concern is that where auditors determine that there are insignificant errors, they aggressively pursue the small business taxpayer because they know that too much of a battle by the taxpayer will prove to be cost ineffective...If small businesses, which are the economic engine of the U.S. economy, need to pay out over \$1,300 per employee for compliance, these are funds that are not going into productive activities that will allow the business to grow."

—Accounting Firm Owner, Reston, MA

This comment was forwarded to the IRS National Taxpayer Advocate

Service, Office of Systemic Advocacy, created to address systemic problems and pursue ideas for their solution.

Regulatory Overkill

When it comes to enforcing regulations, size does matter. Small enterprises sometimes complain that the same provisions and penalties that keep large companies in compliance can, in effect, put the "little guy" out of business. When a company comes to ONO overwhelmed by an agency's enforcement tactics, it is our job to carry that concern to the regulator for a solution that is sensitive to small businesses' circumstances.

We presented one such case to the National Oceanic and Atmospheric Administration (NOAA) when a seafood distributor incurred a \$30,000 fine for purchasing federally regulated seafood without a permit. The fine resulted because the distributor neglected to file an annual permit renewal form.

The company owner had suffered a family crisis and left daily operations in the hands of a business manager who forgot to file a permit renewal. The company argued that NOAA's fine represented "an excessive penalty and over-zealous enforcement," noting that this was the first violation in more than 20 years of operation.

NOAA accepted a settlement offer of a reduced fine paid over an extended period of time but would not waive the owner's individual liability.

“The ONO is the only Federal agency that holds Federal regulatory bodies accountable for their enforcement actions. A ‘big brother’ if you will, that protects small business. The ONO has already saved small businesses millions in unnecessary regulatory costs since its creation.”

*– Leo Blais, Region I
Board Member, Coventry, RI*

He countered that the cost to his reputation and business “are far in excess of the severity of the violation at issue” and sought ONO’s help. NOAA ultimately dropped its pursuit of individual liability, and the parties agreed to a reduced penalty paid over time if no further violations occur.

The National Ombudsman succeeded in raising CBP’s awareness to the need for more inspector training when a small importer contacted us to complain that its shipments of used heavy truck tires were being targeted for frequent inspections, costing the company an extra \$1,000 per container in transportation and storage costs. Despite the holds, no shipments ever failed inspection.

ONO’s involvement prompted CBP to discover the root of the problem: inspectors thought that the tires had been used on earth moving equipment and were holding shipments to inspect for invasive pests and seeds that might piggyback on the soil adhering to the tires or water trapped inside.

The importer confirmed that the tires were used only on highways and carried certification from the Centers for Disease Control that they were steam cleaned and insect free. The CBP stopped targeting the shipments for special inspection and noted that “additional training on the use of risk management procedures when targeting shipments will be provided to our officers as soon as possible.”

We are gratified when our intervention results in fairness for small business and one that positively benefits the agency. As a local chamber of commerce officer testified at our RegFair Hearing in Jacksonville, FL:

“Most of our small businesses are in a survival mode. They need to just apply for work, get the work, and go perform. So if we could somehow have government become a little more sensitive to our small businesses—if we are truly the drivers and employ more people than corporate America as they downsize and outsource—then I think we should be respected and accepted as such.”

*– Chamber of Commerce Officer,
Jacksonville, FL*

IV

RegFair Boards—Our Ambassadors Across the Nation

ONO's success at connecting with the small business community is multiplied many times by the dedicated efforts of our 10 Regional Regulatory Enforcement Fairness Boards. Their invaluable contributions open Chapter IV's highlights of outreach efforts in FY 2006. Board members serve as ONO's eyes and ears in local communities and make contact with entrepreneurs where they live and work.

Because Board members are business owners themselves, they empathize with their peers and can encourage them to speak out about unfair regulatory actions without fear of retaliation.

As part of their duties, the National Ombudsman and RegFair Boards host two types of forums:

Hearings are town hall-type open forums focused on collecting comments and hearing testimony from individual entrepreneurs (see Table IV-1 and Figure IV-1).

Roundtables bring together Federal agency representatives with business and trade associations for an information exchange. Agencies explain their regulatory responsibilities and compliance assistance programs, and business organizations discuss their enforcement concerns so that the National Ombudsman can learn more about the challenges of small businesses.

RegFair Boards also monitor Federal agency enforcement issues and use their network of business contacts and affiliations with trade associations to spread the word that entrepreneurs

Table IV-1. 2006 RegFair Hearings

2006 RegFair Hearings

Little Rock, AR

San Francisco, CA

Jacksonville, FL

Cincinnati, OH

Pierre, SD

San Antonio, TX

Boston, MA

San Diego, CA

Anchorage, AK

Denver, CO

Sacramento, CA

Figure IV-1. Small business owners present their enforcement concerns to the Region VI RegFair Board Hearing in Little Rock, AK.



“You are the eyes and ears not just of the Ombudsman, but of the United States Congress. Without the input of the RegFair Boards and ONO, I’m somewhat blind. What [RegFair Boards] are doing is absolutely critical to what we’re doing in Washington. If we don’t know what the problems are, we can’t fix them.”

– Barry Pineles,
Chief Minority Counsel,
U.S. House Committee
on Small Business

“When I attended my first [RegFair] hearing...I got a full brush look at the value of the National Ombudsman’s Office. The willingness to offer all small business owners the opportunity to be heard in a public forum is encouraging as a small business owner myself. Hopefully we can continue to build enthusiasm for all small businesses to bring these important issues to be heard and to respond quickly.”

– Frank Mischia,
Chairman, Region II,
Fairfield, NJ

need not struggle alone with regulatory challenges.

Chapter IV highlights outreach efforts on several other fronts as well, including:

- ONO partnerships with other SBA organizations to secure regulatory enforcement fairness for small businesses.
- Effective partnerships with national trade groups whose members have regulatory enforcement issues.
- ONO’s continued success with encouraging Federal agencies to recognize and take steps that lift the burden on small entities struggling with compliance.

RegFair Hearings: Small Businesses Speak Out

RegFair Board members understand that for hearings to be a success, they must attract small business owners willing to publicly air their regulatory troubles in a setting where the entrepreneurs will be taken seriously and be safe from retribution. One of the most effective ways of spreading the word is through pre-hearing publicity generated by Board members (see Table IV-2). Because they are community leaders and newsmakers, they can attract media attention to ONO’s mission and how RegFair Hearings can help small companies.

An article from the June 15, 2006 PRNewswire, for example, featured Ernest Reyes’ appointment to the Region IX Board. The story highlighted not only Reyes’ business credentials, but an explanation about SBREFA, ONO’s mission, and where to contact the National Ombudsman with a regulatory complaint. Board members strengthen ONO’s message by delivering it in their own words:

“I don’t think enough people out there in the small business community know this resource exists. I’m sure there are lots more people having problems out there with excessive regulation and enforcement. Once they start the process with the Ombudsman’s office, action is going to be taken, and we’re going to investigate it and get a response.”

– Jim Graham, Chairman,
Region VI, Dallas Morning News

Board members’ influence not only shines a spotlight on the seriousness of small business concerns, but can draw in politicians at all levels of government to collaborate on solving regulatory dilemmas. From contacting Congressional offices with small business liaison responsibilities to briefing local elected officials, Board members have discovered that alerting government representatives to small business problems is a wise strategy. Elected officials are often entrepreneurs themselves and are happy to share connections or participate in resolving regulatory fairness issues:

“Small businesses comprise over 80 percent of the businesses in the country. They want to do good things and do right by the government. They want to communicate the concerns to government agencies. Working in conjunction with Gov. (Mike) Rounds’ Red Tape Task Force, this hearing is intended to provide the best possible avenue for small businesses to share concerns about the impact of regulations and regulatory enforcement.”

– James Larson, Former Chairman, Region VIII, Rapid City Journal (South Dakota)

Members reached out to small businesses in FY 2006 through a wide variety of other creative strategies including the Internet and ONO’s ReadyTalk conferencing technology, which allows parties to participate in hearings remotely. Board members also provided their personal email and phone lists, with one new appointee going as far as allowing the local newspaper to publish his cell phone number so that small companies would feel encouraged to call with their enforcement concerns.

Regulatory Fairness on the Road

The National Ombudsman is an effective tool for outreach, leading RegFair Hearings and Roundtables as well as Interagency meetings where regulators receive ongoing briefings from ONO staff. National Ombudsman Nicholas Owens, appointed midway through FY 2006, quickly rose to the challenge of delivering ONO’s message of effective, not excessive regulatory enforcement and meeting with small business owners face-to-face about their compliance challenges.

Through local media coverage of hearings and roundtables, the National Ombudsman enhanced the profile of ONO and RegFair Boards. During a walking tour of small businesses in the Phoebus community of Hampton, VA with U.S. Representative Thelma Drake (R-VA), National Ombudsman Owens learned firsthand about regulatory concerns impacting small businesses. During the tour, a local community banker expressed a concern about when his bank must “call in” the guarantee with the SBA for a defaulted loan and the length of time to process the guaranteed payment to the bank. Subsequently, the SBA has streamlined the process to expedite assistance and responsiveness to lending partners.

Owens also conducted interviews on the largest news talk radio station in the Rocky Mountain area, as well as the highest rated morning news television show in Colorado to explain that ONO is meant to encourage Federal agencies to embrace compliance assistance “rather than going straight to the penalty stage.”

Besides publicizing ONO, the National Ombudsman’s road trips allowed him to hear firsthand about the impact that excessive enforcement can have on small businesses directly from the entrepreneurs caught in the struggle. As National Ombudsman Owens told the Gulfport-Biloxi Sun Herald, “It’s an honor to serve in a capacity where I can make a difference for small businesses faced with an unnecessary ‘gotcha’ attitude in a regulatory environment of uncertainty and confusion.”

Figure IV-2. 2006 RegFair Hearing Locations

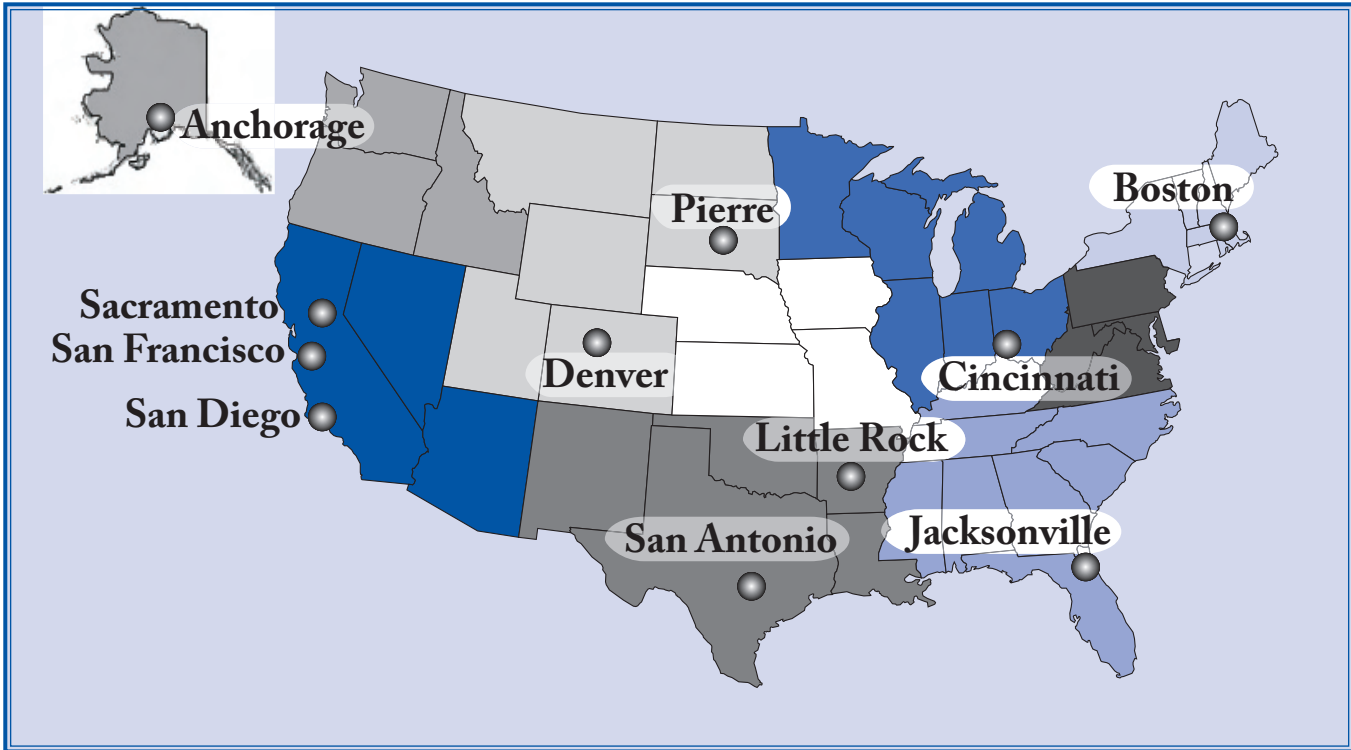


Table IV-2. Potential Audience Reach of ONO Media Efforts

ONO EVENT	Radio/TV Interviews	Newspaper Articles	Internet	Grand Totals
Denver, CO	1,154,184	1,044,340 daily/weekly		2,198,524
Pierre, SD		33,800 daily		33,800
San Antonio, TX		15,500 weekly		15,500
Sioux Falls, SD		1,484 weekly		1,484
Worcester, MA		82,119 daily		82,119
San Diego, CA		50,000 daily		50,000
Sacramento, CA		318,101 daily		318,101
Long Island, NY		474,750 daily		474,750
Biloxi, MS		46,423 daily		46,423
Dallas, TX		477,493 daily		477,493

Besides local entrepreneurs, hearing attendees vary from location to location but can include ONO and other members of the SBA team (see next section), RegFair Board members and alumni, business people, representatives from the media and trade organizations, as well as state and local officials and politicians.

SBA's 'Other Partners' Extend ONO's Reach

ONO plays an important part in SBA's overall mission of serving small business, and our SBA partners continued to extend the reach of our ambassadorship in FY 2006. For example:

- SBA district and regional field offices supported RegFair Board members in publicizing hearings and served as information conduits to small business owners.

- Small Business Development Centers and SCORE, which are SBA partner organizations, amplified ONO efforts to set the stage for entrepreneurial success.

One of our prime partners is SBA's Office of Advocacy. Small companies often contact ONO to enlist our support for legislation or regulations that are still in the development stage. These requests fall within Advocacy's jurisdiction—ONO is responsible for enforcement fairness issues after a regulation is final. We are pleased to refer entrepreneurs to the Office of Advocacy so that they have the

opportunity to have a voice in setting the rules and laws that will govern their businesses.

Trade Associations Provide Peer-to-Peer Alliances

ONO and RegFair Board members have traditionally relied on alliances with business and trade associations such as the National Federation of Independent Business (NFIB) and U.S. Chamber of Commerce to broaden our contacts in the small business community. These groups carried on that tradition in 2006 by speaking on behalf of members, providing feedback on regulatory enforcement issues, and allowing ONO to leverage quantities of scale.

From the 50-state reach of the 600,000-member NFIB to the 300-member Disabled Veteran Business Enterprise Network, trade association partners amplified ONO's message. NFIB, for example, regularly posted RegFair Hearing notices on its web site (www.nfib.com). ONO also received publicity boosts from notices and features in publications such as Inc.com magazine; *Newsline For Small and Medium Manufacturers* from the National Association of Manufacturers; *Legislative Bulletin* from the South Dakota Retailers Association; *Sourdough Bankers Bulletin* published in Anchorage, AK; and through online resources like the Northeast Veterans Business Resource Center and National Association of Women Business Owners.

"It has become very real to me that the effort of government to reach out to Hispanic small businesses through the Office of the National Ombudsman is very effective based on the number of comments I receive as a member of that community."

*— Ernest J. Reyes,
Region IX Board Member,
San Diego, CA*

Trade group attendance at RegFair Hearings in FY 2006 represented more than a million individual members (see Table IV-3). The following transcript from the Little Rock, AR, RegFair Hearing illustrates how business organizations can strengthen the voice of individual members in the regulatory arena. The entrepreneur is president of the Little Rock Realtors Association, as well as a founding member of Women Impacting Public Policy:

Entrepreneur: From the real estate standpoint, we have struggled over many years trying to get a clarification on the independent contractor status. This affects probably 90 percent of small businesses, and puts them into a very, very vulnerable position. The IRS definitions are vague to say the least, and as businesses utilize an independent contractor, they put themselves in enormous jeopardy financially. The IRS is not consistent in its interpretation of those regulations and will frequently come back and fine a company up to seven years, and then you've got the add-on penalties and so forth. It is something that the real estate industry desperately needs, because so many of our workers are independent contractors.

Board Member: Do you have anything in writing—any part of that in writing that you can give to us?

Entrepreneur: I'll be happy to forward my notes.

Board Member: Thank you. We can be sure and get the process started with [IRS representatives].

Agency Outreach: A Win-Win Situation

The Office of the National Ombudsman aims to encourage Federal agencies to consider small business concerns, create and foster a fair and small business-friendly regulatory environment, and be proactive and preemptive with outreach efforts to head off compliance difficulties before they develop. When Federal agencies take responsibility for fostering small business compliance, they become valuable partners in achieving an effective, not excessive regulatory environment, a winning situation for the agency, ONO, and America's entrepreneurs. ONO has found successful agency outreach programs throughout the Federal government:

Center for Medicare & Medicaid Services (CMS) launched its Open Door Initiative designed to provide interaction with small businesses and other stakeholders that deliver healthcare to seniors and the disabled. Topics discussed at Open Door Forums in FY 2006 included Medicare Part D, rural healthcare, low income health access, and end stage renal disease (www.cms.hhs.gov/OpenDoorForums/).

The Environmental Protection Agency's (EPA) Region 2 (New York, New Jersey, Puerto Rico, and the Virgin Islands) is home to 38,700 vehicle fleet maintenance facilities, many of them small businesses.

Region 2 began an outreach program in FY 2006 to encourage use of EPA's Small Business Compliance Policy, which eliminates penalties for small facilities that voluntarily discover and promptly disclose and correct hazardous waste violations. The region provided information on handling, storage, and disposal of hazardous wastes associated with fleet maintenance and offered some non-hazardous alternatives. Region 2 also educated facilities about the environmental damage that results from putting hazardous waste down drains and from idling engine emissions.

The Occupational Safety and Health Administration (OSHA) continues to expand its outreach, compliance assistance, and cooperative program activities targeted at small business. For example, by using OSHA's free On-site Consultation service, employers can find out about potential hazards at their worksites, improve their occupational safety and health management systems, and may even qualify for a two-year exemption from OSHA's programmed inspection schedule. Through its Alliance Program, OSHA works with groups committed to safety and health—including small businesses, trade or professional organizations, unions, and educational institutions—to leverage resources and expertise to develop compliance assistance tools and resources and share information with employers and employees to help

prevent injuries, illnesses, and fatalities in the workplace. OSHA also offers an array of compliance assistance resources for small businesses, including a small business page that features a variety of compliance assistance tools and other resources. The OSHA website also contains information on publications, an 800 number, an e-correspondence system, and Compliance Assistance Specialists in each of OSHA's Federal Area Offices.

In FY 2006, OSHA fielded over 160,000 calls from its 800 number, received over 9,000 inquiries through its e-correspondence system, and received approximately 74 million visits to its website. OSHA released a number of new publications in FY 2006, including a Small Entity Compliance Guide for its hexavalent chromium standard. The agency also developed and posted several tools on its website targeted to small businesses, including a construction module for Compliance Assistance Quick Start—a tool that introduces new and small businesses to the compliance assistance resources on OSHA's website. In addition, OSHA posted several success stories on its website highlighting successful safety and health programs implemented by small businesses. Through its Outreach Training Program, over 400,000 people received occupational safety and health training in FY 2006.

The **Fish & Wildlife Service (FWS)** went into the field in FY 2006 to reach outdoor-oriented small businesses

“The most important thing that Board members can do is to collect comments proactively, then direct them to ONO. ONO's report is the teeth of the law – agencies don't want to get a bad grade. The comment process is not just geared to the hearings. It's a 24/7 job.”

– Joe Shepard, Former Chairman, Region VI RegFair Board, Dallas, TX

where they gather, including Safari Club International's annual convention in Reno, NV; Utah International Sportsmen's Exposition in Salt Lake City; and the Wyoming Outfitter and Guide Association. FWS conducted proactive back-country patrols to alert guides and outfitters about endangered species protections. Other outreach efforts included a partnership with the Kansas Oil and Gas Association to address bird die-offs associated with heating devices near oil wells. The agency also teamed up with the Avian Power Line Interaction Committee to work with individual small utility companies to help them prevent raptor electrocutions.

The Department of Justice's (DOJ) **Bureau of Alcohol, Tobacco, Firearms, and Explosives** (ATF) continued offering ongoing educational seminars for firearms licensees and explosives industry members. The gatherings were designed to keep the

industries abreast of statutory and regulatory changes and any other developments that impact businesses. The seminars were often the result of collaborative partnerships among ATF officials, state regulators, and representatives from industry trade associations.

DOJ's **Disability Rights Section** (DRS) hosted Americans with Disabilities Act Business Connection Leadership Meetings in FY 2006 in Florida, Illinois, and New Mexico. The meetings were held to foster understanding and collaboration between the business and disability communities and focused on a specific topic discussed by several speakers. DRS prepared and distributed a new technical assistance document at each event. DOJ also fulfilled 70 other ADA training, speaking, and exhibit engagements in FY 2006 targeting mayors, local chambers of commerce, and millions of businesses.

EPA Highlights ONO

The Environmental Protection Agency's (EPA) own Office of the Small Business Ombudsman (SBO) highlighted ONO in a recent issue of *Update* newsletter (www.epa.gov/sbo/pdfs/update-summer-06.pdf). The feature explained the functions of SBREFA, ONO, and RegFair Boards and included contact information for ONO and every one of our Board members. EPA created SBO in 1982 and charged it with facilitating communication between the agency and entrepreneurs by reviewing and resolving disputes with EPA and working with EPA personnel to increase their understanding of small businesses in the development and enforcement of environmental regulations. ONO is featured on SBO's website (www.epa.gov/sbo/whois.htm).

Table IV-3. Small Business Associations Reached in FY 2006

Event Location	Organizations Attending	Membership Represented
Little Rock, AK	Arkansas State Chamber of Commerce Little Rock Regional Chamber of Commerce Society of Professional Lobbyists Rotary Club of Little Rock Arkansas Bar Association	6,630
San Francisco, CA	American Institute of Architects Building Owners and Managers Association National Association of the Remodeling Industry SFBA Chapter Plumbing, Heating & Cooling Contractors Association of San Francisco San Francisco Council of District Merchants Associations San Francisco Black Chamber of Commerce Golden Gate Business Association San Francisco Hispanic Chamber of Commerce Golden Gate Restaurant Association Northern California Supplier Development Council Oakland Metropolitan Chamber of Commerce	2,945
Jacksonville, FL	City of Jacksonville – Contracting Small Business Development Center – UNF Small Business Resource Network Jacksonville Regional Chamber of Commerce First Coast African American Chamber of Commerce First Coast Hispanic Chamber of Commerce First Coast Asian American Chamber of Commerce Beaver Street Enterprise Center First Coast Business Alliance	6,459
Cincinnati, OH	Hamilton County Business Center SBA Women’s Networking Roundtable Consumer Credit Counseling Service Cincinnati Business Incubator EMTEC Netwalk Manufacturing & Tech SBDC at EMTEC Benefits Management Consulting LLC Clermont Chamber of Commerce Greater Cincinnati African American Chamber Cincinnati USA Chamber	9,135

Pierre, SD	SD Retailers Association NFIB Small Business Development Center South Eastern Council of Governments	819,215
San Antonio, TX	Small Business Development Center U.S. Hispanic Chamber of Commerce NFIB Greater San Antonio Chamber of Commerce Hispanic Contractors Association Central Texas Association of Government Guaranteed Lenders	16,100
Boston, MA	Alliance for Amesbury Associated Industries of Massachusetts Attleboro Chamber of Commerce Cambridge Chamber of Commerce Cape Ann Chamber of Commerce Cape Cod Chamber of Commerce Fall River Chamber of Commerce The Gloucester Fisherman's Wives Association Greater Lowell Chamber of Commerce Greater Manchester Chamber (NH) Greater Merrimack Valley Convention & Visitors Bureau Greater Newburyport Chamber of Commerce Greater Haverhill Chamber of Commerce Hidden Tech Home Based Business Women's Network Homebuilders Association of MA Mass Bankers Association Mass Biotech Council Mass High Tech Council Massachusetts Oil Heat Council Mass Technology Leadership Council Massachusetts Lodging Association Massachusetts Medical Device Industry Massachusetts Society of Certified Public Accountants, Inc. Merrimack Valley Chamber of Commerce Merrimack Valley Economic Development Council Metrosouth Chamber of Commerce North/East Roofing Contractors Association, Inc. National Federation of Independent Businesses Retailers Association of Massachusetts Small Business Association of New England Worcester Area Chamber of Commerce	50,820

San Diego, CA	San Diego County Hispanic Chamber of Commerce Disabled Veteran Business Enterprise Network Greater San Diego Business Association Asian Business Association San Diego Regional Chamber of Commerce San Diego Union Tribune San Diego Business Journal San Diego Daily Transcript Office of Congresswoman Susan Davis City of San Diego – Office of Small Businesses	145,420
Denver, CO	Rocky Mountain Agri-Business Association Colorado Hazardous Waste Management Society Colorado Ready Mix Concrete Association Colorado Restaurant Association Hispanic Contractors of Colorado Colorado Automobile Dealers Association National Electrical Contractors Association – Rocky Mountain Chapter Women Construction Owners and Executives Colorado Association of Wheat Growers American Subcontractors Association Colorado Association of Home Builders Colorado Cattlemen’s Association Colorado Contractors Association, Inc. Colorado Nonprofit Association Associated Landscape Contractors of Colorado Colorado Association of Commerce and Industry Denver/Boulder Better Business Bureau Colorado Hotel and Lodging Association Society for Marketing Professionals – Colorado Chapter National Federation of Independent Business Mountain States Employers Council Colorado Retail Council Colorado Association of Manufacturing and Technology National Association of Women Business Owners – Colorado Chapter Colorado Credit Union System Downtown Denver Partnership Arvada Chamber of Commerce Asian Chamber of Commerce Aurora Chamber of Commerce Black Chamber of Commerce Boulder Chamber of Commerce	77,735

Denver, CO (cont'd)	Brighton Chamber of Commerce	
	Castle Rock Chamber of Commerce	
	Cherry Creek Chamber of Commerce	
	Colorado Business Council	
	Colorado Springs Black Chamber of Commerce	
	Colorado Springs Hispanic Chamber of Commerce	
	Colorado Women's Chamber of Commerce	
	Denver Hispanic Chamber of Commerce	
	Denver Metro Chamber of Commerce	
	Englewood Chamber of Commerce	
	Golden Chamber of Commerce	
	Pueblo Chamber of Commerce	
	Rocky Mountain Indian Chamber of Commerce	
	South Metro Denver Chamber of Commerce	
Western American Indian Chamber of Commerce		
TOTAL	1,134,459	

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Looking Ahead—Fostering Fairness Through Awareness

It is an economic fact of life that small business is America's primary source of new jobs and a pivotal force in our Nation's economy. With entrepreneurs generating more than 50 percent of the private non-farm gross domestic product, it makes economic sense that their concerns be heard by the Federal agencies that regulate them. These small companies pay 25 percent more per employee than large corporations to comply with Federal regulations, yet entrepreneurs approach the National Ombudsman every week asking for help because their complaints about unfair and excessive enforcement are going unheard.

The Office of the National Ombudsman's mission is to bring those concerns before the relevant agency to facilitate a mutual understanding and fair resolution. We are committed to expanding our outreach and improving our customer-centered services so that small businesses will be heard whenever and however they bring regulatory enforcement and compliance assistance issues to our attention.

This focus requires an extensive network of partners to operate effectively. ONO has built such

a network in the decade since the passage of SBREFA, relying on our RegFair Board members and other SBA offices to serve as outposts in helping us reach our small business constituents. In the future, we plan to strengthen these connections to raise awareness and reach as many members of the entrepreneurial community as possible with our message: ONO will make the voice of small business heard in the Federal government.

Cultivating Connections

As FY 2006 drew to a close, National Ombudsman Nicholas Owens addressed the national meeting of RegFair Board members, outlining important ways that ONO will step up efforts to strengthen partnerships and increase small business awareness:

■ **Broaden outreach to Federal partners.** The more informed that regulatory agencies become about the effect of enforcement on small business, the better they can institute their own compliance assistance programs and head off problems before they develop. ONO will continue to educate our Federal partners through Interagency Meetings and encourage their attendance—remotely or in person—at RegFair Hearings as a

means of keeping in touch with the entrepreneurial community.

■ **Broaden outreach to national trade groups, state business organizations, and other state agencies.** The leverage gained by using trade group contacts and communication channels has been invaluable to ONO and can be amplified in the future. Fostering a connection between trade organizations and other Federal agencies is also proving effective, especially when regulators sponsor seminars and workshops at events, such as association meetings and other industry-sponsored gatherings. Forming alliances between government and industry at the state level will also multiply the avenues through which ONO accomplishes its mission of enforcement fairness. Nineteen states are already operating under SBREFA-like laws or executive orders. State-level business organizations can use their extensive networking and media contacts to blanket their membership with RegFair notices and ONO contact information.

■ **Publicize RegFair Hearings as “town hall” open forums.** One of the most common reasons cited by small business owners for hesitating to step forward with enforcement problems is fear of challenging actions of Federal regulators. ONO is working to get the word out that RegFair Hearings are town hall-type public forums where business owners can feel comfortable discussing their challenges.

■ **Coordinate more RegFair Hearings with local events.** ONO is encouraging Board members to scout for small business-related events in their states that could be coordinated with RegFair Hearings in order to raise ONO’s profile. For example, in 2006, a Region IX RegFair Hearing was held in conjunction with the California Hispanic Chamber of Commerce’s Annual Conference held in Sacramento, CA.

The Voices of Experience

Board members and SBA partners have proved a rich source of ideas for increasing outreach and improving communication. Their experience in the field has yielded practical goals for raising ONO’s profile and supporting our enforcement fairness mission:

■ **Increase involvement of SBA District Offices.** Keeping SBA District Offices apprised of RegFair activity is a key factor in soliciting their outreach assistance. Each district location has a public information officer charged with promoting SBA programs, but staff may not be aware of RegFair Board activities.

■ **Encourage more inter-regional collaboration among RegFair Board members.** Conference calling, emailing, and other interaction can produce positive results, including the exchange of useful contacts and the sharing of best outreach practices and successes.

■ **Encourage Board members to file reports with ONO about all RegFair activities.** ONO staff can then include the information in its weekly reports and Report to Congress.

■ **Make the most of RegFair Hearings as publicity opportunities:**

- Start publicizing early, at least two to three weeks before a RegFair Hearing, including placing news items in the business calendars of newspapers.
- Send news releases to the media, as well as other trade organizations, associations, and any other potential interested party.
- Start locating a suitable venue right after the National Ombudsman announces RegFair Hearing cities and dates.
- Increase local ties by asking small business organizations to become involved with staging RegFair Hearings and Roundtables.
- Encourage the replication and dissemination of SBA news releases by all business organizations that are participating in the RegFair Hearing.

■ **Coordinate media response among all RegFair Hearing participants.**

Designate media contacts, then prepare them with appropriate responses and themes.

21st Century Alliances

Technology has provided the Office of the National Ombudsman with new opportunities to connect with small businesses and its partners in more efficient and effective ways. ONO's own website (www.sba.gov/ombudsman) allows visitors to file comments, check a calendar of events, and access a variety of other online aids. Compliance-related customer service rose to 21st century standards in September 2006 with the re-launch of Business.gov (see Figure II-2). Managed by SBA, the website makes the compliance resources of all Federal regulatory agencies available to small businesses at the click of a mouse.

Our web and marketing experts have already planned extensive site analysis and user focus groups to ensure that Business.gov continues to make optimum use of the Internet's rich variety of possibilities for outreach and education. Plans for future services include pod casts, blogs, and Web chats—all aimed at building and strengthening partnerships among SBA/ONO headquarters and our field offices, other Federal agencies, trade organizations, and state and local officials. Also available will be a host of marketing resources such as brochures, fact sheets, PowerPoint templates, business card kits, and other means to assist our constituents with expanding their network of compliance contacts and information.

Through technology, ONO will increase responsiveness to small business concerns by the efficient use of transmitting comments to agencies electronically.

ONO encourages all Federal regulatory agencies with whom we come in contact to keep their own online resources up-to-date. This includes making compliance assistance, non-retaliation policies, and other pertinent information easily accessible through the agency's website, along with a direct link to ONO's Comment page.

Even as we utilize the latest technological advances, we are reminded by comments from the field that traditional networking can still have a powerful effect. One SBA field officer, for example, commented that her most successful technique for drawing attendees to RegFair Hearings and Roundtables has been working the phones, which has proved to be a more effective outreach tool for her than email. ONO will continue to use all technologies available in its efforts to spread the word that small businesses have an ally in their fight for fair regulatory enforcement.

Conclusion

Small business has taken its place as America's economic engine. At the same time, entrepreneurs can struggle with regulatory policies that sometimes take a one-size-fits-all approach to

enforcement rather than recognize that small companies operate much differently than large corporations. This disparity has resulted in small businesses carrying a disproportionate regulatory burden, according to SBA's Office of Advocacy:

- Companies that employ fewer than 20 people pay \$3,296 per employee to comply with environmental regulations, while firms with 500 or more employees pay \$710.
- Small businesses pay \$1,304 per employee to comply with tax regulations. Their big business counterparts pay \$780.
- Small businesses pay \$920 per employee to comply with workplace rules; large corporations pay \$841.

As the success stories and best practices presented in this report indicate, more progress is made each year to correct the imbalance. As the facts and figures show, however, more remains to be done to remove the regulatory burdens that fall disproportionately on the very companies that are providing the greatest job growth and opportunities in the American and economic business landscape.

The National Ombudsman will continue to forge partnerships, employ technology, and carry out the mission mandated by SBREFA until entrepreneurs are limited only by their drive and imagination in achieving the American dream.

Appendix: Media Outreach

Event/Date	Radio/TV Interviews	Print Media Articles	Internet	Circulation
San Francisco, CA Hearing (1/18/06)			Article promoting hearing posted at www.biz.yahoo.com on 1/10/06.	
Jacksonville, FL Hearing (3/23/06)			Article promoting hearing posted on the <i>Tallahassee Democrat</i> at www.tallahassee.com on 3/21/06.	
Pierre, SD Hearing (4/13/06)			<i>Rapid City Journal</i> ran article on 5/5/06 to promote the hearing in Pierre, SD.	<i>Rapid City Journal</i> - 33,800 daily
			<i>Sioux Fall Business Journal</i> ran article on 4/5/06 to promote hearing in Pierre, SD.	<i>Sioux Fall Business Journal</i> - 1,484 weekly
			South Dakota Retailers Association promoted the hearing in its Legislative Bulletin.	
			National Association of Manufacturers announces in its <i>Newsline</i> newsletter on 4/25/06 the appointment of Nicholas Owens as National Ombudsman and disseminates information about the ONO function and mission.	

Event/Date	Radio/TV Interviews	Print Media Articles	Internet	Circulation
San Antonio, TX Hearing (5/16/06)		<i>New Mexico Business Weekly</i> ran an article on 4/ 27/06 to promote the hearing in San Antonio, TX.	RegFair Hearing listed on Business Calendar of mysanAntonio.com on 5/12/06.	<i>Business Weekly</i> - 6,500 weekly
		The <i>San Antonio Business Journal</i> ran an article about the Office of the National Ombudsman and promoted the hearing in its SBA & Small Business Awards supplement on 4/28/06.		<i>Business Journal</i> - 9,000 weekly
Biloxi, MS (6/21/06)		The <i>Biloxi Sun Herald</i> spotlights hometown native Nick Owens' new job as SBA National Ombudsman.		<i>Biloxi Sun Herald</i> - 46,423 daily
Boston, MA Hearing (7/14/06)		Northeast Veterans Business Resource Center press release to promote the RegFair Hearing on 7/14/06.	The <i>Cape Codder</i> of Townonline.com posted an article on 6/30/06 promoting the hearing.	
		Andi Esposito, Business Editor, <i>Telegram-Gazette</i> , Worcester, MA, wrote and ran an article recapping the hearing.		<i>Telegram-Gazette</i> - 82,119 daily
San Diego, CA Hearing (7/20/06)		Tiffany Stecker, <i>San Diego Daily Transcript</i> , wrote and published an article on 7/20/06 recapping the hearing.	SignOnSanDiego.com announces the appointment of Ernest Reyes to Region IX RegFair Board on 6/15/06 and Stephen P. Cushman's appointment to the same board on 7/6/06.	<i>Daily Transcript</i> - 50,000 weekly
Anchorage, AK Hearing (8/18/06)		<i>Sourdough Bankers' Bulletin</i> ran RegFair article promoting hearing.		
Dallas, TX (9/4/06)		The <i>Dallas Morning News</i> announces the appointment of Jim Graham to the Region VI RegFair Board.		<i>Dallas Morning News</i> - 477,493 daily

Event/Date	Radio/TV Interviews	Print Media Articles	Internet	Circulation
Denver, CO Hearing (9/26/06)	KUSA-TV Denver interviewed Nicholas Owens on 9/26/06. Susan Witkin of 850 KOA Radio interviewed Nicholas Owens on 9/26/06.	The <i>Denver Post</i> ran an article in its Business Section on 8/23/06 to promote the hearing. Aldo Svaldi recapped the hearing on 9/27/06. The <i>Colorado Business Journal</i> ran an article promoting the hearing on 9/15/06.		KUSA - 1 million weekly KOA - 154,184 <i>Post</i> - 1,039,340 daily <i>Journal</i> - 5,000 weekly
Sacramento, CA Hearing (9/29/06)		The <i>Sacramento Bee</i> ran an article on 9/27/06 promoting the hearing and highlighting an anticipated testifier. The <i>Sacramento Bee</i> ran an article by Darrell Smith recapping the hearing on 9/30/06 PR Newswire US disseminated information publicizing the Regulatory Fairness Hearing in Sacramento, CA, on 9/29/06		<i>Bee</i> - 318,101 daily