



Report on the Regulatory Flexibility Act, FY 2017

U.S. Small Business Administration, Office of Advocacy, 73 pages.

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Purpose

Because small businesses lack economies of scale and do not have the resources of larger businesses, the effects of regulatory compliance often fall harder on them. The Regulatory Flexibility Act of 1980 (RFA) was enacted to address the disproportionate burden of regulation on small businesses. This law is the key tool allowing small businesses to have a say in regulatory decisions that affect them. The RFA directs the Office of Advocacy to monitor how well federal agencies are complying with the law, and it requires the Chief Counsel for Advocacy to report on this. The report covers fiscal year 2017, from Oct. 1, 2016, to Sept. 30, 2017. In addition, it reports on agencies' compliance with the requirements of Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," and the Small Business Jobs Act.

Background

The RFA requires federal agencies to consider the impact of their proposed rules on small entities, which include small businesses, small government jurisdictions, and small nonprofits. It requires agencies to review proposed regulations whenever they would have a significant economic impact on a substantial number of small entities. In these cases, agencies are required to consider alternatives or flexibilities that would minimize the regulatory burden on small entities while still achieving the rules' purposes. E.O. 13272 requires agencies to take additional specific steps demonstrating their consideration of small entities in their rulemakings.

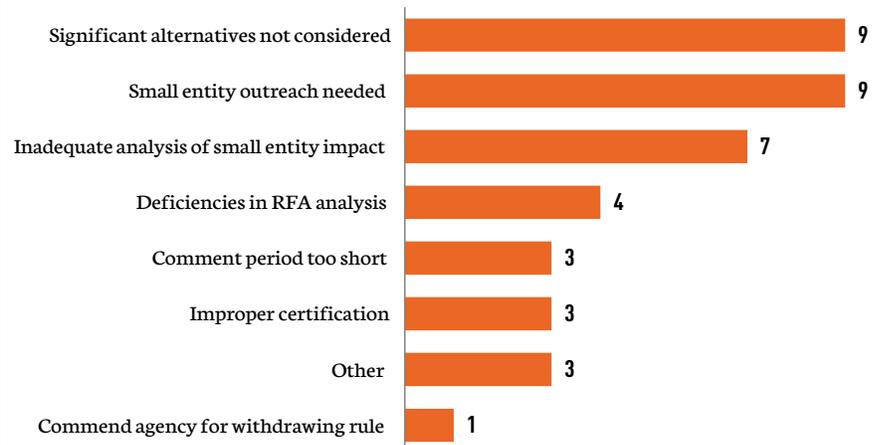
Activities Promoting RFA Compliance

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

- Hosting 14 small business roundtable discussions to gather the views and concerns of small businesses;
- Conducting RFA training sessions at 12 agencies for 195 officials to familiarize them with the requirements of the law; and
- Filing 24 regulatory comment letters with nine agencies. These letters publicly register official comments on behalf of small business.

The two most frequently cited concerns in Advocacy's letters were (1) that agencies did not consider significant alternatives to their proposed rules, and (2) they needed greater small business outreach. (See Figure 1.)

Figure 1. Number of Specific Issues of Concern in Agency Comment Letters, FY 2017



Source: *Report on the Regulatory Flexibility Act, FY 2017*. U.S. Small Business Administration, Office of Advocacy, 2018.

Regulatory Cost Savings

Advocacy’s overall efforts to promote federal agency compliance with the RFA resulted in \$913.4 million in regulatory cost savings for small entities in FY 2017. These represent savings achieved as a result of changes between the initial proposed rule and the final agency action on the rule, as well as from deregulatory actions. Cost savings in FY 2017 came from 16 regulatory and deregulatory actions by six agencies.

One of this year’s regulatory cost savings concerned the application of Title III of the Americans with Disabilities Act to movie theaters. After receiving input from theater operators and in official comments from the Office of Advocacy, the Department of Justice reduced the amount of closed captioning and descriptive equipment that theaters are required to purchase. The change resulted in small business savings of \$66 million between the proposed and final rule.

One cost-saving deregulatory action was the nullification of the Fair Pay and Safe Workplaces rule. Advocacy argued that the burdensome requirements of the rule would deter small businesses from participating as prime and subcontractors in federal contracting. The rule was rescinded by an act of Congress in January 2017, resulting in small business savings of \$260.7 million.

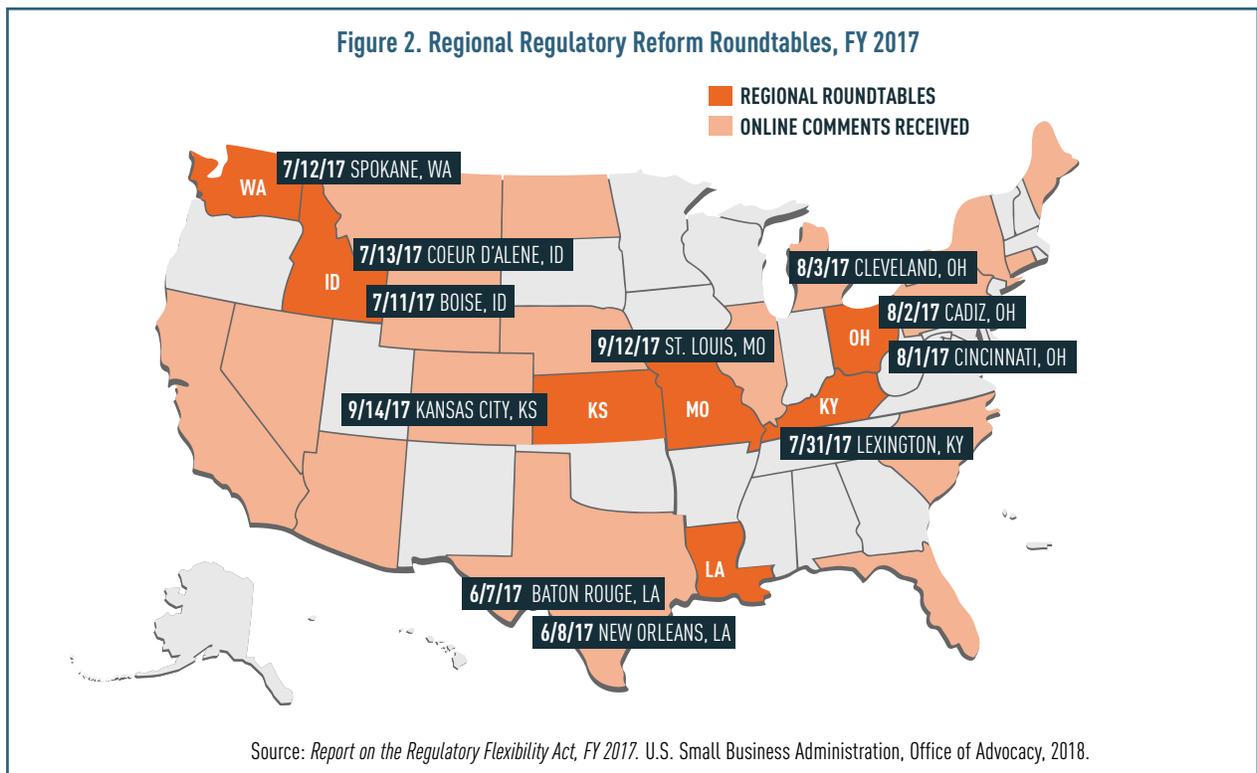
The RFA in the Era of Deregulation

The year 2017 marked the start of an era of deregulation ushered in by E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs,” and E.O. 13777, “Enforcing the Regulatory Reform Agenda.” These offer significant opportunities for regulatory relief targeted to small businesses.

The RFA requires agencies to analyze their deregulatory actions to maximize small business benefits in the marketplace. To make federal agencies aware of small businesses’ priorities for deregulation Advocacy launched the Regional Regulatory Reform Roundtable initiative. These roundtables bring federal agency officials and small businesses together to educate federal agencies about specific regulations that create paperwork, red tape, personnel, and financial obstacles. The first roundtable took place in June. Results of the initiative in the four-month period from June to September 2017 include:

- Sponsoring 11 Regional Regulatory Reform Roundtables in 7 states;
- Gathering online comments from individuals in 19 additional states through the Regulatory Reform webpage; and
- Summarizing small business regulatory input in letters to 15 federal agency heads, their regulatory reform officers, and 21 members of Congress.

The roundtables are continuing in 2018.



Small Business and International Trade

In 2017, Advocacy convened the first interagency working group as required by the Trade Facilitation and Trade Enforcement Act of 2015. The group includes six federal agencies:

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

The working group is evaluating the small business impact in the manufacturing, agriculture, and services industries of the modernization of the North American Free Trade Agreement and preparing a report to Congress.

Cost Savings Methodology

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

Summary: RFA Results in FY 2017

The Regulatory Flexibility Act requires federal agencies to consider small businesses in their rulemaking process. Advocacy's efforts at monitoring agency compliance yielded the following results in FY 2017:

- Regulatory cost savings—changes to 16 regulations from 6 agencies resulting in \$913.4 million in regulatory savings for small businesses;
- 4 additional success stories involving regulatory flexibilities that benefit small business;
- 14 small business roundtables on regulatory issues held in Washington, D.C.;
- 195 federal rulemaking officials trained in RFA compliance during sessions at 12 agencies;
- 24 regulatory comment letters filed with 9 agencies;
- 11 Regional Regulatory Reform Roundtables held in 7 states;
- Comments on regulatory reform from small entities in 19 additional states;
- Summaries of small business difficulties with regulatory compliance sent to 15 federal agency heads, their regulatory reform officers, and 21 members of Congress.

READ THE FULL REPORT ONLINE

This report is available on the Office of Advocacy's webpage at www.sba.gov/advocacy.

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