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## Report on the Regulatory Flexibility Act, FY 2015

U.S. Small Business Administration, Office of Advocacy, 78 pages.

### Purpose

The Regulatory Flexibility Act (RFA) requires federal agencies to give consideration to small entities when drafting regulations. Last year marked the 35th anniversary of the law's signing by President Jimmy Carter. This report is mandated under section 612 of the RFA. It describes the Office of Advocacy's efforts at monitoring agencies' compliance with the law during fiscal year 2015, from October 1, 2014, to September 30, 2015. 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 of 2010.

### Background

The RFA requires federal agencies to consider the impact of their proposed rules on small entities—small businesses, small government jurisdictions, and small nonprofits. It requires agencies to review proposed regulations that would have a significant economic impact on a substantial number of small entities and to consider significant alternatives that minimize the regulatory burden on them while achieving the rules' purposes. E.O. 13272 requires agencies to take additional specific steps demonstrating their consideration of small entities in their rulemakings.

### The Office of Advocacy's Interagency Compliance Activities

Advocacy encourages agency compliance throughout the year along many avenues. Small business roundtables are an important way of gathering input on regulatory topics and exchanging information.

On many occasions, officials from federal agencies participate in these roundtables and have direct exchanges with small businesses. In FY 2015, Advocacy hosted 21 small business roundtables in Washington, D.C., and around the country.

Advocacy offers training on how to comply with the RFA to federal rule writers. Since 2003, Advocacy has conducted training for 18 cabinet-level departments and agencies, 67 separate component agencies and offices within these departments, and 22 independent agencies. In FY 2015, Advocacy provided training to 126 federal agency officials.

Advocacy participates in Small Business Regulatory Enforcement Fairness Act (SBREFA) panels convened by three agencies: the Environmental Protection Agency (EPA), the Consumer Financial Protection Bureau (CFPB), and the Occupational Safety and Health Administration (OSHA).<sup>1</sup> In FY 2015, Advocacy participated in six panels: one each at OSHA and CFPB, as well as three EPA panels convened in FY 2015 and one that continued from FY 2014.

Although federal agencies continue to work to improve their rules, there are many examples of proposals that still impose a significant economic impact on small businesses. In these instances Advocacy utilizes the independence afforded it by Congress to submit formal public comments to agencies. In FY 2015, Advocacy submitted 28 letters to 20 agencies calling attention to the small business impacts of proposed rules. Figure 1 summarizes the

1. SBREFA panels are named for the Small Business Regulatory Enforcement Fairness Act of 1996 that created them. They are also referred to as small business advocacy review or SBAR panels.

specific issues of concern raised in these letters. The most frequent purpose was to press for an alternative regulatory approach that would ameliorate a rule’s economic impact on small business.

### Cost Savings and Success Stories

As a result of Advocacy’s involvement in the rule-making process in FY 2015 and previous years, the office achieved first-year cost savings of \$1.6 billion. These represent savings achieved as a result of changes between the initial proposed rule and the final rule. The FY 2015 cost savings come from Advocacy’s work on 11 rules that were made final in FY 2015. Some of these rulemakings had stretched over more than a decade. For instance, OSHA’s final rule on Confined Spaces in Construction concluded a rulemaking process that dates to 2003, when a SBREFA panel was held. EPA’s updated Underground Storage Tank standards were a revision to standards proposed in 1988.

Advocacy also achieved positive regulatory results with impacts that are not readily quantifiable. Among the success stories in FY 2015 are two telecommunications procedures related to wireless spectrum auctions and copper retirement, a Food and Drug

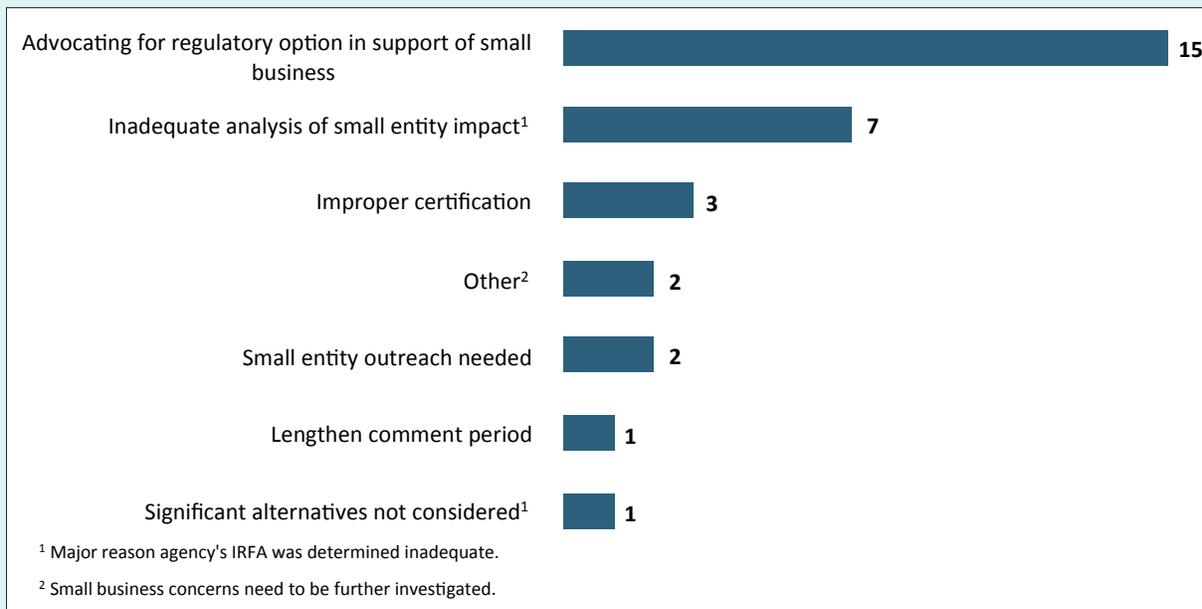
Administration rule that would have restricted the use of spent hops for animal feed, and guidelines for the use of reverse auctions in federal procurement. In addition, Advocacy’s representation of small business concerns in international trade agreements and cybersecurity yielded positive results.

Cost savings are one measure of Advocacy’s effectiveness. While this measure has not been in place over the RFA’s entire history, since the office started tracking savings in 1998, Advocacy’s work on behalf of small business has resulted in cumulative cost savings of \$128.7 billion dollars.

### Scope and Methodology

This report is an account of how Advocacy worked to achieve cost savings for small entities and helped agencies comply with the RFA and E.O. 13272. It covers Advocacy’s public activities with respect to regulatory development. An important part of Advocacy’s involvement in regulatory development is achieved in direct exchanges with agencies prior to publication of proposed rules. Consequently, the report does not reflect the sum total of Advocacy’s accomplishments in this area.

**Figure 1: Number of Specific Issues of Concern in Agency Comment Letters, FY 2015**



Source: *Report on the Regulatory Flexibility Act, FY 2015: Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act and Executive Order 13272*, U.S. Small Business Administration, Office of Advocacy, 2016, p. 21.

Advocacy bases its cost savings estimates primarily on agency estimates, when available. Alternatively, cost estimates are obtained from the entities affected, their representatives, and/or the public record. Cost savings for a given rule as a result of Advocacy's intervention are captured in the fiscal year in which the agency takes final action on the rule. First-year and recurring annual cost savings are listed where applicable. Where cost savings have accrued during the prepublication draft stages of the rule, they are not publicly available.

### **Additional Information**

This report is available on the Office of Advocacy's webpage at [www.sba.gov/advocacy/regulatory-flexibility-act-annual-reports](http://www.sba.gov/advocacy/regulatory-flexibility-act-annual-reports).

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