

Report on the Regulatory Flexibility Act, FY 2020

U.S. Small Business Administration, Office of Advocacy. 62 pages.

July 2021

No. 457

Purpose

The Regulatory Flexibility Act of 1980 (RFA) was enacted to address the disproportionate burden of regulation on small businesses. The effects of regulatory compliance frequently fall harder on small businesses, who lack the resources of larger corporations. The RFA allows small businesses to have a say in regulatory decisions that affect them. Advocacy is directed by the RFA to monitor how well federal agencies comply with the law. The Chief Counsel of Advocacy reports on those measures through the publication of this report, which covers fiscal year 2020, from October 1, 2019, to September 31, 2020. This report also contains updates as to agencies' compliance with the requirements of Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, and the Small Business Jobs Act.

Background

The RFA requires federal agencies to consider the impact of their proposed rules on small entities, which include small businesses, small government jurisdictions, and small nonprofits. It requires agencies to review proposed regulations whenever they would have a significant economic impact on a substantial number of small entities. In each of these cases, agencies are required by law to consider alternatives or flexibilities that would minimize the regulatory burden on small entities while still achieving the purpose of the rule. E.O. 13272 requires agencies to take additional steps demonstrating their consideration of small entities. This year's report includes website links to each agency's procedures

for implementing the RFA in their rulemakings, as required by E.O. 13272.

Activities Promoting RFA Compliance

Advocacy monitors federal rulemakings throughout the year. The office's activities promoting RFA compliance in FY 2020 included:

- Submitting 19 comment letters to 15 agencies to publicly register official comments on behalf of small businesses;
- Hosting 11 issue roundtables to discuss the issues facing small businesses; and
- Conducting RFA training at 8 agencies for 224 officials to familiarize themselves with the requirements of the RFA

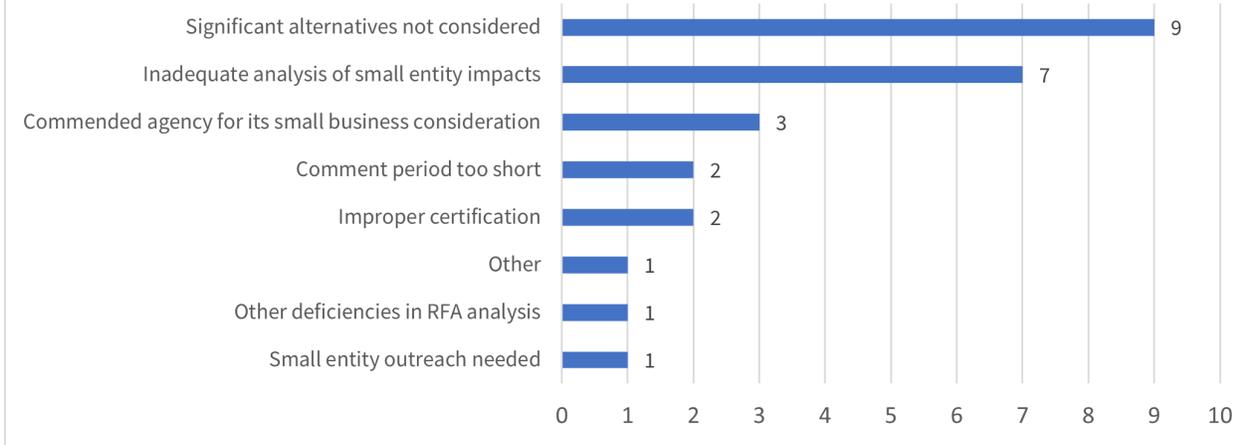
The most frequent concerns, cited in nine comment letters, were that agencies failed to consider significant alternatives to proposed rules. In seven cases, the agency in question did not adequately analyze the impact on small entities. In three instances, however, Advocacy commended agencies for their small business considerations.

Small Business Regulatory Success Stories and Cost Savings

Advocacy's overall efforts to promote federal agency compliance with the RFA resulted in changes to seven specific rules which reduced the regulatory burden on small businesses. These include eight successes which total \$2.259 billion in cost savings for small business. Here are two cost savings examples:

One cost savings concerned a rescinded rule on payday lending proposed by the Consumer Financial Protection Bureau. The final rule rescinds the

Figure 1: Number of Specific Issues in Agency Comment Letters, FY 2020



mandatory underwriting provisions of its 2017 rule after re-evaluating the legal and evidentiary bases for these provisions and finding them to be insufficient. CFPB’s decision to rescind the rule resulted in total cost savings of \$1.88 billion for small entities.

Another cost savings highlighted this year came from the Small Business Administration’s interim final rule amending various regulations regarding its loan programs. Advocacy recommended that SBA consider less burdensome alternatives to the proposed rate cap and the personal resources requirement and to clarify the requirements of the affiliation rules. Cost savings from the final rule totaled an estimated \$7.9 million annually.

Advocacy also achieved seven other success stories that were not quantifiable in FY 2020. Here are two examples:

On February 27, 2020, USDA’s Agricultural Marketing Service delayed a policy requiring hemp farmers to test samples of their product in certified DEA labs, citing public comments as their justification. Advocacy’s letter argued for the delay on the grounds that there were not enough certified labs.

In another case, the Mine Safety and Health Administration (MSHA) issued a direct final rule allowing the safe use of electronic detonators for explosives in metal and nonmetal mines. Advocacy had fought for this change since its 2008 Small Business Regulatory Review and Reform initiative.

Cost Savings Methodology

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

READ THE FULL REPORT ONLINE

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

To stay informed of Advocacy’s research, visit <https://advocacy.sba.gov/subscribe>.

By selecting the Small Business Regulation & Research category, you can choose to receive email notices of Advocacy research, regulatory communications, or The Small Business Advocate newsletter.

