

A smiling woman with dark hair and blue earrings is holding a dark blue banner. The banner has the word "Open" written on it in a large, light-colored, serif font. The background is slightly blurred, showing what appears to be an outdoor setting with ropes and other people.

Partnering

TO DELIVER

solutions

AND

value

TO SMALL BUSINESS

Open

OFFICE OF THE
NATIONAL OMBUDSMAN

2014 ANNUAL REPORT
TO CONGRESS

SBA
U.S. Small Business Administration

Partnering
TO DELIVER
solutions
AND
value
TO SMALL BUSINESS



UNITED STATES SMALL BUSINESS ADMINISTRATION

OFFICE OF THE
NATIONAL OMBUDSMAN
2014 ANNUAL REPORT
TO CONGRESS



Maria Contreras-Sweet

Administrator

U.S. SMALL BUSINESS ADMINISTRATION

Brian M. Castro

National Ombudsman and Assistant Administrator

for Regulatory Enforcement Fairness

U.S. SMALL BUSINESS ADMINISTRATION

Executive Summary

This 2014 Annual Report to Congress by the Office of the National Ombudsman highlights achievements of the Office, including its support of the creation, growth and success of America's small businesses. As an advocate for small businesses, the National Ombudsman helps small business owners navigate federal rules, regulations and requirements. In partnership with federal regulators, the Ombudsman delivers fair solutions and value to small businesses through a level regulatory playing field that supports small business growth and the American economy.

Delivering Individualized Assistance and Promoting Systemic Solutions for Small Business

In FY 2014, the National Ombudsman worked with small businesses and with federal agencies across government to understand and address current regulatory policies and practices that create unnecessary burdens on small business. In addition to helping individual small business owners to quickly and efficiently resolve regulatory compliance issues, as highlighted in this Report, the Ombudsman worked with federal agencies proactively to reconsider policies, clarify procedures and responsibilities, and adjust processes to ensure regulatory fairness for the small business community.

Connecting Directly with America's Small Businesses Through Outreach and Regional Regulatory Fairness Board Members

The National Ombudsman is advised by ten Regional Regulatory Fairness Boards comprised of small business owners who contribute invaluable insights into regulatory challenges confronting small businesses. In 2014, these Boards were

reinvigorated with the appointment of diverse members around the country, each of whom enhanced the demographic, sector, and geographic diversity of the Boards.

The Regulatory Fairness Boards play a vital role in outreach to small business owners and help to facilitate dialogue between the small business community and the National Ombudsman in the field. As described in the Report, these Regulatory Fairness Roundtables and Hearings offer small businesses direct, local channels for raising critical regulatory concerns.

Growing Federal Agency Partnerships

This Report sets out the ratings each federal agency received based on its responsiveness to small business concerns, the quality of those responses, and compliance with the Small Business Regulatory Enforcement Fairness Act. Collectively, the 2014 ratings demonstrate the engagement and commitment of the Office of the National Ombudsman and its federal agency partners throughout government to delivering on the promise of regulatory fairness.

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The Office of the National Ombudsman saves small business owners time and money so they can focus their energy on running and growing their business.

MESSAGE FROM THE SBA Administrator

On behalf of the SBA, I am pleased to present the Report to Congress of our Office of the National Ombudsman for Fiscal Year 2014. This report highlights the achievements of the Office of the National Ombudsman, including its work to support the creation, growth, and success of America's small businesses. Given that small firms create two out of every three net new jobs in our economy, it's critical that the federal government help cultivate a strong small business economy that promotes growth, innovation, and job creation.

Government regulations are essential to keeping Americans safe and protecting the public health, national security, and our environment. But many federal regulations were written with large corporations, not small businesses, in mind. President Obama has directed all federal agencies to assess the burdens of existing and new regulations and find more effective ways to meet legitimate regulatory goals while reducing burdens on small business. The Ombudsman

helps entrepreneurs understand federal regulations, comply with applicable rules, and resolve disputes with federal regulators through expedited agency review. The Office of the National Ombudsman saves small business owners time and money so they can focus their energy on running and growing their business.

In FY 2014, the Office of the National Ombudsman assisted more than 400 small businesses and responded to thousands of general inquiries. The Ombudsman forged new partnerships across federal agencies, focusing on improving regulator responsiveness to small business concerns. The Office of the National Ombudsman exceeded its annual outreach target, convening more than 60 outreach events with small businesses and other representatives of the small business community. At these forums across the country, participants registered comments and concerns regarding federal regulations and regulatory enforcement and compliance issues.

The Office of the National Ombudsman also prioritized empowering its Regional Regulatory Fairness Boards to improve information flow between the Ombudsman and entrepreneurs across the country. More than a dozen new board candidates have been recruited and are currently being vetted or awaiting final appointment. The Office of the National Ombudsman continues to identify the best candidates for the remaining vacancies and seeks recommendations from both parties' leaders of the Senate and House Small Business Committees.

The Office of the National Ombudsman will continue its important work to ensure a level regulatory playing field for small businesses, so entrepreneurs who create a majority of our new jobs are not hindered in their ability to grow their companies and the American economy.

Sincerely,



Maria Contreras-Sweet
SBA Administrator

MESSAGE FROM THE
National Ombudsman

**ASSURING FAIRNESS IN FEDERAL REGULATION
FOR AMERICA'S SMALL BUSINESSES**

The work of the National Ombudsman's team and our federal agency partners throughout Fiscal Year 2014 reduced regulatory burdens and barriers to success for America's small businesses. The Office of the National Ombudsman exists to help small business owners with all of the federal agencies that touch small business. Specifically, we promote expedited issue resolution with federal regulators, clarity in regulatory requirements, and—most importantly—the success of America's small businesses.

Among other successful resolutions in Fiscal Year 2014, our interventions opened tens of millions of dollars of federal contracting opportunities for small businesses that would otherwise not have had the opportunity to compete for those contracts. The Ombuds team also worked to make sure that we in government pay our contractors on a timely basis by helping to expedite \$1.9M in federal contract payments due to small government contractors in FY 2014 alone.



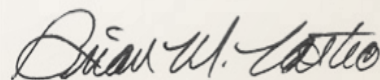
We promote expedited issue resolution with federal regulators, clarity in regulatory requirements, and – most importantly – the success of America's small businesses.

- Our caseload reached the highest level in six years, with 420 small business owners filing formal cases seeking assistance with federal regulations, an increase of 65% over the level just two years ago. The Ombuds team assisted more than 400 small businesses and responded to thousands of general inquiries.
- We grew the diversity and engagement of the Regional Regulatory Fairness Boards and welcomed new board members, who represent new industries and states not previously represented among the board.
- Outreach focused on connecting directly with small business stakeholders in new areas and underserved markets and on broadening awareness of the resources the office provides to small business owners. Together, the National Ombudsman and Deputy Ombudsman connected with small business owners at 64 outreach events in all ten SBA Regions and 22 states, where participants registered comments and concerns regarding federal regulations and regulatory enforcement and compliance issues.
- The Ombudsman's National Regulatory Fairness Hearing in Washington, D.C. highlighted systemic regulatory problems that disproportionately burden large segments of the small business community. More than 20 witnesses, representing individual small

businesses and thousands of association members, delivered compelling testimony to representatives of more than a dozen federal agencies that participated in the Hearing.

- We forged new agency relationships and strengthened existing ones, efforts that continue to pay dividends in the form of improved responsiveness to small business concerns. This year's ratings reflect those improvements for many of our federal agency partners.
- Our partnerships with federal agencies are saving time and money for small business owners by helping to:
 - *Obtain compliance assistance and clarify regulatory requirements*
 - *Reduce fines and penalties*
 - *Resolve regulatory enforcement matters*
 - *Connect small businesses with government assistance*

Respectfully,



Brian M. Castro

*National Ombudsman and Assistant
Administrator for Regulatory Enforcement
Fairness*

A person's hands are visible in the foreground, holding a white document with handwritten notes. The person is wearing a silver watch. The background is a lumber yard with stacks of wood and labels. The text is overlaid on a blue box with a white border and a yellow triangle in the top left corner.

Case Highlight

- *Industrial Material Company*
- *Department of Defense*
- *Pennsylvania*

A small business in the industrial material and supply industry contacted the Office of the National Ombudsman after having difficulty obtaining instructions from the National Guard related to their contract, disposition of manufactured items and outstanding invoices.

Response

The Office of the National Ombudsman contacted the Department of Defense (DoD) on behalf of the industrial material company as well as request clarification with fair and equitable settlement on the contract.

Results

The small business received a total of \$129,000 in overdue payments as a result of Ombudsman advocacy.

Impact

DoD is in the process of amending the business' contract to include clarification regarding disposition of manufactured items made on DoD's behalf.

A Value Proposition for Every Small Business

Navigating federal rules, regulations and requirements can pose a significant challenge for small business. Some small businesses find that requirements do not clearly pertain to a business of their size. In other instances, the cost of demonstrating compliance or obtaining the legal or professional resources to understand a regulation may place a financial burden on small businesses with limited cash flow and access to capital.

The Office of the National Ombudsman partners with federal regulators to deliver fair solutions and value to all segments of America's small business community. Together with key federal partners at every agency that impacts small business, we provide assistance to support thousands of small businesses in achieving timely, common-sense resolutions of regulatory enforcement and compliance issues.

Created in 1996 as part of the Small Business Regulatory Enforcement Act (SBREFA), the Office of the National Ombudsman is mandated to assist small businesses that experience excessive or unfair regulatory enforcement actions involving a federal agency.

We conduct outreach to small businesses across the country in partnership with our Regional Regulatory Fairness Boards. This outreach raises awareness of the Office's role in supporting small business and provides a venue for small business owners and entrepreneurs to bring regulatory concerns and issues. In addition to the Regional Regulatory Fairness Boards, we also accept comments and concerns directly from small business.

When a business has experienced unfair regulatory enforcement involving any federal agency or is dealing with a significant burden due to a particular federal rule, the Office helps to obtain

Representing Small Business

DOÑA A.P. STOREY REGULATORY FAIRNESS BOARD REGION 3 VIRGINIA

As a published writer and national small business spokesperson, Doña brings a unique perspective to the board and uses multiple, national platforms at her disposal. She uses the written word via articles and blog posts, as well as audio podcasts, to raise awareness among the target audiences of small businesses, women and minorities, regarding the importance of the small business advocacy work of the Office of the National Ombudsman.



HELPING SMALL BUSINESS OWNERS RESOLVE PROBLEMS WITH FEDERAL REGULATORS

OPTIONS

1

SUBMIT AN ONLINE REQUEST

for case assistance at www.sba.gov/ombudsman/comment.
This is the recommended process.

2

DOWNLOAD A PRINTABLE CASE ASSISTANCE FORM

(SBA Form 1993) from the Ombudsman's website at www.sba.gov/ombudsman/comment.
Submit a signed case assistance form and supporting documentation by:

EMAIL ombudsman@sba.gov

FAX 202-481-5719

MAIL Office of the National Ombudsman,
U.S. Small Business Administration,
409 3rd Street, S.W.
Washington, D.C. 20416

FIGURE A

a fair, timely review and response to the issue raised. Any small business impacted by a federal agency regulation may file a comment, which typically includes the following basic information as well as a signed consent authorizing the Office to pursue the matter:

- A description of the specific action taken by the agency and the results of this action
- The specific resolution sought
- Any relevant documentation

To promote accessibility, comments may be filed online or in paper form and commenters can receive personal assistance in filing their comment by calling the Ombudsman's Regulatory Fairness Helpline at 888-REG-FAIR. See Figure A.

Once a comment is submitted, a case management specialist reviews the case and any supporting documentation to make sure the necessary authorization and other information is present. The comment is then forwarded to the agency with a request for a prompt, high-level, responsive review of the matter reported.

FIGURE B

STEPS IN RESOLVING SMALL BUSINESS PROBLEMS

After receiving a request for case assistance from a small business, the Ombudsman:

- 1 Reviews the request for completeness, including signatures and a Form 1993, Federal Agency Comment Form, which authorizes the Ombudsman to proceed.
- 2 Determines how the Ombudsman can assist, then advises the small business of expected next steps and parameters of SBREFA review.
- 3 Contacts the federal agency involved to initiate the SBREFA review process.
- 4 Follows up with the federal agency and the small business as appropriate to provide a timely and responsive answer to the issue reported.
- 5 Communicates to the small business owner the actions taken to assist.



Brian Castro, National Ombudsman being interviewed by Steve Millard, President of the Council of Smaller Enterprises (COSE) during outreach in Ohio (June 2014)

We ask the federal agency involved to consider the fairness of the case from a small business perspective and to provide a practical, timely response that balances the spirit of the regulation with the specific circumstances of the small business.

All comments are handled on a confidential, protected basis and can even be raised anonymously if that is preferred by the small business. See Figure B. Examples of the practical resolutions attained and the substantial resource savings for small business through this process are detailed in Chapter 3.

QUICK FACTS

TOP AGENCIES FOR CASE SUBMISSIONS

- Centers for Medicare and Medicaid Services
- Citizen and Immigration Services
- Food and Drug Administration
- Internal Revenue Services
- Small Business Administration

TOP STATES FOR CASE SUBMISSIONS

55	California	16	Washington, D.C.
30	Virginia	16	New York
29	Florida	14	Georgia
21	Texas	14	Pennsylvania
19	Maryland	12	Colorado



Case Highlight

- *Mining Industry*
- *Department of Labor*
- *Virginia*

Following an inspection related to workforce health and safety, a small business in the mining industry asked for assistance from the Office of the National Ombudsman after it was cited for relying on electronic records rather than maintaining paper copies of reports.

Response

The Office of the National Ombudsman requested the Department of Labor to review the citation and the underlying facts in the inspection report.

Results

A high-level review was conducted comparing the inspection report to the citation and found that the facts would not support the citation.

Impact

The small business was deemed compliant and the citation was vacated, allowing the small business to proceed without a citation on record.

Regional Regulatory Fairness Boards

Recognizing that small business owners and leaders in the small business community have firsthand experience with the regulatory challenges confronting small businesses, the Office of the National Ombudsman is advised by ten Regional Regulatory Fairness Boards across the country. The Regional Regulatory Fairness Boards, each comprised of small business owners, provide critical linkages to small businesses nationwide making them aware of our role as a resource and advocate.

The Boards also help to identify unfair, unnecessary, or inconsistently applied agency rules or practices affecting individual small businesses. Though their role is not to resolve individual cases, board members provide critical perspectives on

behalf of the small business owners they represent regarding rules with broader systemic impacts on entire segments of the small business community.

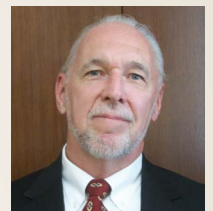
The Regional Regulatory Fairness Boards also support outreach priorities of the National Ombudsman who frequently convenes regulatory fairness roundtables and hearings around the country with small business owners. These dialogues offer the small business community an opportunity to voice their regulatory concerns directly with the National Ombudsman, Board Members and appropriate federal regulators.

Board members have the power to hold hearings and public meetings throughout the year to collect information and insight from local small business owners across the country.

Representing Small Business

KEVIN MALONEY REGULATORY FAIRNESS BOARD REGION 1 CONNECTICUT

“I’ve been self-employed since the age of 19, affording me eternal optimism toward the entrepreneurial spirit,” notes Kevin Maloney. “Through my term on the board I plan to extend the Office’s reach to more small businesses at the community level so their voices are heard. For instance, each June a Business Expo is held in the state capitol in Connecticut, which is aimed predominantly at the small business community. We plan to hold one of our roundtable discussions in conjunction with the Expo within the seminar program, creating a ready-made audience tapping into an existing event for our targeted stakeholders.”



By virtue of their individual and professional networks each of the board members in FY 2014 played a critical role in the outreach of the National Ombudsman. The following board members were particularly active in roundtables and hearings in the following states.

DOÑA STOREY *Roundtable in Virginia Beach, VA*

CHRIS HARVELL *Roundtable in Newark, NJ*

PAUL WRIGHT *Roundtable in Oakland, CA*

GARY EZOVSKI *Roundtable in Warwick, RI*

CINDY BROWN *Roundtable in St. Louis, MO*

PETER CORROON *Roundtable in Salt Lake City, UT*

MARILYN LANDIS *Roundtable in Pittsburgh, PA*

JOE JINDRA *Roundtable in Wichita, KS*

KAY BILLS *Roundtable in Durant, OK*

DEBORAH OSGOOD *Roundtable in Concord, NH*

DR. ALISON BROWN *Regional Hearing in Colorado Springs, CO*

MURIEL WATKINS *National Hearing in Washington, D.C.*

REGULATORY FAIRNESS BOARDS REPRESENTING SMALL BUSINESS

37%
WOMEN OWNED SMALL BUSINESS

37%
MINORITY OWNED SMALL BUSINESS

35
YEARS AVERAGE BUSINESS EXPERIENCE

CREDENTIALS

- ELECTED PUBLIC OFFICE HOLDERS – MAYORAL, STATE LEGISLATORS
- PIONEERS AND INNOVATORS IN TECHNOLOGY ADVANCEMENT
- PROFESSORS AT TOP UNIVERSITIES
- PhDs AND MBAs FROM IVY LEAGUE UNIVERSITIES

INDUSTRY DIVERSITY

Majority of NAICS codes are represented, including:*

- RETAIL
- TRANSPORTATION
- FINANCE AND INSURANCE
- REAL ESTATE
- AGRICULTURE
- INFORMATION SYSTEMS
- CONSTRUCTION
- PROFESSIONAL SERVICES

*North America Industry Classification System



Some members of the Regulatory Fairness Boards with Brian Castro at the FY 2014 Annual Meeting in Washington, D.C. (June 2014).

Representing Small Business

DR. DEBORAH A. OSGOOD REGULATORY FAIRNESS BOARD REGION 1 NEW HAMPSHIRE

As social entrepreneur and nationally recognized expert in small business development, Deborah has been facilitating collaboration between federal and state small business assistance agencies and the private sector for two decades to foster venture start-up, growth, and success. As creator and primary sponsor of America's Small Business Champion's Network, Deborah's role on the board is helping to promote awareness, access and utilization of over 100,000 free and low-cost, and public business assistance programs including access to state-based Regulatory Fairness Board Members.



REGULATORY FAIRNESS BOARD CHAIR BIOS

Please see *Regional Snapshot* on pages 20 & 21 for a complete listing of SBA's regions and the states covered by each.



KEVIN MALONEY Region 1
NORTHEAST EXPRESS TRANSPORTATION, INC.,
Windsor Locks, CT

In 1977 Kevin Maloney co-founded Airfreight Services (AFS) and in 1991 founded Northeast Express Transportation, a distribution company. He later purchased sole ownership of AFS, at which time the entities consolidated into the operating group presently known as NEXT. Sales for the group doubled in the subsequent three years.

Mr. Maloney has been president of the Connecticut Messenger & Courier Association and a director of the Connecticut Motor Transport Association (MTAC). He chairs the Connecticut Public Transportation Commission (CPTC) and the Connecticut Leadership Council of the National Federation of Independent Business.



CHRISTOPHER HARVELL Region 2
DENTAL KIDZ, LLC, *Newark, NJ*

In 2008 Chris Harvell and his wife Lezli cofounded Dental Kidz, now the largest pediatric dental practice in New Jersey. Before starting Dental Kidz, Mr. Harvell was an investment banker in the Real Estate Finance Group at Credit Suisse based in New York City. He has also worked pro-bono for Bill Clinton's Harlem Small Business Initiative.

In 2010 Mr. Harvell was listed among Columbia University Business School's top 10 young alumni who are adapting and thriving during difficult economic times. His company was recently recognized by the City of Newark for its contribution to the economic development of Newark.

Mr. Harvell received his B.S. in Electrical Engineering from George Washington University and M.B.A. in Finance and Real Estate from Columbia University.



MURIEL WATKINS Region 3
MW FINANCIAL, INC., *Washington, D.C.*

Muriel Watkins is President of MW Financial Inc., a boutique public policy analysis firm headquartered in Washington, D.C. Capitalizing on Ms. Watkins' experience as a Harvard-trained former senior executive in Federal government, the firm specializes in the marketing, sale, and repositioning of real estate assets financed, insured, or guaranteed by Federal agencies.

Muriel Watkins has been a member of Women in Housing & Finance. She is on the editorial board of *The Public Manager*, a publication devoted to advancing innovation and excellence in government by documenting "best practices" and contributes articles to the publication.



CLIFTENA CARTER Region 4
CSCI, *Fayetteville, TN*

Cliftena Carter is owner and president of Carter Safety Consultants, Inc. (CSCI), which offers a variety of support services to private and public entities. CSCI provided technical support to the U.S. military during Operation Iraqi Freedom in 2003 and to the Gulf Coast Reconstruction Effort following Hurricanes Katrina and Rita. The U. S. Army Corps of Engineers and U.S. Navy recognized her company for outstanding performance and achievement.

Early in Ms. Carter's career, she played an integral role introducing OSHA/EPA compliance solutions to reduce environmental risk to schools and local governments.

Ms. Carter holds a B.S. in Biology from Tennessee State University and an M.S. in Human Resource and Development from the University of Knoxville.



IRIS COOPER Region 5
JUSTASKIRIS!, *Columbus, OH*

Iris Cooper is owner of JustAskIris!, an entrepreneurial coaching firm. She is also one of the founders of Glory Foods, Inc., a national food marketing company, and in addition has operated a mortgage business and retail gift shop. For over 25 years in the financial service arena she provided funding for housing, commercial real estate, nonprofits, and small businesses.

Ms. Cooper is a former Director of the Ohio Division of Entrepreneurship and Small Business, which features Small Business Development Centers. She holds a B.A. degree in Journalism plus an M.B.A. in Marketing from Indiana University, and she is working on a doctorate in Business Administration.



KAY C. BILLS Region 6
STRATEGIC NATIVE AMERICAN PARTNERSHIP, LLC,
Oklahoma City, OK

In 2005, Kay Bills was recruited by the Minority Business Development Agency (MBDA) to help implement the Native American Business Development, Trade Promotion and Tourism Act. She headed the Office of Native American Business Development (ONABD), which was eventually elevated to report directly to the U.S. Secretary of Commerce.

In 2009, Ms. Bills returned to Oklahoma and was appointed the Oklahoma Ombudsman. She now serves as president of a trade association of small and large federal contractors. She is a member of the Osage Nation of Oklahoma and has received two letters of commendation from the Secretary of Commerce in her career.

BOARD MEMBERS

Board members collaborate with the National Ombudsman, bringing awareness of SBA services available to small businesses across the country.

Gloria J. Benitez de Rodriguez, ROD BEN INTERNATIONAL DBA SHRED-IT,
San Juan, PR

Kay C. Bills, STRATEGIC NATIVE AMERICAN PARTNERSHIP, LLC, *Oklahoma City, OK*

Alison K. Brown, PhD, NAVSYS CORPORATION, *Colorado Springs, CO*

Cynthia Brown, SHRED-IT, BROWN GERMAN ENTERPRISES, INC., *Hazelwood, MO*

Cliftena Carter, CSCI, *Fayetteville, TN*

Iris Cooper, JUSTASKIRISI, *Columbus, OH*

Peter M. Corroon, RED GATE PROPERTIES, LLC, *Salt Lake City, UT*

Gary S. Ezovski, LINCOLN ENVIRONMENTAL PROPERTIES, LLC, *Slatersville, RI*

Cheryl Garling, R AND D ENTERPRISES, INC., *Casper, WY*

Richard G. Gaspar, GASPAR'S CONSTRUCTION, *Seattle, WA*

Christopher Harvell, DENTAL KIDZ, LLC, *Newark, NJ*

Howard Horowitz, ELITE MARKETING GROUP, *New Hyde Park, NY*

David Huller, ICAP ENTERPRISES, LLC, *Rocky River, OH*

Louis G. Hutt Jr., CPA Esq., BENNETT HUTT & CO., *Columbia, MD*

Joseph E. Jindra, KNCK, INC., *Concordia, KS*

Dr. Ernest L. Johnson, Sr., DEVELOPERS & MANAGERS GROUP, LLC, *Baton Rouge, LA*

Robert J. Kane, KARTELE, *Waterbury, CT*

Robert A. Kulp, KULP'S OF STRATFORD, LLC, *Stratford, WI*

Marilyn D. Landis, BASIC BUSINESS CONCEPTS, INC., *Pittsburgh, PA*

Charles L. Largay, YANKEE LOGIC LLC, *Grand Beach, ME*

Brian Maillian, WHITESTONE CAPITAL GROUP, INC., *New York, NY*

Kevin Maloney, NORTHEAST EXPRESS TRANSPORTATION, INC., *Windsor Locks, CT*

Steven Marks, MARKS LUMBER, *Clancy, MT*

Carisa L. McMullen, LANDWORKS STUDIO, LLC, *Olathe, KS*

John A. Michael, NAISMITH ENGINEERING, INC., *Corpus Christi, TX*

William Howard Morris, PRAIRIE & TIREMAN, *Detroit, MI*

Dr. Deborah A. Osgood, KNOWLEDGE INSTITUTE, *Exeter, NH*

Emilio Pérez, EMILIO PÉREZ, LLC, *Goldenrod, FL*

Jennah Purk, PURK & ASSOCIATES, P.C., *St. Louis, MO*

Danton Rice, PRINTINGFORLESS.COM, *Livingston, MT*

Wilfred P. Ryan, RYAN AIR, INC., *Anchorage, AK*

James Settelmeyer, SETTELMAYER RANCHES INCORPORATED, *Minden, NV*

Doña A.P. Storey, GOVTIPS, LLC, *Virginia Beach, VA*

Muriel Watkins, MW FINANCIAL, INC., *Washington, D.C.*

Anthony Welcher, 21ST CENTURY COMMUNICATIONS, *Bellevue, WA*

Ronald W. Wong, IMPRENTA COMMUNICATIONS GROUP, INC., *Albambra, CA*

Paul C. Wright, BERKELEY POLICY ASSOCIATES, *Oakland, CA*



JOSEPH E. JINDRA Region 7

KNCK, INC., *Concordia, KS*

North Central Kansas native Joe Jindra started working at KNCK while still in high school and spent his life working in radio across the country

in Kansas, Missouri, and Arizona. He returned to Concordia in 1989 and purchased the station from General Broadcasting Company. Mr. Jindra currently owns and manages the station.

Under Jindra's ownership, the station increased its power, initially to 6,000 watts, and ultimately to 100,000 watts. Increasing power to 100,000 watts required the station to purchase a new transmitter, change frequency from 95.3 MHz, a "class A" channel (limited to 6,000 watts), to 94.9 MHz, a "class C1" channel, and move to a new tower, 528 feet tall.



ALISON K. BROWN, PHD Region 8

NAVSYS CORPORATION, *Colorado Springs, CO*

Dr. Alison Brown is President and Chief Executive Officer of NAVSYS Corp., specializing in developing next generation Global Positioning System (GPS)

technology. Recently, Dr. Brown was selected Entrepreneur of the Year by Colorado's Celebrate Technology, and as a Woman of Distinction by the Girl Scouts Mile-Hi Council.

Dr. Brown holds a PhD in Mechanics, Aerospace, and Nuclear Engineering from UCLA, an M.S. in Aeronautics and Astronautics from MIT, and an M.A. and B.A. in Engineering from Cambridge University. She is an Honorary Fellow of Sidney Sussex College, Cambridge, and a Fellow of the Institute of Navigation.



PAUL C. WRIGHT Region 9

BERKELEY POLICY ASSOCIATES, *Oakland, CA*

Mr. Wright is an owner, vice president of operations and chief financial officer of Berkeley Policy Associates in Oakland, California, a social policy

research firm. He is also an attorney and a U.S. Army veteran.



ANTHONY WELCHER Region 10

21ST CENTURY COMMUNICATIONS, *Bellevue, WA*

Anthony Welcher develops projects and investment strategies, and sources capital for large-scale development projects in the Pan Arctic, Latin, and

Asian regions in cooperation with state and Federal governments. The principal goal of these projects is to create long-term stable economic development and jobs.

Mr. Welcher served as a presidential appointee and Director of Intergovernmental Affairs at the U.S. State Department. In this role he served as the Secretary of State's representative to U. S. governors, mayors, and local, regional, and state officials. Mr. Welcher also served as Director of External and Congressional Affairs at the United States Export-Import Bank.



Case Highlight

- *Multiple Industries*
- *Multiple States*

Prior to receiving HUBZone certification, small businesses are required to provide appropriate documentation. In several cases, certification of small businesses had been denied due to missing documentation which the small business already had submitted.

Response

The Office of the National Ombudsman, on behalf of multiple HUBZone applicants, raised the issue with partners in the Small Business Administration's HUBZone Program Office.

Results

The HUBZone Program Office conducted a thorough review of cases, re-evaluated the small business applications and granted certification, upon finding that the required documentation had been timely submitted.

Impact

Small businesses that had been incorrectly denied HUBZone certification received the certification they were entitled to and gained access to millions of dollars in federal contracts set aside for HUBZone firms.

Response ■ Results ■ Impact

Throughout the Fiscal Year, the National Ombuds team worked with hundreds of small business owners and dozens of federal agencies to help level the regulatory playing field for small business, while at the same time ensuring critical regulatory objectives – like providing for safe workplaces and healthy food – are advanced. The results of these interventions were significant for the small businesses that filed cases and, where systemic solutions were identified and implemented, led to favorable impacts for thousands of other small businesses in similar circumstances. Examples of both systemic regulatory fixes and individual case resolutions are highlighted in the following pages.

There are multiple channels through which the National Ombudsman learns of emerging regulatory challenges confronting the small business community. These include connecting with small business owners via telephone calls to the Ombudsman’s Regulatory Helpline, online case filings, Regional Regulatory Fairness Board members, Regional and District SBA teams, and

public outreach events, including Regulatory Fairness Roundtables and Hearings.

Federal regulation and federal agency enforcement actions impact small businesses around the country. To help bridge the gap between federal regulators and the full spectrum of the small business community, the Office of the National Ombudsman, together with SBA Resource Partners and Regulatory Fairness Board members, convenes public forums – roundtables and hearings – in all ten SBA regions each year. These public forums bring together Regulatory Fairness Board members, small business owners and operators, and representatives of federal regulatory agencies and provide a unique and direct channel for small

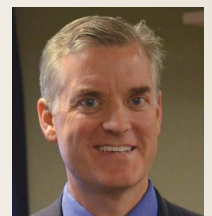
“It was a [regulatory] nightmare that we were going through for the last many years and finally it is over. It is a great relief. Thank you again.”

—ASSET MANAGEMENT SMALL BUSINESS OWNER,
NEW JERSEY

Representing Small Business

PETER M. CORROON REGULATORY FAIRNESS BOARD REGION 8 UTAH

As a former mayor who oversaw an \$850 million budget and managed over 8,000 employees and 36 agencies, Peter brings a unique perspective into the challenges of the small business owner arising from local and national government mandates. His perspective on the board focuses on community and civic leadership issues, ensuring multilingual small businesses are represented through targeted outreach to chambers of commerce, neighborhood business associations and minority business members.



business owners to voice concerns and report hurdles for their businesses that could be relieved by different regulatory approaches.

Roundtables bring together the small business community and business and trade associations for dialogue with the National Ombudsman, Regional Regulatory Fairness Board members, and, often, local representatives of federal regulators. Participating federal agencies explain their regulatory and compliance assistance programs, while representatives of small businesses voice concerns about specific regulatory requirements and the impact of government rules on local businesses.

Hearings are public forums focused on collecting information and receiving testimony from individual entrepreneurs and small business groups, as well as educating the community on the federal regulatory hurdles that small businesses face. Federal agency representatives are invited to attend hearings to keep abreast of small business

regulatory issues, particularly when they directly concern an agency's enforcement responsibilities.

Providing small businesses with solutions of value:

In one particularly compelling case, a woman-owned small business, 8(a) graduate and successful government contractor reported that her business was owed \$626,216 for services performed and accepted but not paid. The business suffered harassment, discrimination and verbal abuse by federal contracting personnel and received a negative performance rating due to retaliation and discrimination from the issue.

In addition to referring the matter to the contracting agency's Office of Inspector General as required by law, the Ombudsman's Office worked with its contacts at that agency and with the SBA Procurement Center Representative (PCR) to assist the small business owner. In response, the contracting agency replaced the Contracting Officer's Representative and affirmed that any inappropriate language or the appearance of discrimination would not be tolerated.

CASE RESOLUTION PROCESS

1 SEEKING SUPPORT

- A small business encounters a compliance question or other regulatory issue involving a federal agency (i.e. through inspections, contracting, fines).
- The small business reports the issue through email, fax, web, mail, public hearing or to a Regulatory Fairness Board Member.

2 RESPONSE

- The small business receives confirmation of receipt and the Office promptly contacts the appropriate federal agency.
- A designated Case Management Specialist serves as the small business' liaison with the federal agency, ensuring a focus on customer service and timely, responsive review.

3 RESULT

- The Office supports the small business through issue resolution, remaining engaged and accessible.
- Results could include clarification of regulatory requirements, compliance assistance, reduced fines, payment of contracting invoices, regulatory process improvements, and revised decisions, all on behalf of small business.

4 IMPACT

- Resolutions of case-specific issues and of systemic issues positively impact the ability of small business to compete and thrive, while delivering on the promise of regulatory fairness.
- Cases help identify areas for regulatory streamlining and provide channels for small business owners to weigh in and contribute to systemic improvements.

To address the payment for services and performance rating issues, on behalf of the small business, the Office requested a meeting with officials at the contracting authority, who were extremely supportive and engaged. Immediately following that meeting, the small business owner wrote to the Office:

"I'm pleased to report that all three issues were addressed and the outcome very favorable. The [agency] has agreed to compensate [the business] for the expended labor and material purchases in the entire amount of \$626,216. They also agreed to submit a final contract rating of 'SATISFACTORY'."

The National Ombudsman convened several Regulatory Fairness Hearings throughout 2014, including a National Regulatory Fairness Hearing in Washington, D.C., to provide a forum for members of the small business community to present testimony on federal regulations impacting small businesses. Small business owners, small business groups, law firms, and trade associations attended the hearings to testify on wide-ranging issues including unfair enforcement actions, government contracting, government audits, and excessive fines or regulations. In response to the testimony of each witness, the relevant regulatory agency conducted a high-level fairness review to address the concern expressed and, where possible, reduce regulatory burdens on small businesses.

REGULATORY FAIRNESS HEARINGS

Colorado Springs, CO
Cupertino, CA ■ Washington, D.C.

TESTIMONY TOPICS

- Unfair enforcement actions
- Government contracting regulatory burden
- Government audits
- Excessive fines or enforcement action
- Small Business Innovation Research (SBIR) program
- FAA regulations
- Subcontractor issues
- Medicare changes and regulations
- Enforcement of USDA Forest Service timber rules

BY THE NUMBERS

19 FEDERAL AGENCIES

19 SMALL BUSINESS OWNERS

13 REGULATORY ISSUES

11 NATIONAL TRADE ASSOCIATIONS



Brian Castro and Region III Regulatory Fairness Board Members oversee the National Regulatory Fairness Hearing in Washington, D.C.

DELIVERING
INDIVIDUALIZED
ASSISTANCE AND
**Promoting
Systemic
Solutions**
FOR SMALL BUSINESS

In FY 2014, the Office of the National Ombudsman worked with federal agencies to understand and address current regulatory policies and practices that create unnecessary burdens on small business. The results in these cases led federal agencies to not only remedy the individual cases, but also to reconsider policies, clarify procedures and responsibilities, and adjust processes to ensure regulatory fairness for all small businesses going forward.



Addressing Systemic Issues

By addressing systemic issues in a proactive way, the impacts of individual case resolutions are magnified and the entire small business community benefits from smarter, more effective and proportionate regulation. Examples of successful advocacy efforts that yielded widespread, systemic benefits include:

VIRGINIA *Defense Contract Audit Agency*

- **The Defense Contract Audit Agency (DCAA) provided written clarification that “DCAA certification” should not be required as a precondition to bid submission.**
 - ▶ At a small business roundtable in Norfolk, Virginia, small business owners reported to the Ombudsman that some Navy contracting officers were requiring “DCAA certification,” which had the effect of excluding them from bidding on contracts for which they were qualified.
 - ▶ Some DoD contracting officers had been using overly restrictive language to state or imply that only contractors whose accounting systems had previously been “certified” by DCAA could bid on certain contracting opportunities.
 - ▶ In response, DCAA provided written clarification that DCAA does not “certify” prospective contractors’ accounting systems and therefore that “DCAA certification” should not be required as a precondition to bid submission. It stated, “DCAA does not ‘certify’ or ‘approve’ accounting systems.... *There is no FAR requirement for a contractor’s system to be deemed adequate in order to compete for an award.... [T]he FAR does not require that the system already be audited and deemed adequate in order to bid.*”

COLORADO *Defense Manpower Data Center*

- **After reviewing and resolving a case in favor of a small business contractor that had lost access to its JPAS (Joint Personnel Adjudication System) account, the Defense Manpower Data Center recognized potential gaps in existing policies on consultants. Therefore, it developed additional policy to clarify the roles and responsibilities of consultant categories and to address policy gaps, so as to avoid similar cases in the future.**
 - ▶ The small business owner was extremely grateful, stating “*Defense Manpower Data Center (DMDC) made a favorable determination and restored our access to the Joint Personnel Adjudication System. I believe DMDC would have made a negative determination had it not been for your intervention.*”

KANSAS *U.S. Department of Housing and Urban Development*

- **Following the erroneous issuance of a Notice of Violation (NOV) to a small community lender in Kansas that had timely submitted its annual recertification documentation, the Department of Housing and Urban Development, Lender Recertification Branch issued a rescission letter to reverse the error and committed to vetting a pre-issuance list with all pertinent offices to avoid issuing NOV’s in error in the future.**
 - ▶ In its filing with the Office, the small business reported, “*WE HAVE BEEN FIGHTING THIS BATTLE FOR SEVEN AND ONE HALF MONTHS!!! I am not sure it will ever end.*”
 - ▶ Within two months of contacting the Ombudsman, the matter was resolved favorably for the lender.

**“I BELIEVE
[THE AGENCY]
WOULD HAVE
MADE A NEGATIVE
DETERMINATION
. . . HAD IT NOT
BEEN FOR YOUR
INTERVENTION.”**

CONTINUED >

Fair Access to Contracting Opportunities

Among other successful resolutions, Ombudsman interventions opened tens of millions of dollars of federal contracting opportunities to small businesses — specific small businesses as well as entire categories of small businesses — that had been unfairly excluded from competing for those contracts.

MULTIPLE STATES *U.S. Small Business Administration*

- **Participation in Certification Programs for Small Businesses** (e.g., SBA's HUBZone program and Veteran's Administration Center for Verification and Eligibility (CVE) certification): certifications erroneously denied or subject to termination were reviewed and where appropriate corrected by the respective program offices, making these disadvantaged small firms eligible for set-aside awards.
- ▶ *"We have been waiting on this approval for nearly a year and we cannot wait another 90 days to reapply and begin this entire process again. Please let us know exactly what we need to do to assure that we do not have to reapply."* – South Carolina family-owned construction company seeking Ombudsman assistance after being denied certification for failure to submit required documentation that had in fact been timely submitted (see case highlight, page 10).

MARYLAND *U.S. Department of Defense*

- **In the case of a small business denial of acceptance into the Military Surface Deployment and Distribution Command program, the Office successfully worked with the federal agency to reverse the original stance by the Department of Defense, allowing the business to receive contracts and orders from the government.**

"WE HAVE BEEN WAITING ON THIS APPROVAL FOR NEARLY A YEAR AND WE CANNOT WAIT ANOTHER 90 DAYS TO REAPPLY AND BEGIN THIS ENTIRE PROCESS AGAIN. PLEASE LET US KNOW EXACTLY WHAT WE NEED TO DO TO ASSURE THAT WE DO NOT HAVE TO REAPPLY."

Payments Due to Small Contractors

The Office also helps make sure that small government contractors are paid on time — and in FY 2014 alone helped expedite nearly two million dollars in past due federal contract payments to small government contractors. Examples include:

VIRGINIA *U.S. Department of Defense (Navy)*

- **\$626,216** — payment in full — to a woman-owned small business and 8(a) graduate firm in Virginia for labor and materials accepted by DoD but not paid.

TEXAS *U.S. Department of Homeland Security*

- **\$320,060** – payment in full – to a minority-owned small business in Texas for cleaning and maintenance services furnished to DHS. After not being paid for over four months, the small business owner shared his experience with the National Ombudsman at a community roundtable. Within five weeks he was paid in full and able to recall his laid off employees and resume performance on the contract.

MULTIPLE STATES *U.S. Department of Defense*

- Small DoD contractors experienced financial burdens resulting from delayed or nonpayment for services or materials provided and accepted. Following Ombudsman intervention, hundreds of thousands of dollars due to these small businesses were paid, allowing them to make payroll, invest in new equipment and grow.

MULTIPLE STATES *Centers for Medicare and Medicaid Services*

- Multiple cases in FY 2014 related to assuring fair and timely reimbursement for medical services rendered and supplies provided to Medicare patients by small medical providers. The impact of resolving these cases meant not only the release of tens of thousands of dollars in payments to providers, but also meaningful access to affordable healthcare for seniors and the disabled.

KANSAS *U.S. Postal Service*

- The Office worked with the U.S. Postal Service to assist a subcontractor that had not been timely paid by the prime contractor for work completed on a new roof for a Kansas Post Office.
 - ▶ Within weeks of filing its case, the subcontractor was paid \$50,000 by the prime contractor, with another \$50,000 the following month.
 - ▶ In addition, the USPS sought and obtained assurances from the prime contractor that the subcontractor would be treated fairly and professionally throughout the remainder of the contract.

CONTINUED >

Abatement of Fines and Penalties

Throughout the year, the Office worked with federal agency partners to resolve cases across regions and industries where fines and penalties were disproportionate or unfair. Impacts of those resolutions were measured in improved compliance, capital investments in operations and growth rather than fines, and improved understanding by federal agencies and small businesses of regulatory requirements and their effects.

MULTIPLE STATES *Occupational Safety and Health Administration*

- In cases in multiple regions in FY 2014, the partnership between the Office and the Occupational Safety and Health Administration (OSHA) provided for high-level reconsideration of significant fines levied by field inspectors. Based on company size, compliance history, remediation efforts, and other mitigating factors, fines were reduced 50% to 80% and manageable, interest-free payment options were provided, empowering the businesses to achieve workplace safety and commercial success.
- Small businesses that benefited included:
 - ▶ An independent restaurant in Philadelphia
 - ▶ A small Ohio construction company
 - ▶ A Louisiana manufacturer and woman-owned small business
 - ▶ A small roofing company in Missouri

KENTUCKY *U.S. Department of Labor*

- A small farmer in Kentucky was found to have inadvertently underpaid ten employees 23 cents an hour, and promptly paid the total back wages of \$2,686.31 (approximately \$260 each). For the violation, it was assessed a civil monetary penalty (CMP) of \$5,625. The National Ombudsman worked with DoL to assess the proportionality of the CMP relative to the violation. As a result of those discussions, the DoL Farm Team reduced the penalty by \$3,675 to \$1,950 (see case highlight, page 22).

TEXAS *Internal Revenue Service*

- The Ombudsman-Taxpayer Advocate partnership paid dividends for small business owners who had been unfairly subject to IRS fines or penalties.
 - ▶ After three years of unsuccessful correspondence with the IRS to resolve the issue, the owner of a small business in Texas contacted the Ombudsman for help. His employment tax payment had been deemed late, even though it was paid on time. Due to an IRS processing error, the payment was not timely recorded and had been returned to the taxpayer before being deemed “late.” After the IRS review, all penalties and interest were removed, reducing the balance to zero.
 - ▶ A New Jersey small business was assessed penalties for filing its taxes late for three tax years and had been unable to resolve the matter for several years. The IRS reviewed the case and withdrew the penalties for all three years.

**FINES
REDUCED
50%-80%
INTEREST-FREE
PAYMENT OPTIONS
PROVIDED**

Unfair Action

Unfair regulatory actions can have far-reaching and unintended consequences for small business owners. As an advocate for small businesses, the Office responds quickly to work with federal agencies to eliminate unnecessary and unfair obstacles, particularly within the procurement and contracting processes. The impact translates to better opportunities for small businesses to compete for government contracts.

GEORGIA *U.S. Department of Defense*

- The owner of a Georgia small business was concerned when he was told that the quality control inspector/auditor he was assigned had no experience with textiles. The inspector rejected an order for apparent defects, halting production and forcing the business to lay off or cut hours for 200 of its workers for two months. After contacting the Ombudsman's Office for help, the matter was resolved and the small business resumed production.

LOUISIANA *Internal Revenue Service*

- The status of a 501(c)(3) non-profit Veterans organization was mistakenly changed by IRS to 501(c)(10) without notice. The reclassification harmed fundraising efforts and the organization contacted the Ombudsman. The IRS reviewed the case and corrected the error.

NEW JERSEY *U.S. Department of the Treasury*

- The former owners of a bagel shop became the subject of Treasury Department collection activity on an SBA loan from 11 years earlier. The bagel store had gone out of business and signed over all its assets to the lender to satisfy the debt. Upon investigation, the SBA determined that it had erred in waiting seven years to refer the debt to Treasury for collection. Accordingly, the SBA recalled the debt from Treasury and worked with the borrower to establish an acceptable repayment plan.

VIRGINIA *U.S. Department of Veterans Affairs*

- A small construction company and CVE-certified firm in good standing, "XYZ Construction,"¹ was notified by the Department of Veterans Affairs (VA) that its CVE status would be canceled. CVE ("Center for Verification and Evaluation") certification is a strictly-controlled and critically important credential for veteran-owned small businesses seeking to contract with the VA. It was especially important to XYZ Construction, a service-disabled veteran owned small business which at that time was actively seeking VA construction contracts.
 - ▶ The cancellation notice apparently was intended for a different CVE firm, with a somewhat similar name, "XYZ Services." The owner of XYZ Construction attempted to resolve the confusion, but the VA declined to address the matter with him because he was not listed as an owner or representative of XYZ Services.
 - ▶ At that point, the owner of XYZ Construction informed the Office of the National Ombudsman, which reached out to the VA to help rectify the situation. Within seven calendar days, the VA issued a notice rescinding the revocation and confirming XYZ Construction's continuing CVE eligibility.

¹ All cases are handled by the Office on a confidential basis, unless confidentiality is waived by the small business; accordingly "XYZ Construction" is substituted here in place of the small business' name.



REGION 1

*Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont*

25
CASES

4 OUTREACH EVENTS

BOARD MEMBERS

Gary S. Ezovski, Slatersville, RI
Robert J. Kane, Waterbury, CT
Charles L. Largay, Grand Beach, ME
Kevin Maloney, Windsor Locks, CT
Dr. Deborah A. Osgood, Exeter, NH



REGION 2

*New Jersey
New York, NY
Puerto Rico
U.S. Virgin
Islands*

27
CASES

5 OUTREACH EVENTS

BOARD MEMBERS

Gloria J. Benitez de Rodriguez,
San Juan, PR
Christopher Harvell, Newark, NJ
Howard Horowitz, New Hyde Park, NY
Brian Maillian, New York, NY



REGION 3

*Delaware
Maryland
Pennsylvania
Virginia
West Virginia
Washington, D.C.*

81
CASES

17 OUTREACH EVENTS

BOARD MEMBERS

Louis G. Hutt Jr., CPA Esq.,
Columbia, MD
Marilyn D. Landis, Pittsburgh, PA
Doña A.P. Storey, Virginia Beach, VA
Muriel Watkins, Washington D.C.



REGION 4

*Alabama
Florida
Georgia
Kentucky
Mississippi
North Carolina
South Carolina
Tennessee*

73
CASES

11 OUTREACH EVENTS

BOARD MEMBERS

Cliftena Carter, Fayetteville, TN
Emilio Pérez, Goldenrod, FL



REGION 5

*Illinois
Indiana
Michigan
Minnesota
Ohio
Wisconsin*

43
CASES

4 OUTREACH EVENTS

BOARD MEMBERS

Iris Cooper, Columbus, OH
David Huller, Rocky River, OH
Robert A. Kulp, Stratford, WI
William Howard Morris, Detroit, MI

REGION 6

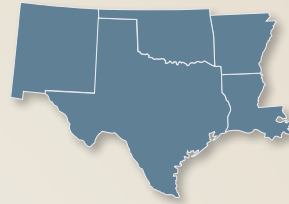
Arkansas
Louisiana
New Mexico
Oklahoma
Texas

38
CASES

4 OUTREACH EVENTS

BOARD MEMBERS

Kay C. Bills, Oklahoma City, OK
Dr. Ernest L. Johnson, Sr.,
Baton Rouge, LA
John A. Michael, Corpus Christi, TX



REGION 7

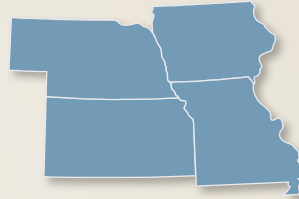
Iowa
Kansas
Missouri
Nebraska

22
CASES

6 OUTREACH EVENTS

BOARD MEMBERS

Cynthia Brown, Hazelwood, MO
Joseph E. Jindra, Concordia, KS
Carisa L. McMullen, Olathe, KS
Jennah Purk, St. Louis, MO



REGION 8

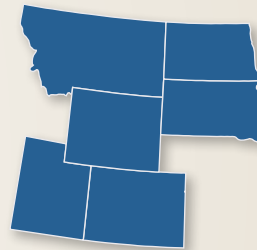
Colorado
Montana
North Dakota
South Dakota
Utah
Wyoming

18
CASES

5 OUTREACH EVENTS

BOARD MEMBERS

Alison K. Brown, PhD,
Colorado Springs, CO
Steven Marks, Clancy, MT
Peter M. Corroon, Salt Lake City, UT
Cheryl Garling, Casper, WY
Danton Rice, Livingston, MT



REGION 9

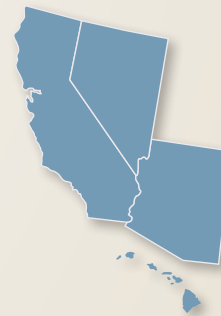
Arizona
California
Hawaii
Nevada
Territories of
Guam and
American Samoa

69
CASES

6 OUTREACH EVENTS

BOARD MEMBERS

James Settelmeyer, Minden, NV
Ronald W. Wong, Alhambra, CA
Paul C. Wright, Oakland, CA



REGION 10

Alaska
Idaho
Oregon
Washington

24
CASES

2 OUTREACH EVENTS

BOARD MEMBERS

Richard G. Gaspar, Seattle, WA
Wilfred P. Ryan, Anchorage, AK
Anthony Welcher, Bellevue, WA



TOGETHER WE CAN SAVE LIVES

A person wearing a red, white, and black plaid shirt and blue jeans is standing in a field of golden wheat. They are holding a black smartphone in both hands and looking down at it. The background is a soft-focus field of wheat under bright, natural light.

Case Highlight

- *Agriculture Industry*
- *Department of Labor*
- *Kentucky*

A small farm inadvertently paid ten H-2A seasonal employees \$9.48 (rather than \$9.71) per hour, resulting in underpayments of \$270 per worker. The farmer paid all back wages due, but also was assessed a penalty of \$5,600 — nearly double the amount of the underpaid wages.

Response

The Office of the National Ombudsman recognized that a fine of that magnitude would create a disproportionate, undue burden on the small business, and conducted necessary outreach with the Department of Labor related to the fine amount.

Results

The Department of Labor reduced the fine for the small business by more than 60%.

Impact

The farm paid a fine proportional to the violation, corrective action was taken, and the employees were made whole.

Federal Agency Ratings

Following the close of each fiscal year, the Office of the National Ombudsman rates federal agencies in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). This process lends to the goals of promoting regulatory fairness, lessening

“The result of this inquiry was favorable in our view and would not have been possible without you taking the time to listen and fully comprehend the complex issue.”

—MEDICAL SERVICES SMALL BUSINESS OWNER, NEBRASKA

unnecessary burdens on small businesses, and enhancing agency accountability. Rating criteria include the responsiveness to small business concerns, the quality of those responses,



National Ombudsman, Brian Castro talking with local small business owners at a Regional Regulatory Fairness Roundtable in Toledo, OH (June 2014).

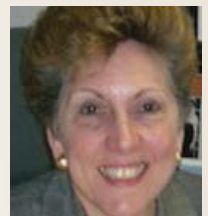
compliance with SBREFA and facts reported by each agency partner in response to the annual questionnaire. Each agency receives an overall grade for the fiscal year, as well as individual ratings in the following areas.

CONTINUED ON PAGE 27 >

Representing Small Business

MARILYN D. LANDIS REGULATORY FAIRNESS BOARD REGION 3 PENNSYLVANIA

Marilyn's role on the board focuses on national outreach to provide community banks and financial institutions with a platform to discuss the regulatory environment and its impact on access to capital for small businesses. Through this effort and working in conjunction with multiple regulatory agencies, such as the U.S. Securities and Exchange Commission (SEC), she provides diverse insights to the Office of the National Ombudsman in order to affect change at the national level and increase access to capital for the small business owner.



FY 2014 AGENCY RATINGS

CABINET AGENCIES	COMMENTS [^]		SBREFA COMPLIANCE			OVERALL
	RESPONSE TIMELINESS	RESPONSE QUALITY	NON-RETALIATION POLICY	COMPLIANCE ASSISTANCE	PROVISION OF SBREFA INFORMATION	
AGRICULTURE						
Animal and Plant Health Inspection Service	A	A	A	A	A	A
Food Safety and Inspection Service	A	A	A	A	A	A
COMMERCE						
National Oceanic and Atmosphere Administration	A	A	A	A	A	A
DEFENSE						
Army Corps of Engineers	N/A	N/A	A	A	N/A	A
Army	B	A	N/A	N/A	N/A	A
EDUCATION	N/C	N/C	A	A	A	A
ENERGY	N/C	N/C	F	A	F	D
HEALTH AND HUMAN SERVICES						
Centers for Medicare and Medicaid Services	A	B	A	A	C	B
Food and Drug Administration	A	A	A	A	A	A
HOMELAND SECURITY						
Customs and Border Protection	B	A	A	A	A	A
Immigration and Customs Enforcement	A	C	A	A	A	A
Citizenship and Immigration Services	N/C	N/C	A	A	N/A	A
Coast Guard	N/C	N/C	A	A	A	A
HOUSING AND URBAN DEVELOPMENT						
Federal Housing Administration	A	A	A	A	A	A
INTERIOR	F	F	A	A	A	C
JUSTICE	N/C	N/C	B	A	A	A
LABOR						
OSHA	A	A	A	A	A	A
Wage and Hour	A	A	A	A	A	A
MSHA	C	B	A	A	A	B
Employee Benefits Security Administration	N/C	N/C	A	A	A	A

CABINET AGENCIES	COMMENTS ^		SBREFA COMPLIANCE			OVERALL
	RESPONSE TIMELINESS	RESPONSE QUALITY	NON-RETALIATION POLICY	COMPLIANCE ASSISTANCE	PROVISION OF SBREFA INFORMATION	
SMALL BUSINESS ADMINISTRATION						
8(a) Business Development	B	A	A	A	A	A
HUBZone	D	C	A	A	A	B
Office of Capital Access	A	A	A	A	F	B
STATE	N/C	N/C	A	A	A	A
TRANSPORTATION						
Federal Motor Carrier Safety Administration	A	A	A	A	A	A
Federal Aviation Administration	N/C	N/C	A	A	A	A
Pipelines and Hazardous Materials Safety Administration	N/C	N/C	A	A	A	A
TREASURY						
IRS	B	A	A	A	A	A
VETERANS AFFAIRS	N/C	N/C	X	X	X	X

NON-CABINET AGENCIES	COMMENTS ^		SBREFA COMPLIANCE			OVERALL
	RESPONSE TIMELINESS	RESPONSE QUALITY	NON-RETALIATION POLICY	COMPLIANCE ASSISTANCE	PROVISION OF SBREFA INFORMATION	
Consumer Product Safety Commission	N/C	N/C	A	A	C	B
Environmental Protection Agency	A	A	A	A	A	A
Equal Employment Opportunity Commission	N/C	N/C	A	A	A	A
Federal Communication Commission	N/C	N/C	A	A	C	B
Federal Deposit Insurance Corporation	A	A	A	A	N/A	A
Federal Energy Regulatory Commission	N/C	N/C	A	C	A	B
Federal Reserve Board	N/C	N/C	A	A	N/A	A
Federal Trade Commission	A	A	A	A	A	A
General Services Administration	N/C	N/C	A	A	N/A	A
NASA	N/C	N/C	A	A	A	A
National Credit Union Administration	N/C	N/C	A	A	C	B
National Labor Relations Board	A	A	A	N/A	N/A	A
Pension Benefit Guaranty Corporation	N/C	N/C	A	A	A	A
Securities and Exchange Commission	A	A	A	A	A	A

See Appendix C for Agency Ratings Footnotes and Comments.

AGENCY QUESTIONNAIRE HIGHLIGHTS

1 NON-RETALIATION POLICIES

Internal: Does the agency have a written non-retaliation policy available to all employees?

If yes, please provide a copy and indicate how the policy is disseminated and what if any related employee training or education is provided.

YES NO

Public: Does the agency have a published non-retaliation policy widely available to small entities?

If yes, please provide a copy and indicate how the policy is disseminated (include web link if applicable).

YES NO

2 COMPLIANCE ASSISTANCE

Does the agency provide small businesses with regulatory compliance assistance in the form of generally-applicable, written compliance guidance or similar written information?

If yes, please provide copies and indicate how that assistance is disseminated (include web link(s) if applicable).

YES NO

Does the agency provide small business compliance assistance (e.g., training or counseling) other than generally-applicable, written guidance?

If yes, please describe this assistance, how it is provided (in writing or otherwise), indicate whether individually-tailored compliance assistance is provided to small businesses, and state the name of the designated agency compliance contact.

YES NO

3 SBREFA NOTIFICATION

Does the agency provide public notice regarding small entities' rights under SBREFA, including the right to file a comment with the National Ombudsman?

If yes, please provide a copy and indicate how the notice is disseminated (include web link(s) if applicable).

YES NO

When the agency issues a citation, notice of regulatory violation, charge of violation, or the like to a particular small business, is written notice of small entities' SBREFA rights included in the issuance?

If yes, please include samples of the written notice(s) provided.

YES NO

Responsiveness to Small Business Regulatory Concerns

Each federal agency earns a letter grade in these areas based on its responsiveness to small business concerns:

- Timeliness of agency responses
- Quality of agency responses

SBREFA Compliance

Each agency also earns a letter grade on the SBREFA compliance of its policies governing:

- Non-retaliation against small business commenters
- Provision of regulatory compliance assistance to small businesses
- Provision of notice to small businesses of their rights under SBREFA, including the right to comment with the Office of the National Ombudsman

Grading Categories

1 TIMELINESS OF RESPONSES

Response times are measured from the date the Office forwards a small business comment to an agency to the date the agency's response is received. "Days" are defined as business days.

- 30 days or fewer
- 31-60 days
- 61-90 days
- 91-120 days
- more than 120 days

2 RESPONSE QUALITY

The Office considers the specificity and detail provided in each agency's response and determines ratings according whether:

- The agency provides detailed information showing that it investigated the facts of the specific case and the actions of the agency personnel involved.
- The agency response comes from a high-level representative, such as an agency official with SBREFA responsibilities or someone from the program office with oversight responsibilities related to the comment.
- The agency addresses all applicable questions posed and responds to the specific comment made by the small entity.

When forwarding a comment, the Office of the National Ombudsman may include questions necessary to assessing agency responsiveness. The answers shed light on aspects of responsiveness, including how thoroughly the agency considered the effects of its actions and whether appropriate follow-up occurred. Examples include: "Why and how did you take the enforcement action?" and "Did your agency consider alternatives such as waiving penalties or reducing fines?"

RATING CRITERIA

NON-RETALIATION POLICIES

- The agency has a written non-retaliation policy available to all employees and a published non-retaliation policy that is readily available to small entities online or otherwise.
- As used here, “non-retaliation” policies are those designed to prevent acts that punish small business concerns for complaining or commenting about an Agency action. Agency must provide a copy of its policy and provide the web address for those policies available to the public.

COMPLIANCE ASSISTANCE

- The agency provides small business compliance guides and assistance as described in § 212, as amended, of SBREFA. The agency provides small entities with a compliance assistance telephone number, compliance assistance website and/or a designated compliance assistance contact available to small business concerns. The agency provides and is able to document compliance assistance education.

SBREFA NOTIFICATION

- The agency provides public notice, including the National Ombudsman’s complete contact information, of small entities’ SBREFA rights.
- When each citation or notice of regulatory violation is issued, the agency provides written notice to small entities about their right to comment about the enforcement/compliance process to the Office of the National Ombudsman.

SUPPLEMENTAL INFORMATION

Agencies may, and are encouraged to, submit additional information that demonstrates how the agency meets these SBREFA requirements. This may include specific examples illustrating how the agency promotes regulatory enforcement and compliance fairness for small entities, including individualized compliance assistance, the amount of fines abated, or other appropriate accommodations.

3 AGENCY NON-RETALIATION POLICY

“Non-retaliation” policies are defined as those designed to prevent acts that punish a small business for complaining or commenting about an agency action. An agency will receive a letter rating of “A” if it demonstrates that:

- The agency has a written non-retaliation policy that is available to all agency employees.
- Small entities have access to the non-retaliation policy at the agency’s public website and/or other readily available source.

Examples of agency non-retaliation policies

EXAMPLE 1 The National Labor Relations Board’s (NLRB) policy on non-retaliation against small business entities is as follows:

*“The National Labor Relations Board’s (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. If you believe that this policy has been violated or if you wish to comment on the NLRB’s enforcement and compliance processes, contact your local NLRB field office, the NLRB’s Office of Inspector General or the National Ombudsman’s Office. Telephone numbers and addresses for local NLRB offices can be obtained on the NLRB website in the **Contact Us** folder. The Office of the Inspector General can be reached by telephone at 202-273-1960, by fax*

at 202-273-2344, or by e-mail at OIGHOTLINE@nrb.gov. Information about the National Ombudsman is available online at www.sba.gov/ombudsman.”

The Agency’s non-retaliation policy is located on the Agency’s website in the Reports & Guidance folder under Public Notices/Small Business Regulatory Enforcement Fairness Act:

<http://www.nrb.gov/reports-guidance/public-notices/small-business-regulatory-enforcement-fairness-act>

Please contact your Assistant General Counsel, Deputy AGC or the undersigned if you have questions.

EXAMPLE 2 SBA’s Non-Retaliation Policy states:

“[The Small Business Administration’s] SBA’s policy prohibiting retaliatory action by SBA employees against any small business. If a small business requests Ombudsman assistance or otherwise questions or complains about SBA regulatory or enforcement actions, requirements, or policies, the agency will not retaliate.

The National Ombudsman addressing regulatory fairness concerns raised by small business owners with the Choctaw Nation in Durant, Oklahoma (August 2014).



The SBA has important responsibilities to small businesses in carrying out its mission to protect, promote, and enhance the role of small business in the Nation's economy and is committed to maintaining an environment in which small businesses are free to challenge SBA regulatory or enforcement actions, requirements, and policies without fear of retaliation.

The SBA takes allegations of retaliation very seriously and will thoroughly investigate any allegation of retaliation and take appropriate corrective action. The SBA supports the policy of referring all allegations of threats or retaliation against small businesses to the Inspector General and/or to the appropriate Management Board Member. Any retaliatory action taken by an SBA employee against a small business will be dealt with according to SBA policy and regulations, including 13 CFR Sections 105.206 and 208. The contents of this Notice will be made available to the public on the Web site of the Office of the National Ombudsman."

EXAMPLE 3 The Occupational Safety and Health Administration's (OSHA) Non-Retaliation policy is posted on its website at: https://www.osha.gov/dcsp/smallbusiness/non_retaliation.html. The policy states Occupational Safety & Health Administration's (OSHA) has a long-established policy that information inquiries received by the agency regarding safety and health regulations or other safety-related subjects shall not trigger an inspection:

"Employer Information Requests. Contacts for technical information initiated by employers or their representatives will not trigger an inspection, nor will such employer inquiries protect the requesting employer against inspections conducted pursuant to existing policy, scheduling guidelines and inspection programs established by the Agency."



64 EVENTS
IN 22
STATES

TYPE OF COMMENTERS

358 Small Businesses
20 Nonprofits
20 Other
16 Associations
6 Small Government

FORMAL COMMENTS FILED

278 Online
52 Email
46 Testimony
30 Fax
11 Mail
3 Meetings



The policy continues:

There are a few rare exceptions to the policy, such as the employer notifying OSHA of the presence of an imminent danger or the occurrence of a fatality. However, OSHA policy is to provide assistance to help employers prevent and reduce workplace fatalities, illnesses and injuries.

Please note: OSHA's non-retaliation policy is outlined in the OSHA Field Operations Manual (FOM) (OSHA Instruction CPL 02-00-150) Chapter II, Section IV.B.4. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) established the Small Business Administration (SBA) Ombudsman and SBA Regional Fairness Boards to investigate small business complaints about Federal agency enforcement actions. Small businesses should not fear retaliation for comments regarding actions by OSHA personnel conducting compliance or enforcement activities. If you are a small business and believe that you have been treated unfairly by OSHA, you may file an electronic comment/complaint with the SBA Ombudsman at ombudsman@sba.gov.

Above and right: Cindy Ramos-Davidson, Chief Executive Officer of the El Paso Hispanic Chamber of Commerce, welcomes small business owners to a regulatory fairness forum hosted by the Chamber and Ombudsman Castro.



Or you may also contact the SBA's Office of the National Ombudsman at: Telephone: (888) REG-FAIR (734-3247); Fax: (202) 481-5719; or Mail: Office of the National Ombudsman U.S. Small Business Administration, 409 3rd Street, S.W., MC2120, Washington, D.C. 20416-0005."

4 REGULATORY COMPLIANCE ASSISTANCE

To receive a letter grade of "A" for providing compliance assistance resources to small business, the agency must demonstrate the availability of:

- Compliance guides and assistance as required under SBREFA as amended;
- A compliance assistance telephone number, website, or other compliance assistance contact for small entities;
- Documented compliance assistance education.

Ratings are reduced for deficient elements.

Examples of agency compliance assistance initiatives

EXAMPLE 1 Occupational Safety & Health Administration (OSHA) has extensive compliance assistance resources on the agency's Web site that is updated regularly with information devoted especially to small business concerns. The Agency's Web site features the following programs dedicated to small business issues and interests: Small Business; Consultation Program; and Safety and Health Achievement Recognition.



The National Ombudsman presenting to small business owners and SBA Colleagues at a Regional Regulatory Fairness Roundtable in Daytona Beach, Florida (February 2014).

EXAMPLE 2 U.S. Department of Housing and Urban Development's (HUD) compliance assistance website is <http://www.hud.gov/offices/osdbu/policy/sbrefa.cfm>.

"When new HUD legislation is enacted, the Office of General Counsel prepares an implementation guide that provides guidance to the program offices of regulatory action or other type of guidance or notice that is required by the statutory provisions."

EXAMPLE 3 Per its response to the Office of the National Ombudsman's annual questionnaire, the Federal Trade Commission (FTC):

"ensures that all businesses, including small businesses, receive the compliance assistance they need. The FTC engages in extensive outreach, education, and guidance activities to assist small businesses and others to comply with the laws and regulations enforced by the Commission."

EXAMPLE 4 The Department of Transportation (DOT) explains:

“DOT agencies provide an enormous amount of compliance assistance, compliance education, and guidance through agency websites, training programs, regulatory guidance documents, other guidance materials, education packages, industry conferences, pamphlets, and through audits and inspections. Ease of access to this information facilitates small business understanding of, and compliance with, our regulatory requirements.

“I truly appreciate your personal attention to this matter. Your timely responses ensured I knew the matter was being thoroughly addressed.”

—MANAGEMENT FIRM SMALL BUSINESS OWNER, VIRGINIA

In addition to other guidance, DOT agencies continue to develop the required SBREFA Section 212 compliance guides and assistance and have made them easier to access through the guidance section of our Regulatory Information website at: <http://www.dot.gov/regulations/guidance>. This section of the website provides information about DOT guidance documents and requirements concerning our use of them and <http://www.dot.gov/regulations/lists-significant-dot-guidance-documents> includes links to our agencies' lists of significant guidance documents.”

5 SBREFA NOTICE

Compliance with SBREFA's notice requirements remains critical to reaching all entities eligible for assistance through the Office of the National Ombudsman.

Accordingly, the fifth rating evaluates whether an agency has established a policy to inform small entities of their SBREFA rights and whether notice of that policy is distributed generally or only when the agency issues a citation, charge, notice of regulatory violation, or the like.

- If an agency provides specific written notice of SBREFA rights to small businesses when a citation or notice of regulatory violation is issued, it will receive an “A” rating.
- If it does not, but the agency provides general notice to small businesses of the right to comment with the National Ombudsman's office, it will receive a “C” rating.
- If the agency provides no notice regarding SBREFA rights or the Office of the National Ombudsman, the agency will receive an “F” rating.

Agency and Board Input

Federal agencies and members of the Regulatory Fairness Boards were provided the opportunity to comment on a draft of this Annual Report. This final report incorporates any substantive input provided.

FEDERAL AGENCY RATING TRENDS FY 2011-2014

CABINET AGENCIES		2011	2012	2013	2014
■ AGRICULTURE	Animal and Plant Health Inspection Service	A	N/A	A	A
	Food Safety and Inspection Service	A	N/A	B	A
	Food & Nutrition Service	B	N/A	N/A	N/A
	Agricultural Marketing Service	N/A	A	N/A	N/A
■ COMMERCE	National Oceanic and Atmospheric Administration	A	A	A	A
■ EDUCATION		A	A	A	A
■ ENERGY		X	X	C	D
■ HEALTH AND HUMAN SERVICES	Centers for Medicare and Medicaid Services	A	A	B	B
	Food and Drug Administration	A	A	A	A
■ HOMELAND SECURITY	Customs and Border Protection	X	X	B	A
	Immigration and Customs Enforcement	A	A	B	A
	Citizenship and Immigration Services	N/A	X	A	A
	Coast Guard	A	N/A	N/A	A
■ HOUSING AND URBAN DEVELOPMENT		A	A	A	A
■ INTERIOR		A	A	A	C
■ JUSTICE		B	A	B	A
■ LABOR	OSHA	A	A	A	A
	Wage and Hour	A	A	A	A
	MSHA	A	A	B	B
	Employee Benefits Security Administration	A	A	A	A
	Employment and Training Administration	N/A	N/A	A	N/A
			A	B	B
■ SMALL BUSINESS ADMINISTRATION		B	A	A	A
■ STATE	Federal Motor Carrier Safety Administration	A	N/A	N/A	A
	Federal Aviation Administration	A	N/A	A	A
	Pipelines and Hazardous Materials Safety Administration	A	A	A	A
■ TREASURY	IRS	A	B	A	A
■ VETERANS AFFAIRS		X	X	X	X

NON-CABINET AGENCIES	2011	2012	2013	2014
■ COMMODITY FUTURES TRADING COMMISSION	A	N/A	N/A	N/A
■ CONSUMER PRODUCT SAFETY COMMISSION	B	B	B	B
■ ENVIRONMENTAL PROTECTION AGENCY	A	A	A	A
■ EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	A	A	A	A
■ FEDERAL COMMUNICATION COMMISSION	B	B	B	B
■ FEDERAL DEPOSIT INSURANCE CORPORATION	B	A	A	A
■ FEDERAL ENERGY REGULATORY COMMISSION	A	A	A	B
■ FEDERAL RESERVE BOARD	B	B	A	A
■ FEDERAL TRADE COMMISSION	A	A	A	A
■ GENERAL SERVICES ADMINISTRATION	N/A	D	A	A
■ NASA	N/A	N/A	N/A	A
■ NATIONAL CREDIT UNION ADMINISTRATION	B	B	B	B
■ NATIONAL LABOR RELATIONS BOARD	A	A	A	A
■ PENSION BENEFIT GUARANTY CORPORATION	A	A	A	A
■ SECURITIES AND EXCHANGE COMMISSION	A	A	A	A

N/A - Not applicable: indicates no basis for an overall rating of the subagency in that year.

X - The agency failed to provide the information necessary to establish an overall rating.



Case Highlight

- *Retail Industry*
- *U.S. Citizenship and Immigration Services*
- *New York*

When a small business received an undated notice that its petition had been denied, it contacted the Office of the National Ombudsman requesting a dated letter from the federal agency. Without a dated letter, the small business was unable to appeal the denial.

Response

The Office of the National Ombudsman acted as a liaison with the federal agency, requesting a new, dated letter and an extension of the appeal deadline.

Results

The federal agency provided the requested dated documentation, allowing for the opportunity to file an appeal to the denial.

Impact

The appeal rights of the small business were preserved and a fair timeline for the appeal was afforded to the small business.

Looking Ahead

As the Office of the National Ombudsman looks ahead, our goal remains to increase outreach to new stakeholders and enhance resolutions for the businesses we serve across the United States.

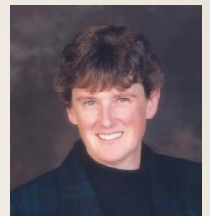
Our work in the coming fiscal year will focus on:

- Reaching new, diverse segments of the small business community and delivering improved channels of compliance assistance for small businesses.
 - Advancing broad solutions to systemic regulatory problems that strike the right balance between critical regulatory aims and practical burdens on small business.
- Growing agency partnerships and pursuing inter-agency collaborations to advance shared missions for the benefit of small business.
 - Increasing the size, diversity, and engagement of the Regulatory Fairness Boards to maximize the impact of these critical representatives of the small business community.
 - Enhancing infrastructure and processes to accelerate the resolution of small business concerns, increase the capacity of the office to assist greater numbers of small businesses, and improve the overall customer experience of small businesses.

Representing Small Business

DR. ALISON BROWN REGULATORY FAIRNESS BOARD REGION 8 COLORADO

“Many small businesses that have successfully participated in the Small Business Innovative Research (SBIR) programs through Phases I and II have experienced challenges in transitioning to Phase III, and have not received preference as required by the SBIR Policy Directive,” says Dr. Alison Brown. “As a result, I have authored a white paper summarizing these issues and reached out to small businesses, which have subsequently provided testimony at the National Regulatory Fairness hearings, requesting the support of the National Ombudsman in assuring fair implementation and enforcement of the SBIR Policy Directive. During my term on the Board, I plan to continue focusing on highlighting industry issues, such as this, serving as an advocate dedicated to championing toward success.”

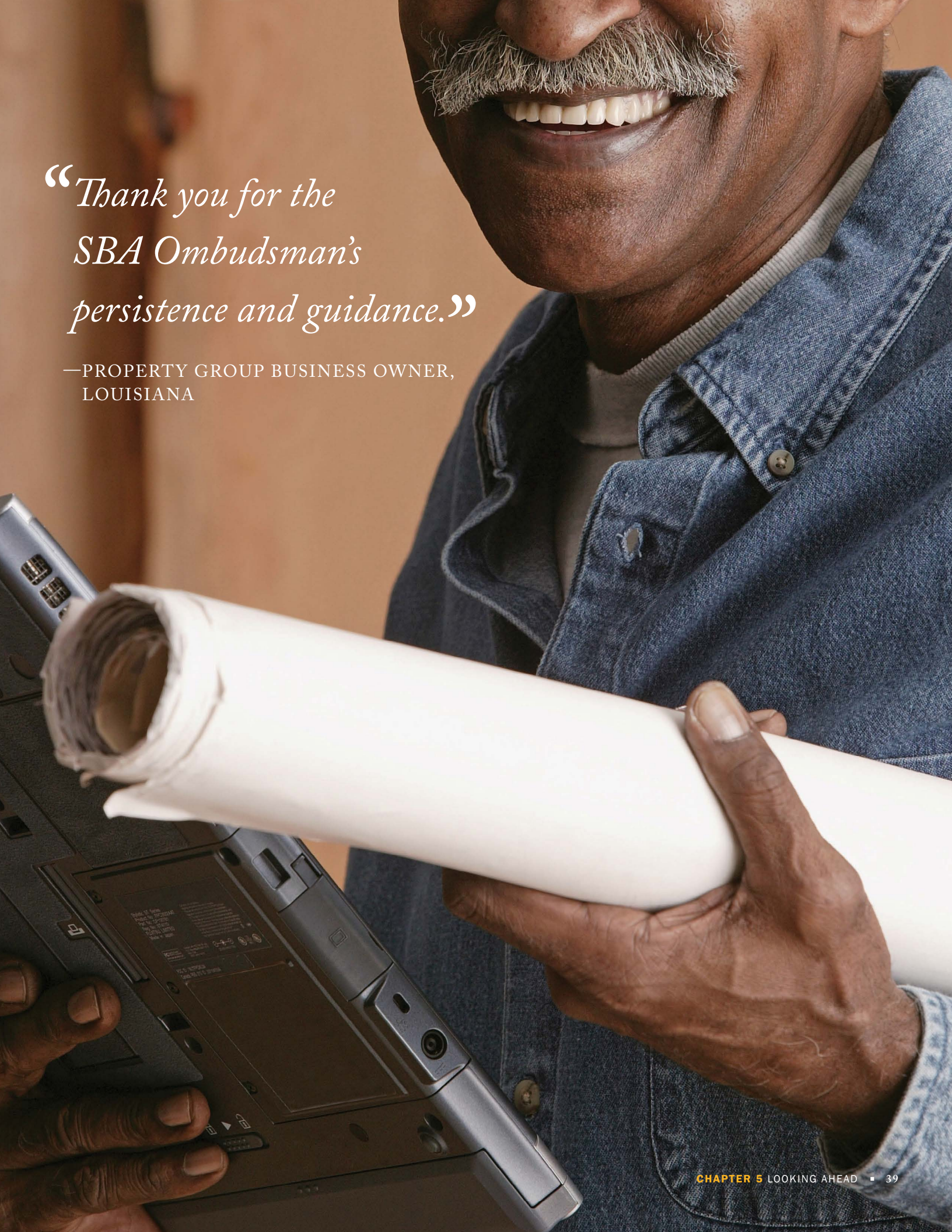


In addition to providing prompt, individualized case assistance to small businesses, the Office of the National Ombudsman is advancing new ways to track and multiply the impacts of its assistance. To better understand the program's impact, we are soliciting a rigorous economic impact analysis of the quantifiable outcomes of Ombudsman interventions. This analysis will further capture direct and indirect impacts for the small business community resulting from resolutions facilitated by the Office of the National Ombudsman and our federal agency partners.

By better understanding the impacts of interventions, working across government to address systemic compliance challenges that unduly burden small businesses, and renewing engagements with internal and external partners, the Office of the National Ombudsman is leveraging new resources to most effectively serve America's small businesses.

2015 AND BEYOND

- Deliver improved channels of compliance assistance
- Advance broad solutions to systemic regulatory problems
- Grow agency partnerships and pursue additional inter-agency collaboration
- Increase the size, diversity, and engagement of the Regulatory Fairness Boards
- Enhance infrastructure and processes to accelerate the resolution of small business concerns



*“Thank you for the
SBA Ombudsman’s
persistence and guidance.”*

—PROPERTY GROUP BUSINESS OWNER,
LOUISIANA

Appendix A – Statute

15 U.S. Code § 657 – Oversight of regulatory enforcement

(a) Definitions

For purposes of this section, the term—

- (1) “Board” means a Regional Small Business Regulatory Fairness Board established under subsection (c) of this section; and
- (2) “Ombudsman” means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b) of this section.

(b) SBA Enforcement Ombudsman

- (1) Not later than 180 days after March 29, 1996, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

(2) The Ombudsman shall—

- (A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;
- (B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);
- (C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;
- (D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and
- (E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

(c) Regional Small Business Regulatory Fairness Boards

(1) Not later than 180 days after March 29, 1996, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall—

(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b) of this section.

(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

(d) Powers of Boards

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from their homes or regular places of business in the performance of services for the Board.

Appendix B – Selected Case Summaries

STATE	INDUSTRY	FEDERAL AGENCY	ISSUE	OUTCOME
Kansas	Community bank	Department of Housing and Urban Development	Notice of Violation (NOV) was erroneously issued to a small community lender even though it had timely submitted its annual recertification documentation	HUD's Lender Recertification Branch issued a rescission letter to reverse the error and committed to vetting a pre-issuance list with all pertinent offices to avoid issuing NOV's in error in the future
Maryland	Moving company	DoD - Army	Denial of acceptance into the Military Surface Deployment & Distribution Command (SDDC) program	No longer ineligible to receive contracts or orders from the government; entry in System for Award Management (SAM) database was changed removing impediment
Virginia	Management consulting	DoD - Army	Contract requirement for facilities assessment support and related services was to be transferred to the 8(a) business development program, without consideration of potential adverse impacts to the incumbent small contractor	Adverse impact to the small contractor was found; as a result the requirement was not transferred
Virginia	Consulting services	DoD - Army	Outstanding payments and other contractual concerns	Company was paid more than \$100,000
Virginia	Architecture	DoD - Army	Outstanding payments, as well as difficulties in performing contract awarded by the Mission and Installation Contracting Command (MICC) for the design, rehabilitation, and repair of the exterior of a Building at Fort Belvoir, VA	Settled complaint with equitable adjustment associated with the renovation; company paid \$55,000
Virginia	Management group	DoD - DCAA	Pre-condition improperly imposed by contracting officers that prospective contractors obtain a certification of their accounting systems from the Defense Contract Audit Agency (DCAA) before submitting bid proposals	Clarification issued by DCAA: "DCAA does not 'certify' or 'approve' accounting systems.... There is no FAR requirement for a contractor's system to be deemed adequate in order to complete for an award.... [T]he FAR does not require that the system already be audited and deemed adequate in order to bid." Ombudsman has leveraged this clarification to educate contracting officers so that they avoid unduly restrictive language in procurement activities
Georgia	Manufacturing	DoD - DCMA	Audit resulting from alleged "actions and incompetence" of a DCMA Quality Control Auditor, inspecting the Marine Corps shirts the company makes for the Defense Logistics Agency; had to lay off employees and pay unemployment for two months which cost \$64,000	DCMA Quality Assurance Specialist was removed from the contract; The company resumed production
Colorado	Security services	DoD - DMDC	Small contractor and DoD consultant lost access to its JPAS (Joint Personnel Adjudication System) account, following a potential security violation	The Agency: (1) restored JPAS access for the small business; (2) recognized potential gaps in existing policies on consultants; and (3) sought additional policy to clarify the roles and responsibilities of consultant categories and avoid similar cases in the future
Pennsylvania	Industrial material handling	DoD - National Guard	The small business contractor had been unable to obtain instructions from the contracting authority for disposition of items manufactured under federal contract	Payment of \$129,000 was approved and the process for amending the contract to provide for additional costs was initiated
Virginia	Technical services	DoD - Navy	\$626,216 past due and owing to small contractor for services and materials provided and accepted	Navy agreed to payment in full of \$626,216 for labor and materials provided
Virginia	Drilling company	DoL - MSHA	A small mining operator was cited with a "high" level of negligence for relying on electronic records of its regulatory reports rather than maintaining paper copies	MSHA reviewed the inspection report and enforcement action and determined that the facts did not support the citation, which was vacated
Louisiana	Manufacturing	DoL - OSHA	Agency inspected the company and issued 2 citations and \$6,900 in fines	Penalty imposed against the small business was reduced to \$1,400
Ohio	Masonry	DoL - OSHA	Need for clarification as to whether company falls under OSHA jurisdiction and is allowed to be fined	Citations related to subcontractor conduct as well as complete decking of the working level were vacated
Pennsylvania	Restaurant	DoL - OSHA	Requested \$7,000 penalty be abated as owner corrected violation during inspection	Penalty imposed against the small business was reduced an additional 30%
Massachusetts	Steel fabricator	DoL - OSHA	Multiple inspections within short period of time resulted in citation and Notification of penalty	60% reduction from the \$2,380 assessed penalty due to business size; offered an Expedited Informal Settlement Agreement (EISA)
Missouri	Construction	DoL - OSHA	Violation for not having harnesses on the roof, or eye protection after inspector provided prior approval to continue work	Penalty imposed against the small business was reduced 50% to \$3,400 with a further possible reduction was contingent upon receipt of financial documentation
Kentucky	Agriculture	DoL - WHD	Civil money penalty of \$5,625 against the company	Agency determined that a deduction was warranted in view of the circumstances, including the proportionate impact. Reduced CMP by \$3,675 to \$1,950

STATE	INDUSTRY	FEDERAL AGENCY	ISSUE	OUTCOME
New Jersey	Healthcare	HHS - CMS	Coverage was denied due to failure to obtain pre authorization for cancer treatment; provider had been advised this was not required	Insurer reversed its denial of coverage and issued payment of \$10,600 to the provider; agent who provided incorrect information to the provider was retrained
South Carolina	Healthcare	HHS - CMS	Denial of authorization for services covered by Medicare	Company's new request for the same plan member was approved and is valid from May 13, 2014 through May 13, 2015
Michigan	Healthcare	HHS - CMS	Difficulty with timely processing of multiple claims	Agency expedited processing of the outstanding claims and issued payment in the amount \$13,865 to the commenter
Maine	Healthcare	HHS - CMS	Insurance company failed to process patient claims according to Medicare guidelines and used incorrect locality to calculate reimbursement	Insurer reprocessed the claims properly and issued a check to the provider for the total difference owed
New York	Healthcare	HHS - CMS	Provider updated its electronic funds transfer account number with CMS' administrative contractor but the update was not processed. As a result the provider was not being paid for treating Medicare patients	The CMS contractor processed the new electronic funds transfer information for the provider company. Past due payments were paid by check to the provider and EFT payments resumed within 2 weeks of filing the case
Nebraska	Healthcare	HHS - CMS	Small provider applied online for an exemption and received an email confirmation that the request was approved with no further action needed to avoid penalty; then company later told they were not exempt	Agency agreed to automatically reprocess the claims the commenter submitted that were subjected to reduction under the 2% Medicare fee adjustment and pay the additional 2% for those claims
New Jersey	Financial	IRS	Although the small business had filed tax returns for tax years 2005 to 2008, the IRS levied late filing penalties for the tax years 2006 to 2008	Agency removed all penalties for the years 2006, 2007 and 2008
Texas	Communications	IRS	Record of employment tax payments was not timely recorded in IRS systems; later IRS found and returned this payment to the small business owner. IRS then required him to submit payment, deemed payment untimely, and imposed a penalty and interest for the "late" payment. After 3 years of unsuccessful correspondence with IRS to resolve the issue, the business contacted the Ombudsman	Penalties and interest were removed, reducing the balance to zero
Missouri	Healthcare	SBA	A small government contractor and SDVOSB was excluded from federal contract awards and faced collection action by the Treasury Department for alleged default on two SBA disaster loans	SBA investigated and determined that the borrower had been deployed overseas on active duty with the Army National Guard when his loans were sent to the Treasury Department for collection. SBA recalled the loans from Treasury collections and the borrower resumed regular loan payments
New Jersey	Restaurant	SBA	Collection agency rejected repayment offer after notice of balance due	Agency recalled loan from Treasury, working with owner on an acceptable re-payment plan
Colorado	Financial	SBA	HUBZone application denied and denial sent to incorrect point of contact at applicant firm	Denial was reversed, and application approved retroactive to date of denial (9/13)
Oklahoma	Software company	SBA	HUBZone application denied for failure to meet residency requirements	Agency re-opened the case, found an error in calculating residency, and reversed the declination, retroactive to the date of denial (9/13)
Mississippi	Engineering	SBA	HUBZone application denied for failure to submit required documentation that had been timely submitted	Agency re-evaluated application after finding that it had received the documentation and erred in declining the application
South Carolina	Construction	SBA	HUBZone application denied for failure to submit required documentation that had been timely submitted	Applicant, a small, family-owned business, produced documentation showing that all information had in fact been submitted to SBA; application materials were reviewed anew and the application was granted retroactive to the date of the denial (9/13)
New York	Retail	USCIS	I-140 Petition Form denied; denial letter undated, so company unable to determine a deadline for appeal	New decision notices provided opportunity to file an appeal or a motion to reopen or reconsider
Kansas	Construction/Engineering	USPS	A subcontractor had not been timely paid by the prime contractor for work completed on a new roof for a Kansas Post Office	Within weeks of filing its case, the subcontractor was paid \$50,000 by the prime contractor, with another \$50,000 to be paid the following month. USPS obtained assurances from the prime that the subcontractor would be treated fairly and professionally throughout the remainder of the contract

Appendix C – Agency Ratings

Footnotes and Comments

Notes A Cabinet Department's subordinate organizational unit is listed separately if it received at least one enforcement action-related comment during the fiscal year.

When the survey was administered, the Office of the National Ombudsman sent it to the VA's previously designated representative; VA has contacted SBA, designated a new representative and provided SBA with the appropriate contact information for use in future inquiries.

N/C No comments relating to an agency enforcement action were filed with ONO; consequently, there is no basis for scoring the timeliness or quality of responses provided to such comments.

^ Comment timeliness and quality ratings are based on agency responses, if any, provided to ONO as of 1/28/15, which is 120 days following the close of FY2014 (120 days is the maximum time allowed for a response to receive a timeliness grade other than "F").

X The agency failed to provide the information necessary for this statutorily mandated report pursuant to 15 U.S.C. § 631, et. seq.

N/A Not applicable; the agency asserts that it is not subject to this aspect of SBREFA due to the nature of its charter.

***** Response quality rating is based on responses to FY2011 and FY2012 cases received in FY2014.

Appendix D – National Ombudsman Directory

Main Number: 202-205-2417 ■ Hotline: 888-REG-FAIR

NAME	TITLE	EMAIL
Castro, Brian	National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness	<i>Brian.Castro@sba.gov</i>
Fenner, Jodie	Administrative Specialist	<i>Jodie.Fenner@sba.gov</i>
Friedman, Niles	Senior Advisor	<i>Niles.Friedman@sba.gov</i>
Méndez, José	Case Management Specialist	<i>Jose.Mendez@sba.gov</i>
Pope, Cindy	Case Management Specialist	<i>Cynthia.Pope@sba.gov</i>
Swift, Yolanda	Deputy National Ombudsman	<i>Yolanda.Swift@sba.gov</i>
Zahirieh, Elahe	Case Management Specialist	<i>Elahe.Zahirieh@sba.gov</i>
CASE MANAGEMENT SPECIALIST	AGENCIES COVERED	
Pope, Cindy	Agriculture: <i>Food Safety and Inspection Service; Forest Service; Animal and Plant Health Inspection Service</i>	
	Education	
	Energy	
	Homeland Security: <i>Coast Guard; Citizenship & Immigration Services; Customs & Border Protection; Federal Emergency Management Agency; Immigration and Customs Enforcement</i>	
	Housing and Urban Development	
	Justice	
	Interior: <i>Fish and Wildlife; Bureau of Land Management</i>	
	Small Business Administration	
	State	
	Transportation: <i>Federal Aviation Administration</i>	
	Veterans Administration	
	Non-Cabinet Agencies: <i>Consumer Product Safety Commission; Federal Communications Commission; Federal Energy Regulatory Commission; Federal Trade Commission; Nuclear Regulatory Commission</i>	
Méndez, José	Miscellaneous	
Zahirieh, Elahe	Commerce: <i>Bureau of Industry and Security; National Oceanic & Atmospheric Administration</i>	
	Defense	
	Health and Human Services: <i>Food and Drug Administration; Centers for Medicare and Medicaid</i>	
	Labor: <i>Occupational Safety and Health Administration; Wage & Hour Division; Mine Safety & Health Administration</i>	
	Treasury: <i>Internal Revenue Service</i>	
	Non-Cabinet Agencies: <i>Consumer Financial Protection Bureau; Environmental Protection Agency; Equal Employment Opportunity Commission; Federal Deposit Insurance Corporation Federal Reserve Board; National Credit Union Administration; National Labor Relations Board; Pension Benefit Guaranty Corporation; Securities and Exchange Commission; Other federal agencies not listed</i>	

“Defense Manpower Data Center (DMDC) made a favorable determination and restored our access to the Joint Personnel Adjudication System. I believe DMDC would have made a negative determination had it not been for your intervention.”

—INFORMATION MANAGEMENT SMALL BUSINESS OWNER, COLORADO



OFFICE OF THE NATIONAL OMBUDSMAN
409 3rd Street, S.W. Suite 7125, Washington, D.C. 20416
TTY/TTD: 800-877-8339, Toll Free: 888-734-3247, www.sba.gov/ombudsman