

**OVERSIGHT OF THE OFFICE OF ADVOCACY AND  
THE OFFICE OF THE NATIONAL OMBUDSMAN  
AT THE SBA**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT  
AND REGULATIONS  
OF THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS  
SECOND SESSION

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WEDNESDAY, FEBRUARY 10, 2016

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
SUBCOMMITTEE ON INVESTIGATIONS,  
OVERSIGHT AND REGULATIONS,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 1:00 p.m., in Room 2360, Rayburn House Office Building, Hon. Crescent Hardy [chairman of the Subcommittee] presiding.

Present: Representatives Hardy, Velázquez, and Adams.

Chairman HARDY. Good afternoon. I would like to call this hearing to order. Too often small businesses tell us that the federal government ignores their concerns about the new regulation and threats, treats them unfairly. At a hearing in my district this past November, I heard that the red tape is making it more difficult and small firms, especially those in rural areas, harder to operate. Small businesses are even more worried about the flood of new mandates that are gushing out of Washington, D.C. And the final year of the Obama administration gives them grave concern.

Last year, the administration finalized rules totaling \$99 billion in costs, and many of those rules, like the EPA's waters of the U.S. rule, inflict significant burdens upon small businesses. This year, it could even be worse, as the federal agencies plan to finalize the rules, like the Department of Labor's overtime rule, and impose major costs on small businesses and will hurt their employees.

Two offices, the Office of Advocacy and the Office of the National Ombudsman at the Small Business Administration, were created by Congress to help small businesses with their very regulatory concerns that I have mentioned. The Office of Advocacy independently represents the views and the interests of small businesses as regulations are developed. It also monitors agencies' compliance with the Regulatory Flexibility Act. The Office of the National Ombudsman provides a way for small businesses to anonymously comment on excessive and unfair regulatory enforcement actions.

Today, the Subcommittee will hear from the leaders of both offices on how they are carrying on their statutory duties. Given that the regulations continue to be a significant challenge for small businesses, it is critical that these offices work efficiently to reduce excessive regulatory burdens and ensure that small businesses are treated fairly.

I would like to thank the witnesses here today, and I look forward to hearing your testimony. And I will yield now to the ranking member, Ms. Adams, for her opening remarks.

Ms. ADAMS. Thank you, Mr. Chairman.

And I want to thank the gentlemen for being here. At nearly 30 million strong, small businesses are central to the U.S. economy. Responsible for two-thirds of net new jobs, they are the engine that drives the job creation. The State of North Carolina alone is home to more than 800,000 small businesses. Essential to their success is ensuring that their voice can be heard when it comes to Federal policy and regulation. This means not only reviewing regulations from a small-business perspective but also giving entrepreneurs a point of access to address their concerns.

And this is where the Office of Advocacy and the National Ombudsman play a critical role. During today's hearing, we will hear from both of these offices on how they are meeting their mandates and providing small businesses with a voice in the Federal Government. At its core, the Office of Advocacy works to reduce the burden of Federal regulation on small businesses through its implementation of the Regulatory Flexibility Act. In 2014, Advocacy achieved nearly \$5 billion in annual savings for small businesses. By right-sizing regulations, small businesses are better able to focus on their core mission.

In addition to its regulatory work, Advocacy conducts research on small businesses. During 2014, it published 23 research and data products, exceeding its annual goal of 20 reports. I am interested in how it sets its research agenda and in what ways it is prioritizing research related to minority-owned businesses, which make up 15 percent of U.S. businesses and are growing rapidly.

The Ombudsman plays a complementary role to Advocacy, providing small firms with the ability to directly resolve complaints about the Federal Government. Such a mechanism is critical as small businesses lack the resources that larger corporations have to address such problems. And I am eager to understand how the Ombudsman is able to effectively handle its caseload, which reached a 6-year high last year. In addition, the Ombudsman is responsible for Regional Regulatory Fairness Boards, which provide small businesses with an avenue to raise concerns about Federal policies. Ensuring that these boards are filled can be a challenge, and I am hoping to hear an update on such progress, as well as efforts to increase diversity on these boards.

During the hearing, I am hopeful to hear what is working and what is not. Ensuring that these offices function effectively and efficiently is essential to leveling the playing field for small businesses. So I want to thank both of the witnesses for being here today, and I look forward to your testimony.

I yield back, Mr. Chairman.

Chairman HARDY. Thank you. If Committee members have opening statements prepared, I would like to ask them that they submit them for the record.

I would like to take a moment and explain how things work around here, the timing lights. You will each have 5 minutes to deliver your testimony. The light will start out green. When you have 1 minute remaining, the light will turn yellow. And when it turns

red, you are out of time. So I ask you try to stay within those limits. But we are here to hear from you also.

I guess we will do an introduction first. Our first witness is Mr. Darryl DePriest. Mr. DePriest was appointed by President Obama and confirmed by the United States Senate as the seventh Chief Counsel of Advocacy this past December. He leads the Office of Advocacy, which is housed in the Small Business Administration, but it is independent from the agency. The office advocates for small businesses as new regulations are developed by the federal agencies.

And, first, I would like to thank Mr. DePriest for coming to my office and introducing himself yesterday. Thank you very much.

Our second witness is Admiral Earl Gay, a Small Business and Agriculture Regulatory Enforcement Ombudsman—I have a hard time saying that word, so I don't want to say it too many times too fast—at the Small Business Administration. Admiral Gay leads the Office of the National Ombudsman, which assists small businesses that believe they have been subject to an excessive and unfair regulatory enforcement action. He has had a distinguished career as a naval officer and aviator.

And, Admiral Gay, we appreciate your service.

Mr. DePriest, we will begin with you.

**STATEMENTS OF THE HONORABLE DARRYL L. DEPRIEST,  
CHIEF COUNSEL FOR ADVOCACY, UNITED STATES SMALL  
BUSINESS ADMINISTRATION, WASHINGTON, D.C.; AND REAR  
ADMIRAL EARL L. GAY, USN (RET.), SMALL BUSINESS AND  
AGRICULTURE REGULATORY ENFORCEMENT OMBUDSMAN,  
UNITED STATES SMALL BUSINESS ADMINISTRATION, WASH-  
INGTON, D.C.**

**STATEMENT OF THE HONORABLE DARRYL L. DEPRIEST**

Mr. DEPRIEST. Chairman Hardy, Ranking Member Adams, and members of the Committee, good afternoon. As the Chief Counsel for Advocacy, I would like to thank you for this opportunity to appear before the Committee today to discuss the office and its accomplishments during fiscal year 2015, which I think is responsive to some of the issues that you raised in your opening statements.

I have provided my complete testimony, and I ask that it be entered into the record. It includes all of Advocacy's recent activity, which I will just summarize in these brief remarks.

When the Office of Advocacy was first created in 1976, it was charged with providing small businesses with an independent and credible voice in the Federal rulemaking process. Too often, small businesses were unduly burdened by one-size-fits-all regulations from Federal agencies. During the past 40 years, the Office of Advocacy has facilitated greater consideration of small-business impacts through economic research, regulatory flexibility trainings, comment letters, roundtables, publications, and collaboration with Federal officials throughout government. As a result, Federal agencies treat Advocacy as a partner in the rulemaking process in an effort to reduce the regulatory burden on small business.

As the seventh Senate-confirmed Chief Counsel, I will ensure that the office continues to work with Federal agencies to mitigate

the potential costs of regulation on small entities. To further describe our dedication to this cause, I would like to update you on Advocacy's efforts and accomplishments on behalf of small business during fiscal year 2015. During this time, Advocacy hosted 21 roundtables to highlight the concerns of small businesses on a wide range of topics, from OSHA standards to FAA regulations. In addition, Advocacy submitted 28 comment letters to 15 different agencies on a variety of issues. Specifically, the majority of these comment letters addressed either, one, the need for flexible alternatives supporting small business; two, inadequate analysis of the impact on small entities; three, improper certification of the rule; or, four, requests for greater outreach to small entities. The office achieved more than \$1.6 billion of first-year cost savings as a result of its efforts on behalf of small business. Generally, these savings come from the difference in costs between the proposed rule and the final rule.

Advocacy's efforts have also produced positive outcomes that are not quantifiable and are not captured in these cost-savings projections. Advocacy's work with Federal agencies and engagement with small businesses often helped facilitate greater consideration of small-business concerns and Federal rulemakings in Federal initiatives. For example, Advocacy's engagement with officials from the Food and Drug Administration produced more flexible regulations on animal food controls. Similarly, our work with the Federal Communications Commission improved competitive bidding rules.

Advocacy's approach to Federal agencies has also included facilitating greater compliance with the Regulatory Flexibility Act throughout the government. Since 2002, Advocacy has conducted formal trainings on RFA compliance for Federal agencies and other stakeholders. In fiscal year 2015 alone, Advocacy conducted trainings for 126 Federal officials from a variety of different agencies, exceeding our annual goal by more than 25 percent. In addition to these formal trainings, Advocacy offers Federal agencies technical assistance regarding RFA compliance. Since its creation, Advocacy has provided timely and policy-relevant information on important issues affecting small businesses. During fiscal year 2015, we released 26 research publications on several topics relevant to today's economy.

Finally, the 10 regional advocates who are part of the office play a vital role in maintaining an open dialogue with the vast majority of small entities that operate outside the beltway. They interact directly with small-business owners, small-business trade associations, and State officials to educate them about the benefits of regulatory flexibility. This past fiscal year, Advocacy's regional advocates participated in more than 500 outreach efforts, exceeding their annual goal of 360.

In closing, I would like to thank the Committee and its staff for its continued support of the Office of Advocacy. As chief counsel, I look forward to working closely with you on the important issues of affecting small entities across this country. Now, if there are any questions, I would be pleased to answer them.

Chairman HARDY. Thank you, Mr. DePriest.

Admiral Gay, you have your 5 minutes.

**STATEMENT OF REAR ADMIRAL EARL L. GAY, US N (RET.)**

Admiral GAY. Thank you, Chairman Hardy and Ranking Member Adams for providing me this opportunity to comment on how the Office of the National Ombudsman can and does help improve the regulatory environment for America's small businesses. I look forward to working with this Committee to improve the regulatory enforcement environment for our Nation's 28 million small businesses.

I am also excited that Darryl L. DePriest is now on board as the Chief Counsel for Advocacy. I meet with Mr. DePriest weekly to discuss synergies our offices execute to ensure a fair regulatory environment. We both agree that a strong working relationship with frequent communication and collaboration is critical to the SBA's mission of counseling and protecting America's small businesses against unnecessary regulatory burdens. Now, while the Office of Advocacy is responsible for ensuring fairness in implementation stages of Federal regulations, the Office of the National Ombudsman, or ONO, works to ensure regulations are being fairly enforced once they are enacted. Pursuant to the Small Business Regulatory Enforcement and Fairness Act, or SBREFA Act of 1996, this office was created to serve as a powerful voice for America's small businesses. In fulfilling this role, we conduct public hearings, outreach events, and roundtables in each of SBA's 10 regions, where we provide small businesses with forums where they can voice their concerns and comments about regulatory enforcement actions without fear of retaliation. We work with and encourage regulators to address entrepreneurs' comments and concerns promptly and, wherever possible, to opt for compliance assistance and education rather than moving directly to levying fines and penalties.

Additionally, we rate Federal agencies on the timeliness and the quality of their responses in our annual report to Congress. Our office also facilitates Regulatory Fairness Boards, as you talked about earlier, ma'am, or RegFair Boards in each of the SBA regions. Each board consists of five small-business owners who serve as the eyes and ears for small businesses in their communities, States, and regions. They work with local business and regional business offices, addressing any concerns with regulatory enforcement issues. Now, those reg boards are very vital assets, and they continue to be advocates for our efforts. In addition to receiving comments regarding regulatory fairness, our ONO office also receives comments in other issues, such as contracting, access to capital, loan policy and business training, counseling, and other support. During fiscal year 2015, our staff conducted more than 80 outreach events and four regional regulatory fairness hearings. Through the aggressive efforts of our district and regional offices, these roundtables and hearings continue to be very well attended. In my brief 3 months onboard, this office has held one regulatory enforcement fairness hearing, three small-business roundtables, one in Nevada recently and Florida, and several outreach events with small-business owners and entrepreneurs. I have met and established personal relationships with senior leaders at 12 Federal agencies, discussing ways we can better work together to reduce regulatory burdens against small businesses.

During the next 6 months, we plan on conducting several roundtables and hearings, and also hosting our annual meeting with members of the 10 Regional Fairness Boards. It is important to note that all of our hearings, meetings, and partnership programs with small-business stakeholders have been in close collaboration with other Federal agencies. We truly value their critical presence and participation. I provided you a schedule of our activities for fiscal year 2015, as well as the planned events for the first two quarters of fiscal year 2016.

In closing, I would like to state that on behalf of Administrator Contreras-Sweet and the great staff in the Office of the National Ombudsman, we look forward to working with all of our teammates and the Members of Congress to eliminate unnecessary regulatory burdens on small businesses as they continue to fuel America's economic prosperity. I thank you again for the opportunity to appear here today and will be happy to answer any questions. Thank you.

Chairman HARDY. Thank you, Admiral Gay.

I appreciate both your testimonies. Thank you for being here again.

I would like to start with Mr. DePriest. Small-business owners are feeling like they are drowning in a sea of red tape. You know, 82,000 pages last year of new regulations written. Can you tell us a little bit about what your office is doing to prepare for this upcoming flood of new red tape that is coming to be able to make sure that we protect those small businesses?

Mr. DEPRIEST. Certainly. I am blessed with having a terrific staff that has been through this process repeatedly, especially as we move toward the end of this administration, to make sure that every regulation that is proposed goes through the Regulatory Flexibility Act analysis and is analyzed for its effect on small businesses.

We will continue to do the things we do, such as the roundtables, coordinating the panels, doing the analysis, having our economists look at it, everything that we can do to make sure that while an agency is able to achieve its regulatory goal, at the same time, we are looking for ways to minimize the effect that any proposed regulation would have on small businesses.

Chairman HARDY. Thank you.

Over the last couple years, the Office of Advocacy has filed public comment letters with federal agencies raising significant concerns about the RFA compliance. For example, the Office of Advocacy wrote the EPA and the Corps a comment letter on the waters of the United States rule and asked the agencies to withdraw the rule and comply with the RFA. The agencies ignored the Advocacy letter and finalized the rule without conducting a SBAR panel and assessing the impacts of the rule on small businesses. While the small business community was pleased that the Office of Advocacy stood up for them, some view it as a failure of the office also. What legal authority do you have for the chief counsel of Advocacy? And is there anything that you need us to do to help you ensure that you have the ability to make sure that agencies comply?

Mr. DEPRIEST. Thank you. The office has, under the amendments to the Regulatory Flexibility Act, particularly the Small Business Regulatory Enforcement Fairness Act, has the ability to

file amicus briefs in court if there is a legal challenge to a regulation. The comment letters that we write, such as the one that you referenced, can also be used as evidence in court to see whether the agency has complied with the Regulatory Flexibility Act. Now, insofar as whether there is more that we need, in talking with the staff, we found that the vast majority of agencies comply with the Regulatory Flexibility Act. Our mantra is better information, better rules. So we try to put small businesses together with the agencies so that they get the input from small businesses. For example, in the waters of the United States, we did conduct roundtables with representatives of small business, with the EPA, and with the Corps. So they heard the concerns of small business. And we will just have to see, as we go forward, as we monitor the situation, you know, what effect it has. Now, I understand that that particular rule has been enjoined by the courts. But we will continue to monitor it.

Chairman HARDY. Thank you. Admiral Gay, your office's annual report indicates the office is spending a lot of time helping small businesses resolve federal procurement disputes. This appears to be duplicative work of other offices within the SBA and the Federal Government. Can you explain what your office does when it receives the comments from the small business regarding the Federal procurement?

Admiral GAY. Yes, sir. Thank you for that question. As in all cases, we receive the comments. And in the comment forms, we ask that the small business state what their issues are, what they want to come out of it, and the impact that that regulation has on their ability to operate. But most importantly, we require them to provide supporting documentation, so we have ample evidence to support their issues.

Once that happens, it comes to my office, and I have two outstanding case management specialists. Our office is four now. We were seven. We are down to four now. And we are working hard to replace those two. But at any rate, once the case management specialist looks over the case, I prepare a letter, signed by myself, to the corresponding entity, stating the issues that were in the comment.

The agency has 30 days or less to provide me a timely and quality response. So when that happens, I in turn review the letter that they have returned back to me, and I usually phone call to the commenter to state what is happening. And then we send that letter back to the commenter.

Chairman HARDY. Thank you.

My time has expired. I will turn the time over to Ms. Adams.

Ms. ADAMS. Thank you, Mr. Chair.

And thank you, gentlemen. In 2014, Advocacy published 23 research reports. One of my priorities is to increase research into minority-owned small businesses as a means of understanding the challenges that they face. Mr. DePriest, how do you determine these research priorities? And what type of research are you planning on for minority businesses for this year?

Mr. DEPRIEST. Thank you. We solicit, insofar as our economic research is concerned, we solicit ideas from the small-business community, from Members of Congress, from members of this Com-

mittee, from the mother SBA of what they might want us to research. And in that process, we try to pull together what our research agenda is going to be for the year. Now, insofar as minorities, that is a special focus of the office. When the office was created, the statute creating it specified that we are supposed to do research on issues involving minorities. As a matter of fact, we are doing some research right now on minorities in the technology area, minorities and immigrants and what their effect is in the technology area. As a matter of fact, in a couple weeks, I am going out to San Francisco and Silicon Valley to talk with individuals who are involved in the effort of increasing minority entrepreneurship. And at that time, we are also going to present our research on what is going on and things that can be helpful. So we are mindful of our requirements to do so, and we actively do it and do it as best we can.

Ms. ADAMS. Thank you.

Advocacy received over \$9 million in the recently enacted omnibus, with staffing making up nearly 90 percent of the office's budget. Mr. DePriest, do you believe that this funding is sufficient for the office to carry out its responsibilities?

Mr. DEPRIEST. Yes. I believe that it is. In talking with the members of the staff since I have been there, I believe that it is a sufficient amount of money for us to carry on our activities.

Ms. ADAMS. Good. Most people want more. Advocacy and Ombudsman play different yet similar roles in supporting small businesses. They both provide a conduit for small businesses to raise problems with the Federal Government.

Admiral Gay, how do you coordinate with each other to ensure that your work is not duplicative? It sort of gets back on what maybe the chairman—

Admiral GAY. Yes, ma'am. As I stated before, I meet with Darryl weekly, sometimes biweekly, to discuss the systemic issues that I have seen or my case management specialists have seen in dealing with the small businesses' concerns and the comment forms as well. We also participate in roundtables together. As a matter of fact, the recent one that we had out in Las Vegas with Sara Wagner, sir—we had Yvonne Lee, who works under Darryl's Advocacy department, attend those, as well as fairness hearings. I attended a U.S. Air Force contracting summit. And we go toe and toe. We usually attend the same forums and business get-togethers, so we are not duplicative at all. We try to reduce the duplication.

Ms. ADAMS. Okay. I was going to ask if you thought Congress should consider merging the offices, considering the overlaps. I guess your answer is no?

Admiral GAY. Well, give me 2 more months, ma'am, and I can come back and give you my opinion on that.

Ms. ADAMS. Okay. Then I would also, you know, as a connected question, would that result in better service to small businesses with better potentially lower costs?

Admiral GAY. I think right now I think we work together pretty closely. Before Darryl and I got here, the people who were in our individual offices, they know each other. They worked close together. They have a very nurturing relationship. And our job as

leaders is to maintain that and make sure we grow that congeniality.

Ms. ADAMS. Thank you very much.

Mr. Chair, I yield back.

Chairman HARDY. Thank you. I turn the time over to Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. DePriest, President Obama issued two executive orders, 13563 and 13610, as well as related memoranda to help reduce regulatory burdens on small business. Advocacy has provided counsel to the administration on these measures. In your view, have these executive orders made any difference in reducing regulatory burdens to small businesses?

Mr. DEPRIEST. Yes, I believe they have. As I said during my opening remarks, we calculate that we saved businesses in the first year \$1.6 billion. And that is the difference between what the agencies proposed as their initial rule and what they ended up with after consultation with us. We think that is a significant savings. As I said, there are other savings that are perhaps not as quantifiable, but we think \$1.6 billion is significant savings. We are constantly looking for ways to represent the interests of small business. As I said, we do roundtables where we try to put the small businesses together with the agencies. We help with the panels. We do everything that we can to be the voice of small business and reduce the burden. Now, I think that the executive orders that the President has issued, some of which lead to actually looking back at regulations and see whether they are still remaining in force, you know, we do that. We help the agencies put together an agenda for doing that lookback. So I think that we are on the right track there.

Ms. VELÁZQUEZ. Okay. Mr. DePriest, under Dodd-Frank, the newly created Consumer Financial Protection Bureau became subject to the Small Business Advocacy Review Panel process. Given that the CFPB is a newer agency, can you comment on Advocacy's experience in establishing the panel process there?

Mr. DEPRIEST. Yes, I can. The CFPB has really embraced the process. I did have the number here. I would have to get it to you, but they have done a number of the panels that they are required to do. And, in some instances, you know, we think that there has been a benefit insofar as the rules that they were thinking about versus what they proposed. So even though it is a newer agency, they come at it and we come at them with the history of what we have been doing with OSHA and the EPA. And I would say that the agency has embraced that process.

Ms. VELAZQUEZ. Well, one of our concerns is we don't want for regulations to hinder the ability of small banks to provide access to capital for small businesses. So this is why it is so important that you work with the CFPB to make sure that consideration is taken when they issue regulations regarding the cost of credit for small businesses.

Mr. DEPRIEST. I see. Yes, we do that. And we will continue to monitor that.

Ms. VELAZQUEZ. Thank you.

I yield back. Thank you, Mr. Chairman.

Chairman HARDY. Thank you. If you don't mind, we are going to go a second round if everybody is fine with that.

Admiral GAY, I would like to ask, on procurement complaints, small businesses not getting paid, are you dealing with that within your office, or are you getting it out to the appropriate people to look at it?

Admiral GAY. Yes, sir. As we deal with the Federal contract disputes, that is one of the issues that we see. And that is businesses not receiving prompt payments on contracts. So, yes, sir, we do see that, along with time delays in processing of the contract, and so on and so forth. So we do see some of those that involve late payments.

Chairman HARDY. The question, I guess, though, is these are regulatory issues. Are you referring them over to the proper—

Admiral GAY. Yes, sir. Yes, sir.

Chairman HARDY. Okay.

Admiral GAY. Absolutely.

Chairman HARDY. Another question for you, Admiral Gay. According to the office's website, there are board member vacancies on six of the 10 regional Regulatory Fairness Boards. For example, region 9, which includes Nevada, there are only three board members, and none of them are from my home State of Nevada. Can you explain why there are so many vacancies, and what are you doing to fill those vacancies?

Admiral GAY. First of all, thank you for funding that would allow me to leave the beltway area to get out there. This is an all-hands-on-deck effort. You can't do that while here inside the beltway. And so what that does is allow me to go out and get recommendations from the RegFair Board members, and also Members of Congress as well, on people that are viable candidates to serve on these boards. Another issue is the vetting process. The vetting process, as you may or may not know, is meticulous, and it is prudent. And I think it should be because these candidates are representing the federal government. They are speaking on behalf of the government as well.

Chairman HARDY. If I may on that.

Admiral GAY. Yes, sir.

Chairman HARDY. Your selection process, are you involving small-business owners, operators, and officers that serve within that regional regulatory fairness area?

Admiral GAY. Yes, sir.

Chairman HARDY. Okay. Could you also please provide the Committee with a list of current Regulatory Fairness Board members for each region and the date that they were appointed by the SBA?

Admiral GAY. Yes, sir, I will do that.

Chairman HARDY. You know, each Regional Regulatory Fairness Board is supposed to have five members that are appointed by the Administrator, receiving recommendations from the chair and the ranking member of the House and the Senate Small Business Committees. The current and previous chairmen of the House Committee on Small Business have never been asked by the SBA for a recommendation. I believe this is a little bit concerning that

we have never been asked. And it appears the SBA is not complying with their statutory requirements.

Admiral GAY. Well, I understand the statutory requirements, and I will ensure that any new members on my watch will be reviewed by the chairs.

Chairman HARDY. With that, I will turn the time over to Ms. Adams.

Ms. ADAMS. Thank you, Mr. Chair.

Mr. DePriest, Advocacy is required to carry out the panel process at EPA, OSHA, and CFPB. Can you comment on what is working in this panel process and what can be improved?

Mr. DEPRIEST. I think that what is working is that the agencies are listening to the concerns from the small-entity representatives and implementing less burdensome regulations. To follow on with Congresswoman Velázquez' comment, particularly with the CFPB, they have held six of the panels since 2012. Some of the issues involved mortgage loan origination and arbitration and payday lending. And we think that we have seen some benefits here. For example, with the mortgage servicing rule, small entities which service less than 5,000 loans are exempt from some parts of the rule. And so that was a result of the agency listening to the concerns of small business.

As I said earlier, the mantra is, you know, better information, better rules. And these panel processes allow small businesses to be directly involved in the process of writing the regulations. And I think there is definitely a benefit to that.

Ms. ADAMS. One of the ongoing concerns with the Regulatory Flexibility Act has been the ability of agencies to continually forego the requirement in section 610 that require periodic review of the rules. Do you believe that this requirement should be strengthened?

Mr. DEPRIEST. I would have to really look at that and talk with my staff about their experiences with that. My understanding is that we have helped agencies map out a plan for how they do their 610 compliance. And I would like to have the opportunity to talk with the staff to see whether that is a possibility. Now, I know that later on this year, I will have the opportunity to present some legislative priorities. And I will take a special look at that to see whether that should be one of the ones I recommend.

Ms. ADAMS. All right. Great.

Admiral Gay, your office is responsible for operating 10 Regional Regulatory Fairness Boards, which are comprised of small-business owners. What challenges do you face in getting small-business owners to devote their time to serve on the boards?

Admiral GAY. Again, ma'am, as a segue or a reverse segue back to the previous question, I think that in my short time onboard, from what I have seen is we have the RegFair Board members are very engaged. They are very, very engaged. And they represent small businesses well there. The challenges that we have right now, again, are getting the vetting process, getting folks through the vetting process and me getting out conducting increased outreach events to identify those viable candidates. You had an earlier comment about diversity of the board. And it is my job, our job to ensure that that board remains diverse. And we are working hard

to increase the diversity. But I need to get out and be on the road to make sure that I recruit viable candidates for your approval.

Ms. ADAMS. Okay. So you have a process for ensuring that the boards are diverse in terms of minority businesses and their participation?

Admiral GAY. Yes, ma'am. I think if you look at our report, you will see that our membership is diverse.

Ms. ADAMS. Okay.

Admiral GAY. Yes, ma'am.

Ms. ADAMS. Your office had in 2014 its highest caseload in 6 years, with 420 cases. Do you have sufficient resources, staff and otherwise, to handle this volume of cases effectively?

Admiral GAY. Yes, ma'am. As I stated earlier, we were at seven. We are at four now, and that came because someone retired; someone was promoted; someone was transferred. But our boss has given me the right H.R. resources to fill those two positions that need to be filled. And we should have those two positions filled in the next couple of weeks, because I need to get out on the road.

Ms. ADAMS. Great. Thank you very much.

I yield back, Mr. Chairman.

Chairman HARDY. Thank you.

I turn the time over to Ms. Velázquez.

Ms. VELAZQUEZ. I have no more questions, Mr. Chairman. Thank you.

Chairman HARDY. Thank you. I have one more. Mr. DePriest, you know, your office actually submitted a letter to the Department of Labor on the overtime rule and said the Department's analysis had said, I quote: "Does not properly inform the public about the impact of this rule on small business entities. And due to those problems with the analysis, DOL cannot fully consider alternatives that would reduce the burdens on small businesses." Can you elaborate on the Office of Advocacy concerns on the overtime rule?

Mr. DEPRIEST. Well, I actually think that the quotation that you made really does sum it up. I mean, when we were first presented with this rule, we held several roundtables across the country—three in Washington, one in New Orleans, and one in Louisville—on this issue. And the letter that we wrote was really based upon the comments, the small business concerns that these changes will add significant compliance costs and paperwork burdens. We are going to actively work with DOL to seek regulatory alternatives that have been recommended by small businesses. I mean, one of the ones that they are really concerned about is the difference between—or how this regulation would affect those in low-wage states versus others. One of the reasons we went to New Orleans and Louisville was because dollars are spent differently in those regions. And we have been advocating for the Department of Labor to take that into account. Now, we understand that the DOL plans to release their rule later this year. So we are looking at it anxiously to see what they determine.

Chairman HARDY. So, at this point, have they indicated whether they are going to revisit and redo their initial regulatory or give you any indication?

Mr. DEPRIEST. I don't have any further information on that.

Chairman HARDY. With that, I would like to thank you both for coming. I appreciate your being here and your testimonies. I appreciate what you do. And if there is anything this Small Business Committee can do to help strengthen those issues that will help strengthen our small businesses, that is what we are here for. As we know, our small businesses operate nimbly and swiftly to build and create and offer some of the most innovative and reliable goods and services in the marketplace. They pour their hearts and minds into their companies. However, navigating the rulemaking process and complying with regulations is a huge challenge. This Administration is making it a lot more difficult for small businesses to keep their doors open. That is why your offices and duties are so important. Small businesses need you to continue to aggressively advocate for them and assist them.

This Subcommittee will continue to closely monitor your offices and your activities and work to ensure that the federal agencies comply with their statutory obligations under RFA.

I ask unanimous consent that the members have 5 legislative days to submit their statements and support materials for the record.

Without objection, this meeting is adjourned.

[Whereupon, at 1:48 p.m., the subcommittee was adjourned.]

**APPENDIX**



Testimony of

**The Honorable Darryl L. DePriest, Esq.**  
**Chief Counsel for Advocacy**  
**U.S. Small Business Administration**

*U.S. House of Representatives*  
*Committee on Small Business Subcommittee on Investigations,*  
*Oversight, and Regulations*

**Date:** February 10, 2016  
**Time:** 1:00 PM  
**Location:** Room 2360  
Rayburn Office Building  
Washington, D.C.  
**Topic:** Oversight of the Office of Advocacy and the Office of the  
National Ombudsman at the SBA

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, directs this office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by Advocacy's staff in Washington, D.C., and by Regional Advocates throughout the country. For more information about the Office of Advocacy, visit <http://www.sba.gov/advocacy>, or call **(202) 205-6533**.

Chairman Hardy, Ranking Member Adams, and Members of the Committee, good afternoon. As the Chief Counsel for Advocacy, I would like to thank you for the opportunity to appear before the Committee today to discuss the Office of Advocacy and its many accomplishments during Fiscal Year 2015 (FY2015).

When the Office of Advocacy was first created in 1976, it was charged with providing small businesses with an independent and credible voice in the federal rulemaking process. Too often, small businesses have been unduly burdened by one-size-fits-all regulations from federal agencies.

During the past 40 years, the Office of Advocacy has facilitated greater consideration of small business impacts through economic research, regulatory flexibility trainings, comment letters, roundtables, publications, and collaboration with federal officials throughout government. Federal agencies treat Advocacy as a partner in the rulemaking process in the effort to reduce the regulatory burden on small business.

As the seventh Senate-confirmed Chief Counsel, I will ensure that the office continues to work with federal agencies to mitigate the potential costs of regulation on small entities. To further describe our dedication to this cause, I would like to update you on Advocacy's efforts and accomplishments on behalf of small business during FY2015.

### **Regulatory Outreach**

From draft until final proposal, Advocacy engages federal officials throughout the entire rulemaking process. Advocacy's roundtables, comment letters, and interagency discussions are vital to alerting federal officials to the potential impacts on small entities and producing alternatives to help reduce any burdens.

### **Roundtables**

Advocacy's regulatory roundtables gather federal officials, trade associations, and small business stakeholders from across the country for substantive presentations and open discussions about regulatory issues. During topics that included: (1) occupational exposure limits and other safety requirements; (2) overtime pay; (3) regulation of small drones; (4) federal procurement; (5) national emission standards; and (6) tax reform. Notably, our staff conducted roundtables in Louisville, New Orleans, and Washington, D.C. to discuss new federal procurement regulations.

### **Comment Letters**

Once a proposed rule has been published and is open for public comment. Advocacy will often submit written comments voicing the concerns of small entities. These comment letters are a major tool used by Advocacy to ensure federal officials consider the impacts on small business, as federal agencies are compelled by statute to respond. During FY2015, Advocacy submitted 28 comment letters to 15 different agencies on a variety of issues. The majority of these comment letters addressed either: (1) the need for flexible alter-

natives supporting small business; (2) inadequate analysis of the impact on small entities; (3) improper certification of the rule; or (4) requests for greater outreach to small entities.

### **Regulatory Impact**

The Office of Advocacy has worked for nearly forty years to create a more flexible regulatory environment for small business in the United States. Advocacy's positive impact on the federal rule-making process can be seen in many ways: (1) as first-year cost-savings; (2) as greater consideration of small business concerns in particular areas; and (3) as greater compliance with the RFA by federal agencies. Taking each of these parts into account provides an accurate portrayal of Advocacy's success.

### **Cost Savings**

During FY2015, Advocacy achieved over \$1.6 billion in first-year cost savings as a result of its efforts on behalf of small business. Generally, savings come from the difference in cost between the proposed rule and the final rule. These savings resulted from eleven separate rules proposed by five different agencies: (1) the Department of Energy; (2) the Food and Drug Administration; (3) the Occupational Safety and Health Administration; (4) the Bureau of Land Management; and (5) the Environmental Protection Agency.

For the majority of rules, the first-year cost savings arises from a one-time implementation cost. However, for rules such as OSHA's final *Cranes and Derricks in Construction* final rule, the initial implementation of the rule was delayed for three years. Advocacy's efforts resulted in over \$13 million in savings for each year, saving small businesses \$40 million cumulatively over those three years.

### **Greater Consideration of Small Business Concerns**

Advocacy's efforts have also produced positive outcomes that are not quantifiable and are not captured in cost-savings projections. Advocacy's partnering approach to federal agencies and small business trade associations often help facilitate greater consideration of small business concerns in federal rulemakings and federal initiatives. For example, during FY2015, Advocacy obtained greater consideration of small business concerns in three federal rulemakings and three federal initiatives. Advocacy's engagement of federal officials from the Food and Drug Administration and the Federal Communications Commission produced more flexible regulations on animal food controls and on competitive bidding rules, respectively. Advocacy's leadership and hard work on a federal cybersecurity framework resulted in the National Institute of Standards and Technology conducted a panel on the impacts of federal cybersecurity regulations on small federal contractors. Similarly, Advocacy provided valuable regulatory advice to the agencies involved in the Transatlantic Trade and Investment Partnership negotiations. Advocacy's participation in several rounds of negotiations helped garner greater consideration of small business issues on the international stage.

### **Greater Compliance with the RFA**

Advocacy has established cooperative relationships with most federal agencies, and has successfully facilitated greater compliance with the RFA throughout the government. As federal agencies have become more familiar with the RFA and have actively partnered with Advocacy, agencies throughout the government have produced more flexible and less burdensome regulations. Such success has been achieved through Advocacy's respected publications, technical assistance, and formal trainings on the RFA.

Since 2002, Advocacy has conducted formal trainings on RFA compliance for federal agencies and other stakeholders. These trainings have been a valuable resource in achieving greater regulatory flexibility and greater consideration of small business concerns. Over the past thirteen years, Advocacy has conducted trainings for 18 cabinet-level departments and agencies, 67 separate component agencies and offices, 22 independent agencies, and various special groups including congressional staff, small business organizations, and trade associations. In FY2015 alone, Advocacy conducted trainings for 126 federal officials from a variety of different agencies, exceeding our annual goal by over 25 percent.

In addition to these formal trainings, Advocacy offers federal agencies technical assistance regarding RFA compliance. Throughout the rulemaking process, Advocacy is in daily contact with agencies to provide technical assistance in complying with the RFA. Such assistance can include: (1) estimates of the numbers of businesses likely to be affected by a proposal; (2) legal opinions on RFA issues; (3) the review of draft materials; (4) arranging roundtables with affected industry representatives; and (5) other assistance specific to each case.

### **Economic Research and Outreach**

Since its creation, Advocacy has provided current and policy-relevant information on important issues affecting small businesses. During FY2015, the Office of Advocacy provided small business owners, researchers, policymakers, and other stakeholders with 26 contracted and internal research publications on several topics relevant to today's economy, including: (1) access to capital; (2) employment; (3) innovation; (4) veterans; and (5) minority- and women-owned businesses.

During FY2015, Advocacy also established a new program series entitled "Small Business Economic Research Forums." These forums provide interested parties with an opportunity to discuss relevant small business issues with our research team and other stakeholders. These forums also inform Advocacy's staff of the cutting-edge topics that are affecting small businesses across the country. During the series' inaugural year, eight research forums were held on topics such as consumer credit, student loan debt, tax exemptions, and new sources of capital.

### **Communications Outreach**

Advocacy's information team keeps in touch with concerned stakeholders through Advocacy's website, various publications, email alerts, and social media presence. Our monthly newsletter, *The Small Business Advocate*, reaches nearly 37,000 electronic subscribers. In addition, our specialized email alerts provide valuable information to thousands more, including over 28,000 research subscribers and over 25,000 regulatory subscribers. Advocacy also frequently updates stakeholders on Facebook, Twitter, and Advocacy's blog.

### **Regional Advocates**

The ten Regional advocates play a vital role in maintaining an open dialogue with the vast majority of small entities that operate outside of the Washington, D.C. area. They interact directly with small business owners, small business trade associations, and state officials to educate them about the benefits of regulatory flexibility. Regional advocates conduct outreach to identify areas of concern for small business and assist headquarters staff with specific actions, such as recommending participants for Small Business Regulatory Enforcement Fairness Act panels that require small entity representatives. They also alert businesses in their respective regions about regulatory proposals that could affect them. During FY2015, Advocacy's regional advocates participated in more than 500 outreach events, exceeding their annual goal of 360.

### **Conclusion**

In closing, I would like to thank the Committee and its staff for its continued support of the Office of Advocacy. As Chief Counsel, I look forward to working closely with you on the important issues affecting small entities across this country. If there are any questions, I would be pleased to answer them.



**U.S. Small Business Administration**

**TESTIMONY of**

**REAR ADMIRAL (RET.) EARL GAY**

National Ombudsman  
U.S. Small Business Administration

**House Small Business Committee**

Subcommittee on Investigations, Oversight, and Regulations

Wednesday, February 10, 2016

Thank you Chairman Hardy and Ranking Member Adams for providing me this opportunity to comment on how the Office of the National Ombudsman can and does help improve the regulatory environment for America's small businesses.

I look forward to working with this committee to improve the regulatory enforcement environment for our nation's 28 million small businesses. I am also excited that Darryl L. DePriest is now on board as the Chief Counsel for the Office of Advocacy. I meet with Mr. DePriest weekly to discuss synergies our offices execute to ensure a fair regulatory environment. We both agree that a strong working relationship with frequent communication and collaboration is critical to the SBA's mission of counseling and protecting America's small businesses against unnecessary regulatory burdens.

While the Office of Advocacy is responsible for ensuring fairness in the implementation stages of federal regulations, the Office of the National Ombudsman (ONO) works to ensure regulations are being fairly enforced once they are enacted. Pursuant to the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), this office was created to serve as a powerful voice for America's small businesses.

In fulfilling this role, we conduct public hearings and outreach events (including roundtables and meetings) in each of SBA's ten regions, providing small businesses with forums where they voice their comments about federal regulatory enforcement actions without fear of retaliation.

We work with and encourage regulators to address entrepreneurs' comments and concerns promptly, and wherever possible, to opt for compliance assistance and education rather than moving directly to levy penalties and fines. Additionally, in our annual report to Congress, we rate federal agencies on the timeliness and quality of their responses to comments received from small businesses.

Our office also facilitates regional regulatory fairness boards (RegFair boards) in each of the SBA regions. Each RegFair board consists of 5 small business owners who serve as the eyes and ears for small businesses in their communities, states, and regions. They work with local small businesses to address regional concerns regarding federal regulatory enforcement or compliance issues. These RegFair boards have been and continue to be vital assets and advocates. In addition to receiving comments regarding regulatory fairness, our office also receives comments regarding other issues; such as, contracting, access to capital, loan policy and business training, counseling and other support.

During FY-15, our staff conducted more than 80 outreach events, 4 regional regulatory fairness hearings and 1 national hearing here in Washington, DC. Through the aggressive efforts of our district and regional offices and SBA resource partners and federal agency representatives, these roundtables and hearings continue to be very well attended and productive.

In my brief three months onboard, this office has held one regulatory enforcement fairness hearing, 2 small business roundtables in Nevada and several outreach events with small business owners and entrepreneurs. I have met and established personal relationships with senior leaders at 12 federal agencies, discussing ways we can better work together to reduce regulatory burdens for small businesses. During the next six months we plan on conducting several roundtables and hearings and hosting our annual meeting with members of the ten regional regulatory fairness boards.

It is important to note that all of our hearings, meetings, and partnership programs with small business stakeholders, have been in close collaboration with other federal agencies, we truly value their critical presence and participation.

Attached you will find a schedule of the ONO activities for FY-15, as well as the planned events for the first two quarters of FY-16.

In closing, I'd like to state that, on behalf of Administrator Contreras-Sweet, and the great staff in the Office of the National Ombudsman, we look forward to working with all of our teammates and the members of Congress, to eliminate unnecessary regulatory burdens on small businesses as they continue to fuel America's economic prosperity.

I thank you again for the opportunity to appear here today and will be happy to answer any questions.

141329	City and State	Street Address	Date	Primary and Secondary	Time	Type	Organizing Partner	Notes	Completed	Approximate Number of People
3	Washington, DC		10/22/2014		8-3pm EST	Speaking Engagement	Deputy National Ombudsman	DOE - OSOBU FY Small Business Kick-Off	1	100
National	Washington, DC		10/27/2014		4:30 to 5:30pm EST	Meeting with small business leaders	Niles Friedman	Meeting with CEO for SBE Council and small business leaders	1	10
3	McLean, VA		11/5/2014		2-3:30pm EST	Speaking Engagement	National Ombudsman	DOD Mid-Atlantic Regional Council (MARIC) with Dona Storey	1	80
3	Springfield, VA		11/7/2014		10-11am EST	Speaking Engagement	National Ombudsman	DOD National Geospatial-Intelligence Agency, Office of Small Business Programs	1	10
National	Washington, DC		11/12/2014		9:45 to 10:30 EST	Speaking Engagement	National Ombudsman	APFAC Annual Legislative Conference	1	200
3	Washington, DC		11/13/2014		Meetings	Meetings	Deputy National Ombudsman	Asia/Pacific Islander American Chamber of Commerce & Entrepreneurship, Legislative Agenda Launch	1	20
3	Washington, DC		11/14/2014		10-11am EST	Speaking Engagement	National Ombudsman	Office of Advocacy - Advocacy Roundtable	1	40
4	Florida / National Reach		11/18/2014		12-1pm EST	Radio Interview	National Ombudsman	Wealth Building Hour with Barbara Weisman (from SBE Council) meeting on 10/27/2014	1	30,000
3	Washington, DC		11/19/2014		9-11 EST	Meeting	National Ombudsman	Meeting with Community Bank Executives	1	50
5	Cleveland, OH		11/20/2014		10:30-12 EST	Roundtable	National Ombudsman	Leader Roundtable with Community Bank Executives	1	20
National	Washington, DC		11/21/2014		9-11am EST	Speaking Engagement	National Ombudsman	NGCCC Washington Procurement Forum, Key Note	1	50
National	Crystal City, VA		11/25/2014		10:00-11:30am EST	Speaking Engagement	National Ombudsman	Army Small Business Contracting Summit	1	30
4	Atlanta, GA		12/10/2014		TBD	Speaking Engagement	National Ombudsman	National Veterans Small Business Engagement Conference	1	25
National	Washington, DC		12/10/2014		3-4:00	Meeting	Deputy National Ombudsman	Coalition of Federal Ombudsmen	1	30
National	Washington, DC		1/13/2015		12-3:00pm EST	Webinar	National Ombudsman	Small Business Majority - Business Leader Briefing	1	150
4	Monte Escher, FL		1/13/2015			Speaking Engagement	National Ombudsman	Air Force Contracting Summit - USMC Warbon Field	1	180
3	Springfield, VA		1/19/2015	Brian		Speaking Engagement	National Ombudsman	Small Business Contracting Summit - USMC Warbon Field	1	100
4	Columbia, SC		1/29/2015	Brian		Radio Interview	National Ombudsman	Small Business Contracting Summit - USMC Warbon Field	1	180
4	Orlando, FL		2/3/2015	Volanda and Brian		Meeting	National Ombudsman	Frank Krupp Radio Interview	1	5
4	Orlando, FL		2/4/2015	Volanda and Brian		Hearing	National Ombudsman	African American Chamber Meeting	1	45
3	Washington, DC		2/5/2015	Brian		Speaking Engagement	National Ombudsman	8(a) Association Winter Conference	1	55
3	Washington, DC		2/10/2015	Brian		Speaking Engagement	National Ombudsman	Annual Meeting of the National Council of Agricultural Employers (NCAE)	1	180
8	Denver, CO		2/18/2015	Brian		Webinar	Latin American Chambers of Commerce	Region II Administrator's Roundtable with the Greater DC region Latin American Chambers of Commerce	1	20
5	Cincinnati, OH		2/18/2015	Brian	11-12 EST	Webinar	SBOC Colorado	SBOC State Director	1	20
1	Providence, RI		2/19/2015	Brian and Niles	8:30-11:30am EST	Radio Interview	US Bank Colorado	US Bank Colorado Small Business Event	1	100
3	Wytheville, VA		3/10/2015	Brian	11-2-3:30 EST	Teleconference	SBA Offices	Regulatory Fairness Leader Roundtable	1	60
3	Champion, PA		3/10/2015	Brian	10:30-12 EST	Discussion	SBA Offices	Discussion with leaders from western Virginia on leader regulatory issues	1	15
8	Denver, CO		3/17/2015	Brian and Niles	9-12 EST	Roundtable	Marilyn Landis	Regulatory Fairness Leader Roundtable at Small Business Lending Conference	1	50
8	Denver, CO		3/17/2015	Brian and Niles	3-5 MDT	Speaking Engagement	APFAC	Association of Procurement Technical Assistance Centers (APTAC) Spring 2015 Training Conference	1	60
8	Salida, CO		3/18/2015	Brian and Niles	8am MDT	Roundtable	Rebecca A. Ashew	8(a) Association Colorado Chapter	1	25
3	Virginia Beach, VA		3/18/2015	Brian and Niles	2-4:30 MDT	Hearing	Alison Brown	Regional Regulatory Fairness Hearing	1	15
9	Anaheim, CA		3/24/2015	Volanda	9-12 EST	Hearing	Dona Storey	Regional Regulatory Fairness Hearing - Gov't Contracting Issues	1	50
					9:45-10:30am PST	Speaking Engagement	National Association of Chemical Distributors	National Association of Chemical Distributors	1	50

141323	City and State	Street Address	Date	Primary and Secondary	Time	Type	Organizing Partner	Notes	Completed	Approximate Number of People
3	Washington, DC		3/25/2015	Brian	2:15-3:00pm EST	Panel Discussion	National Ombudsman	Air-Conditioning, Heating, and Refrigeration Institute (AHRI) - 2015 Public Policy Symposium	1	30
7	Kansas City, MO		3/31/2015	Yolanda	1:30pm CST	Speaking Engagement	Carisa McMillen	Society of American Community Engineers (SACE) - The Annual Industry Education and Training Workshop	1	50
4	Knoxville, TN		3/31/2015	Brian and Niles	10:11 CST	Roundtable	SBA Office	Regional Fairness Lender Roundtable	1	20
4	Nashville, TN		4/1/2015	Brian and Niles	10:15 CST	Roundtable	SBA Office	Regional Fairness Lender Roundtable	1	20
4	Nashville, TN		4/1/2015	Brian and Niles	1:30pm CST	Roundtable	SBA Office	Regional Regulatory Fairness Roundtable	1	40
3	Fairmont, WV		4/2/2015	Brian	10:11 EST	Meeting	DYMET and SBA Offices	Meeting with congressional leadership, resource partners and other small business stakeholders	1	10
3	Fairmont, WV		4/2/2015	Brian	3:5 EST	Meeting	DYMET and SBA Offices	Regional Regulatory Fairness Roundtable	1	30
3	Fairmont, WV		4/2/2015	Brian	8:30-10:01 EST	Meeting	DYMET and SBA Offices	Meeting with WOSB leadership	1	10
6	Austin, TX		4/20/2015	Yolanda	12:15 - 1:30pm CST	Roundtable	NAFSA	NAFSA conference with Chris James	1	100
4	Columbia, SC		4/22/2015	Brian and Niles	Afternoon	Roundtable	Frank Knopp	Frank Knopp and SBA Offices	1	50
4	Charleston, SC		4/23/2015	Brian and Niles	Morning	Speaking Engagement	Frank Knopp	Mayor invitation - Business expo being held in North Charleston	1	50
National	Washington, DC		4/27/2015	ONO	1:5 EST	Hearing (National)	National Ombudsman	National Regulatory Fairness Hearing - Deakamanged Small Businesses	1	100
National	Washington, DC		4/28-29/2015	ONO	1:5 Days	Meeting - Annual Board Meeting	National Ombudsman	Hosting the Annual Regulatory Fairness Board Meeting	1	40
4	Memphis, TN		4/30/2015	Yolanda		Panel Discussion	Deputy National Ombudsman	BOOM Conference	1	
4	Memphis, TN		4/30/2015	Yolanda		Meeting	Deputy National Ombudsman	Meeting with the Mayor of Memphis and small business owners	1	
4	Memphis, TN		5/1/2015	Yolanda	TBD	Panel Discussion	Deputy National Ombudsman	Meeting with the Mayor of Memphis and small business owners	1	
10	Spokane, WA		5/7/2015	Yolanda	1:430 PDT	Panel Discussion	US Black Chamber	US Black Chamber - Solutions Series Event	1	40
6	Coeur d'Alene, ID		5/7/2015	Brian		Meeting	Brian Castro	Fishing and Wildlife Association Hearing	1	
6	Enterprise, LA		5/19/2015	Brian	12:30 - 3pm CST	Roundtable	Brian Castro	Manufacturing - Association of Manufacturers / Niles Mithrenight	1	30
6	Portland, ME		5/19/2015	Yolanda	TBD	Roundtable	Brian Castro	Manufacturing - Association of Manufacturers / Niles Mithrenight	1	
5	Madison, IL		6/2/2015	Yolanda	TBD	Speaker Engagement	NDA / Army	NDA and Army Local Buying Commands	1	
1	Hartford, Connecticut		6/4/2015	Brian	TBD	Roundtable	Kevin Mahoney	Connecticut Business Expo	1	
1	Portsmouth, NH		6/5/2015	Brian	TBD	Roundtable	Charles Lurvey / Deborah Ogood	Regional Regulatory Fairness Roundtable	1	
2	New York, NY		6/9/2015	Yolanda	TBD	Speaking Engagement	US Patent & Trademark Office and the Department of Commerce	Future of Urban Innovation Startups Summit at Columbia University	1	
3	Baltimore, MD		6/18/2015	Brian	10-12 EDT	Roundtable	Maryland Governor's Office	Roundtable with Maryland Governor's Office and Regional Administrator, Natalie Olsen	1	
4	Killeen, TX		6/23/2015	Yolanda	TBD	Speaking Engagement	Army Small Business Contracting	Army Small Business Contracting Summit	1	
5	Chicago, IL		6/27/2015	Yolanda	9-10:45 CST	Speaking Engagement	VGM - Tom Powers	Orthotics and Prosthetics Group of American (OPGA) Premier Event	1	
3	Annapolis, MD		7/16/2015	Brian / Yolanda	TBD	Speaking Engagement	Yolanda Swift	US Entrepreneur Business Network on July 16th 7:30-9:30PM at one of our Entrepreneur's business	1	
8	Bozeman, MT		7/21/2015	Brian / Yolanda	10-11:30 MDT	Roundtable	Wayne Cardella - DD Montana / John Hart - Regional Advocate	Manufacturing Roundtable	1	
8	Helena, MT		7/22/2015	Brian / Yolanda	TBD	Meeting	Wayne Cardella - DD Montana / John Hart - Regional Advocate	Meetings with two senator's staff, the congressmen's staff, our resource partners with the state, bank regulators and key association members	1	
8	Great Falls, MT		7/23/2015	Brian / Yolanda	9:30-11 MDT	Roundtable	Wayne Cardella - DD Montana / John Hart - Regional Advocate	Manufacturing and Agricultural Roundtable	1	

141323	City and State	Street Address	Date	Primary and Secondary	Time	Type	Organizing Partner	Notes	Completed	Approximate Number of People
9	Los Angeles, CA		July 18 - 23 / 2015	Yolanda	TBD	Meeting	Yolanda Swift	National Bar Association (NBA) Annual Conference	1	
9	Los Angeles, CA		7/23/2015	Yolanda	TBD	Roundtable	Yolanda Swift	Federal Deposit Insurance Commission and SBA Office and National Bar Association (NBA) Annual Conference	1	
6	Albuquerque, NM		7/29/2015	Brian / Yolanda	TBD	Roundtable	Tom Briones (Board)	Regional Advocate W and SBA Office and Tom Briones Fair Pay, Cybersecurity, counterfeit electronic products, contracting with the Labs, transactional data collection, strategic sourcing, category management and reverse auctions and other procurement related topics of interest.	1	
1	Connecticut		8/6/2015	Brian	2pm EDT	Radio Interview	Bill DeBiosa   Editor, CBIA News	The Connecticut Business & Industry Association	1	
8	Salt Lake City, UT		9/2/2015	Yolanda	9 to 12 MDT	Roundtable	Peter Corcoran	Topics regarding Air Force regulations	1	
9	San Francisco, CA		9/17/2015	Yolanda	345-515 PDT	Speaking Engagement	SBCD National	SBCD Conference 2015 - San Francisco Marriott Marquis / San Francisco, California	1	
	San Francisco, CA		9/8-11/2015	Deborah Jackson, Lisa Williams	daily Exhibition Hall until closing	Outreach and Counseling at Export Pavilion	DOC/BIS as part of the Export Pavilion	ASBCD 2015 Annual Conference, San Francisco, California: Provided counseling to all business development professional on export controls.		
3	Springfield, VA		9/24/2015	Yolanda	3:00-4:40pm	Speaking Engagement	NDIA and Alison Brown (Board member)	National Defense Industrial Association 12th Annual National Small Business Conference at The Waterford in Springfield, VA	1	
3	Washington, DC	600 Pennsylvania Ave., NW	10/8/2015	Earl Gay	11:00am EST			Christian White, Deputy General Counsel for Legal Counsel, Federal Trade Commission		
9	Washington, DC		10/14/2015	Earl Gay	8:30 am MST	Hearing	Yvonne Lee and Mr. Doyel Shamley from Apache County	Hearing to address Mexican Wolf issue with Dept. of the Interior / Fish and Wildlife Service American Legion building		
3	Washington, DC	NASA Headquarters	10/19/2015	Earl Gay	3:30pm EST			L. Chance, NASA Headquarters		
	Washington, DC		11/4/2015	Sheila Quarterman-BIS, and Major Clark, SBA Advocacy and Brian Castro-SBA on detail with BIS	8:00am to 4:30pm EST	2015 BIS UPDATE on Export Controls	BIS	Small and Medium Enterprises Roundtable, a staple of the BIS Update Conference, which facilitates an exchange of ideas on primary issues and recommendation that address the awareness and understanding of and compliance with export controls under the EAR and others related controls.		
3	Washington, DC		11/4/2015	Earl Gay	11:00am EST			Center for Medicare and Medicaid, Djen Clybourn, Deputy Director		
3	Washington, DC		11/4/2015	Earl Gay	2:30pm EST			Center for Medicare and Medicaid and the Internal Revenue Service, Small Business/Self-Employed Division		
3	Washington, DC		11/11/2015	Earl Gay				Lay a wreath at the World War II National Memorial with WWII Pilot, Benji Miller		
3	Washington, DC	409 3rd St. SW Washington, DC	11/12/2015	Earl Gay	10:00am EST			Office of Veterans Business Development, Barbara Carson		
3	Washington, DC		11/20/2015	Earl Gay	12:00pm EST			Food and Drug Administration, Laurie Lenkel, Director, Office of the Ombudsman and Andrew Moss, Deputy Ombudsman		

141329	City and State	Street Address	Date	Primary and Secondary	Time	Type	Organizing Partner	Notes	Completed	Approximate Number of People
4	Atlanta, GA	270 Peachtree St. NW Atlanta, GA	11/30/2015	Earl Gay	2:00pm CST			Georgia Chamber of Commerce, Kelsey Moore, Marketing		
4	Atlanta, GA	233 Peachtree St. Atlanta, GA	11/30/2015	Earl Gay	11:00am CST			Region 4 Administrator, Cassius Butts		
4	Atlanta, GA	233 Peachtree St. Atlanta, GA	12/1/2015	Earl Gay	2:00pm CST			Region 4 District Director, Terri Devision and Deputy District Director, David Perry		
3	Washington, DC	409 3rd St. SW Washington, DC	12/3/2015	Earl Gay	9:00am EST			Regulatory Fairness Board Member Marilyn Landis		
3	Washington, DC		12/4/2015	Earl Gay	11:30am EST			Mr. Tesky, Department of the Air Force	70	32,365
3	Washington, DC		12/4/2015	Earl Gay	10:30am EST			Tommy Marks, Department of the Army		
3	Washington, DC		12/7/2015	Earl Gay	10:00am EST			Advisory Committee on Veterans Affairs which will include a series of briefs covering veterans' small businesses.		
3	Washington, DC	Patriot Plaza Washington, DC	12/7/2015	Earl Gay	11:00am EST			Mariana Pardo, Director of the GCBH Hubzone Program, and Art Collins, Deputy Director of Hubzone.		
3	Washington, DC	409 3rd St. SW Washington, DC	12/9/2015	Earl Gay	11:30am EST			Regional Hearing Teleconference concerning Mexican Wolf issues		
3	Washington, DC	720 Kennon Ave. SE, Bldg. 36, Room 207 Washington, DC	12/14/2015	Earl Gay	11:00am EST			Emily Harman, Department of the Navy		
3	Washington, DC	409 3rd St. SW Washington, DC	12/16/2015	Earl Gay	1:00pm EST			William Lory, Defense Leadership		
3	Washington, DC	28 Russell St. Washington, DC	1/7/2016	Earl Gay	10:00am EST			Mark Tiner, Deputy Assistant Administrator for Senate Affairs Office of Congressional and Legislative Affairs (CLAL), Office of the Administrator, United States Small Business Administration (SBA), Office of the		



March 22, 2016

**VIA EMAIL**

The Honorable Steve Chabot  
Chairman  
Committee on Small Business  
2361 Rayburn House Office Building  
Washington, DC 20515-6315

Dear Chairman Chabot:

This letter is in response to your letter dated February 29, 2016, which included additional questions for the record for the hearing titled, "Oversight of the Office of Advocacy and the Office of the National Ombudsman at the SBA" held on February 10, 2016. Enclosed you will find our responses.

The Office of Advocacy appreciates the opportunity to provide the Committee with more information about the office's activities. If you or any member of the Committee has any questions regarding these responses, please do not hesitate to contact me or Elle Patout, Congressional Affairs and Public Relations Manager. She can be reached at (202)205-6941 or [Elle.Patout@sba.gov](mailto:Elle.Patout@sba.gov).

Sincerely,

Darryl L. DePriest  
Chief Counsel for Advocacy



409 3rd Street, SW / MC 3114 / Washington, DC 20416 / 202-205-6533 ph / 202-205-6928 fax  
[www.sba.gov/advocacy](http://www.sba.gov/advocacy)

**Post-Hearing Questions for the Record  
Submitted to Mr. Darryl L. DePriest  
From Representative Steve Chabot  
Chairman**

- 1. Is the Memorandum of Understanding that the Office of Advocacy and the Office of Information and Regulatory Affairs (OIRA) entered into in 2002 still in effect and has it been amended? If it is no longer in effect, why hasn't it been renewed? If it has been amended, please provide an updated copy to the Committee.**

The Memorandum of Understanding that the Office of Advocacy signed with the Office of Information and Regulatory Affairs contained a three-year expiration date. In the time since the expiration date, the two offices have agreed to continue to abide by its terms, which have not been amended.

- 2. In 2014, the Government Accountability Office issued a report on the Office of Advocacy's need to improve controls over its research, regulatory, and workforce planning activities and made five recommendations. The Office of Advocacy has implemented, and GAO has closed out, all the recommendations. Can you describe what the Office of Advocacy has done to improve its workforce planning controls, particularly its succession planning as key staff with significant regulatory expertise retire?**

Advocacy's staff is the most effective tool that it has at its disposal. We recognize the importance of maintaining a knowledgeable staff and ensuring that long term strategic plans are in place to maximize the value of the employees while preserving the institutional knowledge that sometimes can be lost when an employee retires. While Advocacy already had these systems in place, as a result of the GAO report we now have a written Succession Plan to ensure that Advocacy is best prepared to meet its future workforce needs.

Through employee performance analysis, leadership training programs and succession planning meetings, Advocacy is able to meet any retirement challenge. Retirements and position changes are anticipated and planned for in order to avoid any disruption in Advocacy activities. Advocacy's workforce succession planning focuses on having a cadre of experts with the necessary skills for the future. These needs are mostly in the areas of regulatory issue expertise, economic research, information and technology specialists, and human resource specialists. Advocacy's Succession Plan includes a constant assessment of its needs and of its workforce. Advocacy will continue to utilize this practice in order to maximize internal employee knowledge and resources while bringing in new ideas for growth.

- 3. The Office of Advocacy's FY 2015 annual report states that the Department of Interior does not notify the Office of Advocacy of its rules or respond to the Office of Advocacy's comments as required by the Small Business Jobs Act of 2010 and Executive Order 13,272. Specifically, the report states that "[t]he Fish and Wildlife Services does not notify Advocacy of its rules and consistently fails to respond adequately to Advocacy's comments." Has the Department of Interior**

**provided any explanation for its failure to comply with these requirements, and what is the Office of Advocacy doing to get the Department of Interior comply?**

The Fish and Wildlife Service (FWS) routinely contends that critical habitat designations under the Endangered Species Act (ESA) have little to no impact on small entities. FWS rationalizes that most or all of the costs are incurred at the time of listing the species under the ESA and that the ESA does not allow cost to be considered at the time of listing. As a result, critical habitat designations are certified as having no impact on small entities. Advocacy disagrees with FWS's position.

If FWS's reasoning was what Congress had intended when enacting the ESA, there would have been no need for the ESA to require that the costs of a critical habitat designation be a factor in that designation. It is clearly the case that restricting the use of large swaths of land may have an impact on the owners and users of that land. Advocacy continues to encourage FWS to make a full accounting of the costs of critical habitat designations in their economic analysis and to perform an Initial Regulatory Flexibility analysis where required.

**4. The Office of Advocacy's FY 2015 report states that the office wrote to EPA on May 8, 2015 to express concerns with the Small Business Advocacy Review (SBAR) panel for the proposed rule on Federal Implementation of the Clean Power Plan. The report noted that EPA did not prepare sufficient materials to adequately inform the other panel members (the Office of Advocacy and OIRA) or the small businesses participating in the process about the proposed rule. It also stated that EPA did not present details on the regulatory proposal. This is not the first time in recent years that Advocacy has criticized EPA for providing inadequate information to small businesses participating in the panel process. Is the Office of Advocacy working with the EPA to improve its preparations and materials for SBAR panels, and if so, what specific actions has the Office of Advocacy taken?**

Yes, Advocacy is working with the EPA to improve its process in SBREFA panels (Small Business Regulatory Enforcement and Fairness Act panels). For the consultations required for SBREFA panels, Advocacy believes that satisfactory materials provided to the Small Entity Representatives (SERs) will include:

- a clear description of the goals of the rulemaking,
- the type and number of affected small entities,
- a preferred alternative,
- a series of viable alternatives, and
- projected costs and benefits of compliance for these alternatives.

With this information, small entities are better able to suggest changes to those alternatives or propose additional alternatives and flexibilities, as well as provide more useful information about likely costs.

In the case of EPA, the process of developing materials for the SBREFA panel follows a series of steps.

First, Advocacy engages EPA on the development of materials as soon as EPA informs the Chief Counsel of its intent to convene a panel in the near future. Advocacy staff, along with the staff representing the Administrator of the Office of Information and Regulatory Affairs (OIRA), reviews the documents EPA has prepared and makes recommendations for revisions and additions that will better prepare the SERs for their participation in the panel process.

Second, EPA invites the SERs to a meeting in advance of the panel's convening to review the materials and request the SERs advice on improving the materials and to help identify gaps in the information EPA has made available. In addition, the SERs have the opportunity to provide written comments on the materials.

Third, EPA revises its materials in response to the SER meeting and written comments, and Advocacy staff and OIRA staff again review the materials, and recommend further changes. In most cases, EPA, Advocacy and OIRA come to agreement on the materials. EPA then convenes the panel and distributes these final materials to the SERs for the formal panel consultation.

EPA documents these above steps in its 2006 "Final Guidance for EPA Rulewriters: Regulatory Flexibility Act." Most recent SBREFA panels have provided satisfactory materials to the SERs, thanks to this iterative process.

In the case of the Federal Implementation proposed rule, EPA did not meet with the SERs in advance of convening, so the materials did not benefit from the full process. Advocacy advised EPA in advance of the gaps in the materials and encouraged EPA to delay convening and continue discussions. EPA convened despite our efforts. Advocacy will continue to encourage EPA to follow the process outlined above so that small businesses are able to provide useful input to the panel process.

**5. Your testimony stated that the Office of Advocacy provides federal agencies with technical assistance on RFA training. Is your office tracking agency requests for technical assistance and whether or not there is any correlation between providing technical assistance and improved RFA compliance?**

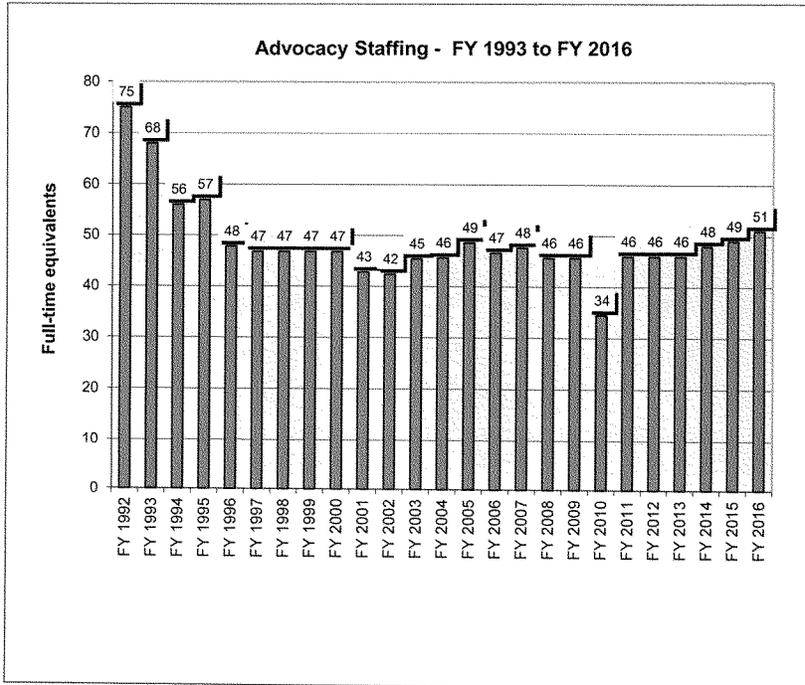
Executive Order 13272 (EO), which was signed in 2002, requires Advocacy to provide to the federal agencies technical training in how to comply with the Regulatory Flexibility Act. We have records of every agency we have trained under the EO. In that training, and elsewhere, we offer assistance to the agencies' rulewriters. For example, the training includes how to compose a regulatory flexibility analysis and how to properly certify that a proposed rule would not have a significant economic impact on a substantial number of small entities.

We have had many requests for such assistance, and anecdotal evidence suggests a correlation between this technical assistance and improved RFA compliance. For example, after RFA training, an agency staff attorney called with questions about the RFA analysis contained in a particular rule. Advocacy provided the attorney with assistance in calculating the number of small businesses that would be impacted by the rule. In addition, after training sessions with another agency, Advocacy was invited to attend meetings with that

agency's staff to advise on small business data issues in preparation for an Initial Regulatory Flexibility Analysis. Finally, as a result of the training, Advocacy has noticed an increase in roundtable participation by agency staff.

6. Please provide a list of the total number of Office of Advocacy staff (full-time equivalent positions) by fiscal or calendar year since 1992. In addition, for each year, please provide a breakdown of the number of staff by office (e.g. Office of Interagency Affairs, Office of Economic Research, etc.) within the Office of Advocacy since 1992.

Below you will find a chart that depicts the highest total number of employees per fiscal year that is submitted annually in our budget justification. At the end of each fiscal year, the total number of employees by office is documented. Those numbers are listed below the chart.



FY 1992 – 74 on board FTEs

- Office of the Chief Counsel – 10
- Office of Interagency Affairs- 19
- Office of Information – 17
- Office of Economic Research - 18
- Regional Advocates - 10

FY 1993 – 54 on board FTEs

- Office of the Chief Counsel – 8
- Office of Interagency Affairs- 15
- Office of Information – 14
- Office of Economic Research – 17
- Regional Advocates – 0

FY 1994 – 56 on board FTEs

- Office of the Chief Counsel – 12
- Office of Interagency Affairs- 13
- Office of Information – 15
- Office of Economic Research – 16
- Regional Advocates - 0

FY 1995– 61 on board FTEs

- Office of the Chief Counsel – 8
- Office of Interagency Affairs- 15
- Office of Information – 10
- Office of Economic Research – 18
- Regional Advocates – 10

FY 1996 – 45 on board FTEs

- Office of the Chief Counsel – 6
- Office of Interagency Affairs- 13
- Office of Information – 8
- Office of Economic Research – 8
- Regional Advocates – 10

FY 1997 – 54 on board FTEs

- Office of the Chief Counsel – 7
- Office of Interagency Affairs- 20
- Office of Information – 7
- Office of Economic Research – 8
- Regional Advocates - 12

FY 1998 – 53 on board FTEs

- Office of the Chief Counsel – 5
- Office of Interagency Affairs- 17
- Office of Information – 9
- Office of Economic Research – 12
- Regional Advocates – 10

FY 1999 – 50 on board FTEs

- Office of the Chief Counsel – 5
- Office of Interagency Affairs- 16
- Office of Information – 8
- Office of Economic Research – 11
- Regional Advocates – 10

FY 2000 - 56 on board FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 6
- Office of Interagency Affairs- 12
- Office of Information – 10
- Office of Economic Research – 14
- Regional Advocates – 10

FY 2001 - 38 on board FTEs

- Office of the Chief Counsel – 3
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 13
- Office of Information – 7
- Office of Economic Research – 8
- Regional Advocates – 2

FY 2002 - 34 on board FTEs

- Office of the Chief Counsel – 5
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 12
- Office of Information – 6
- Office of Economic Research – 6
- Regional Advocates - 0

FY 2003 - 44 on board FTEs

- Office of the Chief Counsel – 6
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 13

- Office of Information – 6
- Office of Economic Research – 7
- Regional Advocates – 7

FY 2004 - 44 on board FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 14
- Office of Information – 6
- Office of Economic Research – 7
- Regional Advocates – 8

FY 2005 - 48 on board FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 14
- Office of Information – 6
- Office of Economic Research – 7
- Regional Advocates – 12

FY 2006 - 48 on board FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 14
- Office of Information – 6
- Office of Economic Research – 7
- Regional Advocates – 12

FY 2007 – 50 on board FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 15
- Office of Information – 7
- Office of Economic Research – 8
- Regional Advocates – 11

FY 2008 – 50 on board FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 15
- Office of Information – 7
- Office of Economic Research – 8
- Regional Advocates – 11

FY 2009 – 46 on board FTEs

- Office of the Chief Counsel – 3
- Office of Administrative Support Branch - 4
- Office of Interagency Affairs- 14
- Office of Information – 7
- Office of Economic Research – 8
- Regional Advocates – 10

2010 – 39 on board FTEs

- Office of the Chief Counsel – 2
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 14
- Office of Information – 8
- Office of Economic Research – 9
- Regional Advocates – 1

FY 2011 – 47 on board FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 13
- Office of Information – 9
- Office of Economic Research – 5
- Regional Advocates – 11

FY 2012 – 49 on board equivalent to FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 13
- Office of Information – 9
- Office of Economic Research – 7
- Regional Advocates – 11

FY 2013 – 50 on board equivalent to FTEs

- Office of the Chief Counsel – 5
- Office of Administrative Support Branch - 6
- Office of Interagency Affairs- 13
- Office of Information – 8
- Office of Economic Research – 7
- Regional Advocates – 11

FY 2014 – 49 on board equivalent to FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 15
- Office of Information – 7
- Office of Economic Research – 7
- Regional Advocates – 11

FY 2015 – 54 on board equivalent to FTEs

- Office of the Chief Counsel – 4
- Office of Administrative Support Branch - 5
- Office of Interagency Affairs- 16
- Office of Information – 7
- Office of Economic Research – 11
- Regional Advocates – 11

FY 2016 – 51 on board equivalent to FTEs

- Office of the Chief Counsel – 2
- Office of Administrative Support Branch - 6
- Office of Interagency Affairs- 15
- Office of Information – 7
- Office of Economic Research – 9
- Regional Advocates – 11

**Questions for the Record**  
**Subcommittee on Investigations, Oversight, and Regulations**  
**Committee on Small Business**

**Hearing: Oversight of the Office of Advocacy and the Office of the National Ombudsman at the SBA**  
**February 10, 2016**

**Admiral Earl Gav, Small Business and Agriculture Regulatory Enforcement Ombudsman, Office of the National Ombudsman, SBA**

1. The Office of National Ombudsman's FY 2014 annual report indicates that the office is spending a lot of time helping small businesses resolve federal procurement disputes. This appears to be duplicative of the work of other offices within the SBA and the federal government and may violate the Small Business Act's prohibition against duplication by SBA of other agency programs. 15 U.S.C. § 647. Are you duplicating the work of other offices or simply referring federal procurement issues to the appropriate offices to resolve these matters?

**The Office of the National Ombudsman has no investigative capability nor authority to overrule, stop or delay a federal action. Therefore, this office refers federal procurement issues to the appropriate offices and federal agencies to resolve these matters.**

2. Please provide the Committee with a complete list of the current regional Regulatory Fairness board members for each SBA Region and the date that they were appointed by the SBA Administrator.

**See attached document.**

3. The FY 2014 annual report states that 420 small business owners file formal cases seeking the assistance of the Office of the National Ombudsman with federal regulations. How many or what percentage of those cases resulted in a favorable outcome for small businesses such as reduction of a penalty?

**41 of the 420 or 9% of the cases filed with the Office of the Office of National Ombudsman resulted in a favorable outcome for the small business applicant.**

4. The FY 2014 report provides anecdotes but it doesn't provide a complete list of each formal case and what happened with each case. This is concerning because the report is supposed to help Congress identify problems with excessive or unfair enforcement in federal agencies. Why doesn't the report provide a complete list of the formal cases, along with information on whether there was a favorable outcome for each small business, and the number of days it took for the agency to respond to each small business?

**The Ombudsman's Annual Report to Congress provides a concise synopsis of the success stories representative of the various types of cases received by the office rather than a comprehensive listing. Detailed information about each case is not in the report to protect the privacy and financial information of the commenters. Also, the report is published on the SBA website and available to the public.**

**Information on the average number of days an agency took to respond to enforcement related cases was included in reports prior to the FY2014 report. Summary information on individual cases and information on the average number of days an agency took to respond to each case is available upon request.**

5. According to your office's FY 2014 report, the Centers for Medicare and Medicaid Services, United States Citizenship and Immigration Services, the Food and Drug Administration, the Internal Revenue Service, and the Small Business Administration as the top agencies for case submissions.
- a. Are the regulatory enforcement comments you receive from small businesses regarding these agencies about one problematic regulation or numerous problematic regulations? In other words, do you see any patterns in regulatory enforcement issues at these agencies? Which regulations were mentioned most often?

**These agencies represent various issues. The most mentioned regulations are:**

- USCIS – visa petition denials / visa petition delays
  - SBA – loan denials / HUBZone Program and 8(a) Business Development Program application denials
  - IRS – Excessive audits / Federal Tax Liens / Penalties, Interest charges / Refunds
  - FDA – FDA's laws and regulations for imported products: The laws and regulations are open to misinterpretation and are frequently changing / Process of inspection of detained imported shipments is very long (3-6 months) and expensive / Lack of communication and clarification from FDA to prevent delays and detention of imported products
  - CMS – CMS Auditing Process: Excessive audits: Recovery Audit Contractor (RAC) and Zone Program Integrity Contractor (ZPIC) audits on Durable Medical Equipment (DME) providers. The appeal process - tremendous delays at the Administrative Law Judge (ALJ) review stage (a backlog of 2-3 years) / Denial of claims / CMS Competitive Bidding program and reduction in bid rates/
- b. What complaints are you receiving about the SBA?
- Loan issues – collections, lender issues, requests for loan compromise and modification
  - 8a Business Development Program and HUBZone Program application denials.
- c. When will the Office of the National Ombudsman's FY 2015 report be issued?
- The Office of the National Ombudsman is on schedule to issue the FY 2015 Annual Report to Congress by the beginning of June 2016.**
6. In your office's FY 2014 annual report, the Department of Interior received a grade of "F" when it comes to responding to small business comments and the quality of responses.
- a. How many comments were forwarded to the Department of Interior in 2014?
- There was one enforcement related comment referred to the Department of the Interior in 2014.**
- b. Does the "F" indicate that the Department of Interior did not respond at all?
- An "F" indicates that an agency responded later than 120 days after receipt. However, the Department of the Interior has not responded to the comment referred in 2014.**
- c. What are you doing to improve the Department of Interior's performance?

**Mr. Earl Gay, National Ombudsman, is requesting a meeting with all agencies, including the Department of the Interior, who scored a “C” or below overall to determine how the Office of the National Ombudsman can work with them to improve their scores.**

7. The Office of the National Ombudsman rates regulatory compliance assistance by federal agencies. Does an agency receive a letter grade of “A” for merely having compliance assistance materials or is the quality and helpfulness of the compliance materials considered in assigning the letter grade?

**An agency receives a letter grade of “A” for having and disseminating compliance assistance materials to customers. The Office of the National Ombudsman also requires agencies to provide proof of the referenced assistance via a copy of the material or a website link.**

8. The FY 2014 annual report that the Office of the National Ombudsman issued rates agencies on response timeliness and response quality; however, the report does not state how many comments each agency received. This information would help Congress better understand which agencies might have unfair or excessive enforcement problems. Why doesn't the report list the number of comments each agency received and the regulation that is the subject of each comment?

**The number of comments received by each agency was included in the report prior to FY2013. Specific regulations for each comment have historically not been a part of the report. We will consider adjusting this policy.**

9. Your FY 2014 annual report refers to an “Ombudsman-Taxpayer Advocate partnership.” Could you explain to us how your office helps resolve Internal Revenue Service issues with the National Taxpayer Advocate?

**The Office of the National Ombudsman reviews the small business comments and supporting documentation and forwards the information along with a completed IRS Form 8821 (Tax Information Authorization) to the IRS Taxpayer Advocate Service (TAS) with a request from the National Ombudsman for a high-level review of the enforcement action and a response to the ONO within a specified time period. Upon receipt of the comment, TAS begins to contact and work with the small business until the resolution of the issue. Until TAS provides a full response and report on the resolution of a comment, it sends interim updates to ONO every 30 days.**

Regional Regulatory Fairness Board Members  
as of March 17, 2016

SBA Region	Name	Appointment Date
1	Gary S. Ezovski, Chair Kevin Maloney Juliette C. Mayers Dr. Deborah A. Osgood, PhD Charles L. Largay	07/11/12 03/28/12 07/20/15 01/15/14 03/14/12
2	Christopher Harvelli, Chair Kenneth M. Franskiak	03/26/12 07/20/15
3	Dona A.P. Storey, Chair Muriel Watkins Marilyn D. Landis Louis G. Hutt, Jr., CPA Esq. Robert Paicake	01/16/14 09/27/14 05/23/14 01/16/14 12/23/14
4	Frank Knapp, Jr., Chair Cliffena Carter Albert G. Edwards Moises Montanez Leo James	12/23/14 03/14/15 12/23/14 07/20/15 12/23/14
5	David L. Huller, Chair Alex McQuillen David M. Rambhajan Zach Adamson	05/23/14 12/23/14 07/20/15 07/07/15
6	Michael Mitternight, Chair John A. Michael Thomas R. Briones	12/23/14 05/31/13 12/23/14

SBA Region	Name	Appointment Date
7	Cynthia (Cindy) Brown Rohrer, Chair Joseph Jindra Carisa L. McMullen	01/11/14 01/16/14 01/16/14
8	The Honorable Peter M. Corroon, Chair Alison K. Brown, PhD	05/23/14 06/13/13
9	Reginald Eugene Baker, Jr., Chair Kristine Kassel M. Isabel Valdes	12/23/14 12/23/14 08/18/15
10	Michael J. Ballantyne, Chair Anthony Welcher Wilfred P. Ryan James Howard Houser, Jr.	12/23/14 05/11/14 05/11/14 12/23/14

