



Office of the
Washington
State Auditor
Pat McCarthy

PERFORMANCE AUDIT

Report Highlights

Reassessing Implementation of the Regulatory Fairness Act

Washington's small businesses are an essential part of the state's overall economy, creating jobs and sparking innovation. Both federal and state lawmakers recognize that the disproportionate impacts of regulatory costs on small businesses can reduce competition, innovation, and new employment opportunities, and can potentially threaten the survival of the businesses themselves. The state's Regulatory Fairness Act (RCW 19.85) requires agencies to take the financial effects of proposed regulations into account, calculate the costs to businesses, and mitigate costs that are disproportionate for small businesses, where feasible.

This audit follows up on the State Auditor's 2016 report "[Assessing Implementation of the Regulatory Fairness Act](#)." It assesses agency compliance with the Act since the previous audit to understand whether compliance has improved following legislation requiring the Governor's Office of Regulatory Innovation and Assistance (ORIA) to provide tools and assistance to regulatory agencies.

Agencies have significantly improved their execution of Regulatory Fairness Act requirements since the previous audit. They attributed progress in large part to help provided by the Office of Regulatory Innovation and Assistance.

Agencies claimed 47 percent of rules in our sample were exempt from the Act. For the other 53 percent, agencies provided sound support for their cost-related claims most of the time. Nearly 90 percent of the less-than-minor cost claims were fully supported – a significant improvement from the last audit, when only half were fully supported. Compliance with the Small Business Economic Impact Statement (SBEIS) greatly improved since the last audit: nearly 75 percent in our sample were substantively complete. One key area where agencies continue to struggle is accessing reliable, consistent data about the businesses they regulate.

Agency staff report that the Governor’s Office of Regulatory Innovation and Assistance’s (ORIA) tools and support have greatly helped them comply with the Act. ORIA has provided extensive support to agencies in navigating requirements of the Act. Agencies in our audit were aware of ORIA’s resources, and most use them regularly. Agencies praised ORIA’s efforts and are asking for expanded help. Some agencies suggested it could be helpful to have additional improvements in the standardized forms used to propose new or revised rules.

While overall compliance with the Act has improved, some agencies struggled to correctly apply allowable exemptions. All the exemptions claimed in our sample were actual legal exemptions, which is far better than in the previous audit. While all the exemptions claimed were allowed by law, agencies were entitled to claim only about two-thirds of them. Agencies would benefit from additional training on the application of exemptions.

State Auditor’s Conclusions

Small businesses play an important role in Washington’s economy, but they often face proportionally higher costs compared to big companies when complying with some state regulations. The state’s Regulatory Fairness Act set up a framework to address this disparity. It requires state agencies to assess their rules’ effects, and develop strategies to mitigate the disproportionate impact of some regulations.

Our 2016 performance audit examining agencies’ compliance with the Act found most agencies struggled to follow the law. Agencies frequently could not support their conclusions that the costs of new regulations were minimal, and often claimed exemptions from the Act that did not exist. Furthermore, we found they rarely prepared complete SBEIS, one of the Act’s main requirements. One of the audit’s key recommendations was for the Legislature to designate a central authority to help agencies meet the requirements of the law. In 2017, the Legislature assigned that responsibility to ORIA.

The results of the current audit are far better than the 2016 audit. Agencies were more consistent in completing the SBEIS when required, and did a much better job of documenting the circumstances when one was not needed. In addition, the agencies were overwhelmingly positive about the level of support and guidance in navigating the requirements of the Act they got from ORIA.

Maintaining an equitable regulatory environment for small businesses is always important, but given the difficult times we are experiencing now, it is even more so. ORIA and the state agencies deserve to be commended for the tremendous improvement they have made in administering the Regulatory Fairness Act since our last review.

Recommendations

We made recommendations to the Office of Regulatory Innovation and Assistance (ORIA) to expand its assistance to agencies in three areas where they still have challenges in their efforts to comply with the Regulatory Fairness Act. We recommended ORIA help facilitate the sharing of summary data among agencies, serving as a repository of information relevant to the specific sectors of small businesses in Washington’s economy. We also recommended ORIA expand its assistance in helping agencies apply exemptions to their proposed rules.

In addition, we made a recommendation to ORIA to work with agencies and the Code Reviser to explore opportunities to improve the standardized form used for proposed new or revised rules.