



Insight

A Worrisome Regulatory Trend Continues for Small Businesses

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EXECUTIVE SUMMARY

- The Small Business Administration’s Office of Advocacy (Advocacy) recently released its annual report on agency compliance with the Regulatory Flexibility Act (RFA), finding that agencies were able to update a handful of rules to provide roughly \$91 million in regulatory relief for small businesses due to concerns Advocacy raised during the rulemaking process.
- This savings total, however, continues the Biden Administration’s emerging trend of historically low levels of RFA small business savings despite historically high levels of input from Advocacy.
- This report’s findings largely align with those of a recent congressional report on the issue and highlight the need for more substantive reforms beyond merely greater agency-stakeholder engagement.

INTRODUCTION

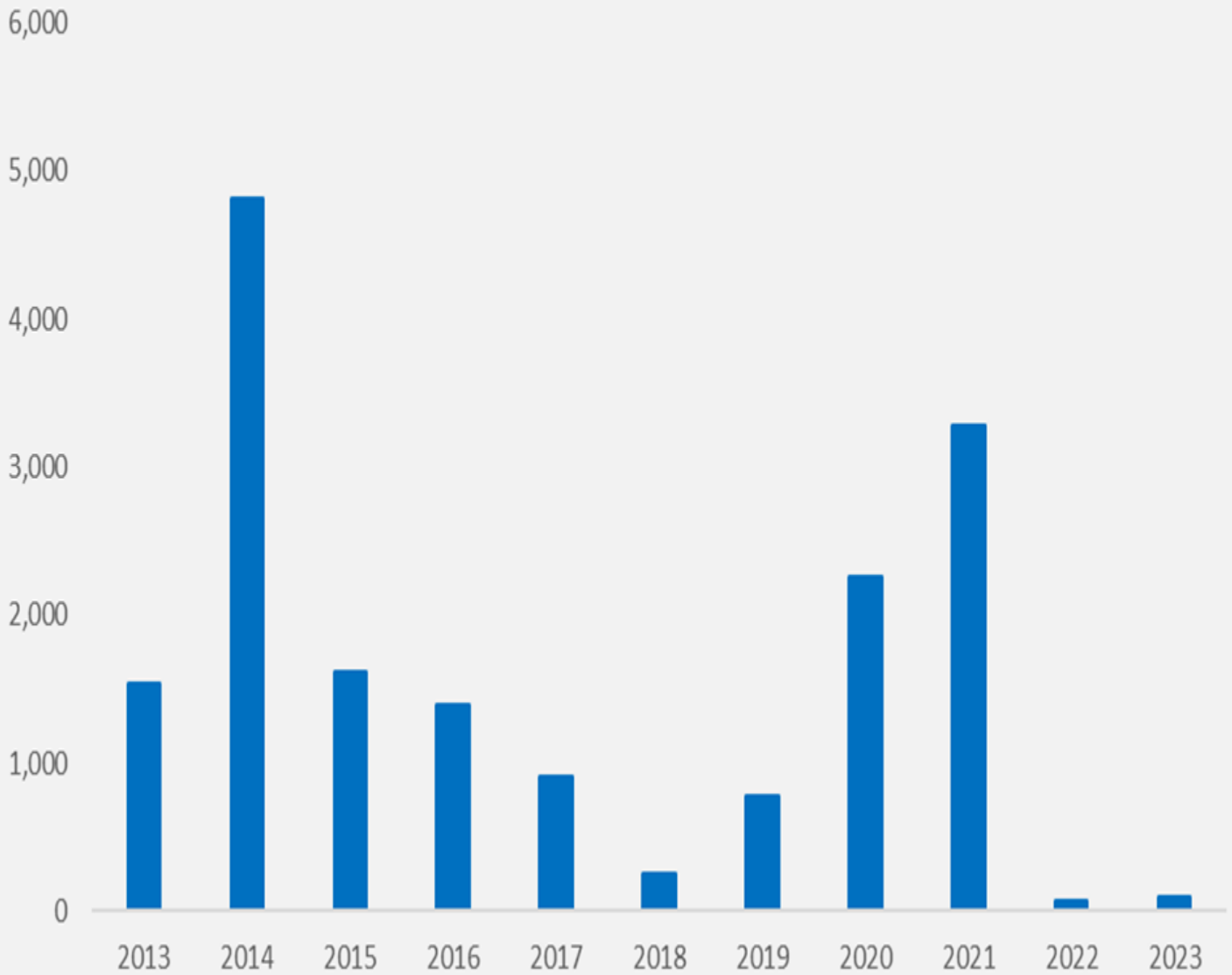
The Office of Advocacy of the Small Business Administration (Advocacy), established in 1976, is a relatively small, obscure agency with a rather unique [mission](#): to be “the independent voice for small business in the federal government.” The [Regulatory Flexibility Act \(RFA\)](#) of 1980 further empowered Advocacy, but also tasked it with certain duties, including the production of an annual report (Advocacy RFA Report) on how federal agencies are complying with the RFA, as well as any relevant updates from Advocacy on its efforts in the rulemaking process. Since fiscal year (FY) 2013, Advocacy has been able to claim approximately \$17 billion in initial cost savings and \$10.8 billion in recurring cost savings for small businesses due to its interaction with agencies. The latest [Advocacy RFA Report](#) finds that, during FY 2023, agencies adjusted four rulemakings to produce \$91.3 million in regulatory cost savings for small businesses due to Advocacy’s input. While this savings total is nominally higher than the record-low \$73.5 million in the preceding year’s [report](#), it largely follows the same trends as the FY 2022 report, suggesting that federal agencies under the Biden Administration have been unable or unwilling to address small business concerns raised by Advocacy in a meaningful way.

FY 2023 VS. PAST YEARS

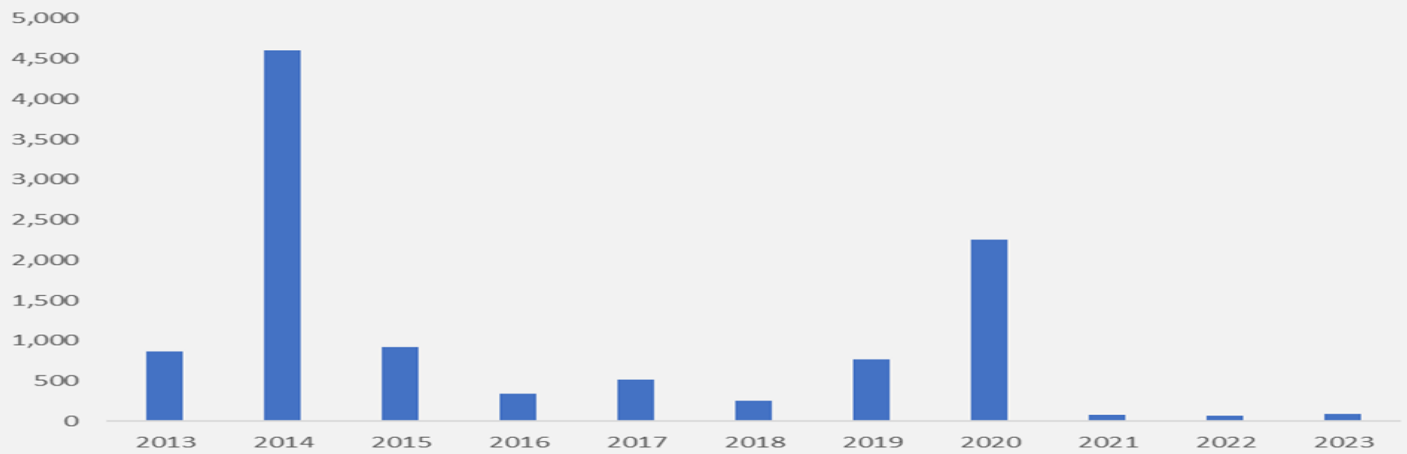
An Ongoing Trend of Diminishing “Success Stories”

As noted above, agencies were able to conjure up nearly \$20 million more in regulatory cost savings for small businesses in FY 2023 than they did in FY 2022. While that may seem like a significant amount, it is but a rounding error compared to the amounts found in Advocacy RFA Reports from across the past decade. As the charts below show, this past report’s savings[\[1\]](#) totals are the second lowest, ahead of only FY 2022.

Quantified Initial Savings, By FY (\$ Million)

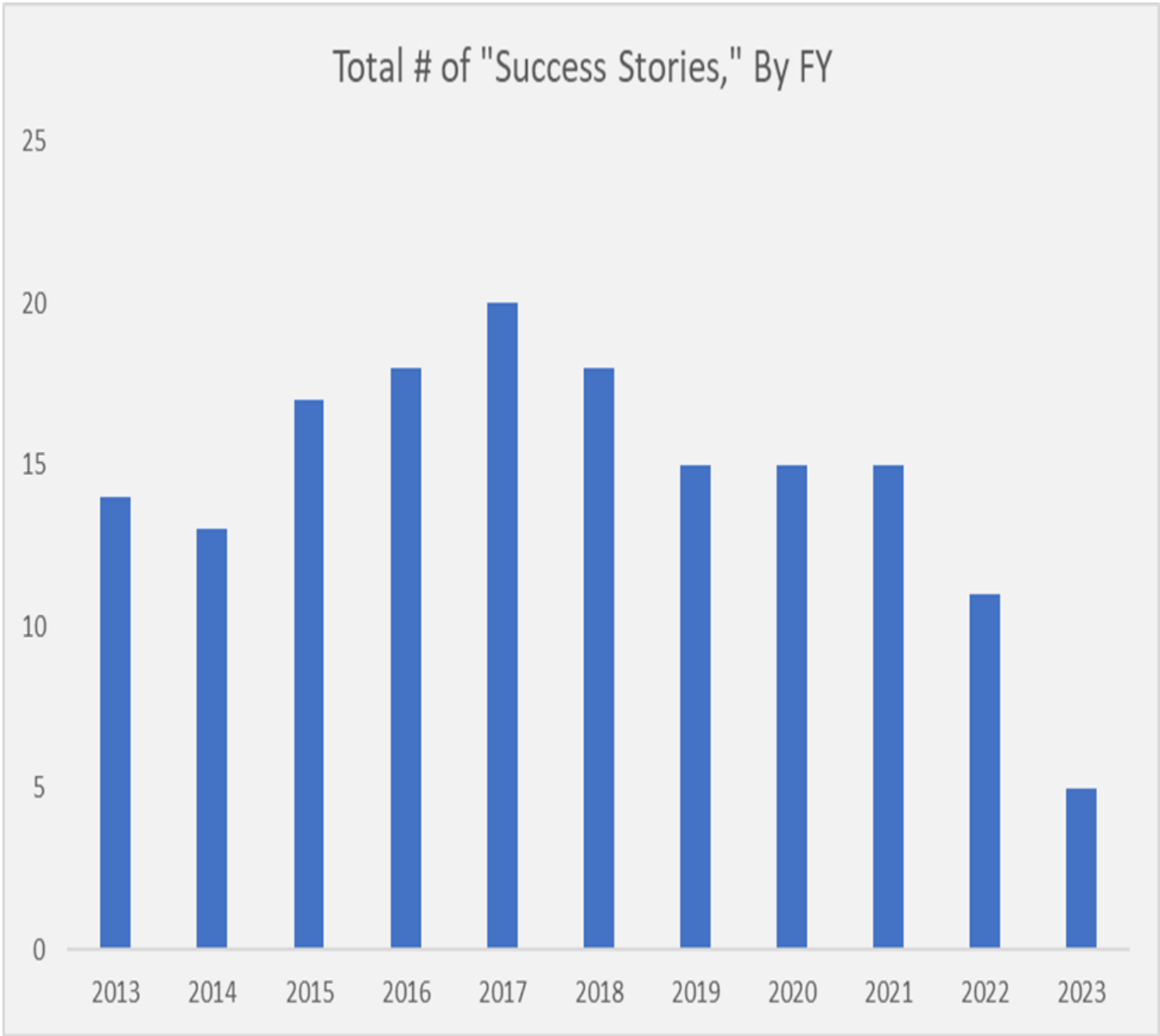


Quantified Annual Savings, By FY (\$ Million)



Moreover, given this latest report’s findings, there is a clear trend emerging that federal agencies under the Biden Administration do not seem to be prioritizing small business concerns in the rulemaking process. While the FY 2021 [report](#) claimed nearly \$3.3 billion in initial savings, the vast majority of that total (\$3.2 billion) was attributed to the Department of Labor’s (DOL) [rule](#) regarding “Occupational Exposure to COVID-19; Emergency Temporary Standard.” That rule, however, was intended to be “temporary” (see title) and ended up [expiring](#) a few months later. Removing that \$3.2 billion from FY 2021 report’s total leaves a mere \$77 million in savings. While FY 2021 (October 1, 2020 through September 30, 2021) includes time under both the Trump and Biden Administrations, only [one](#) rule – with merely \$600,000 in estimated small business savings – became final under the Biden Administration. This is not the only trend revealed by this report.

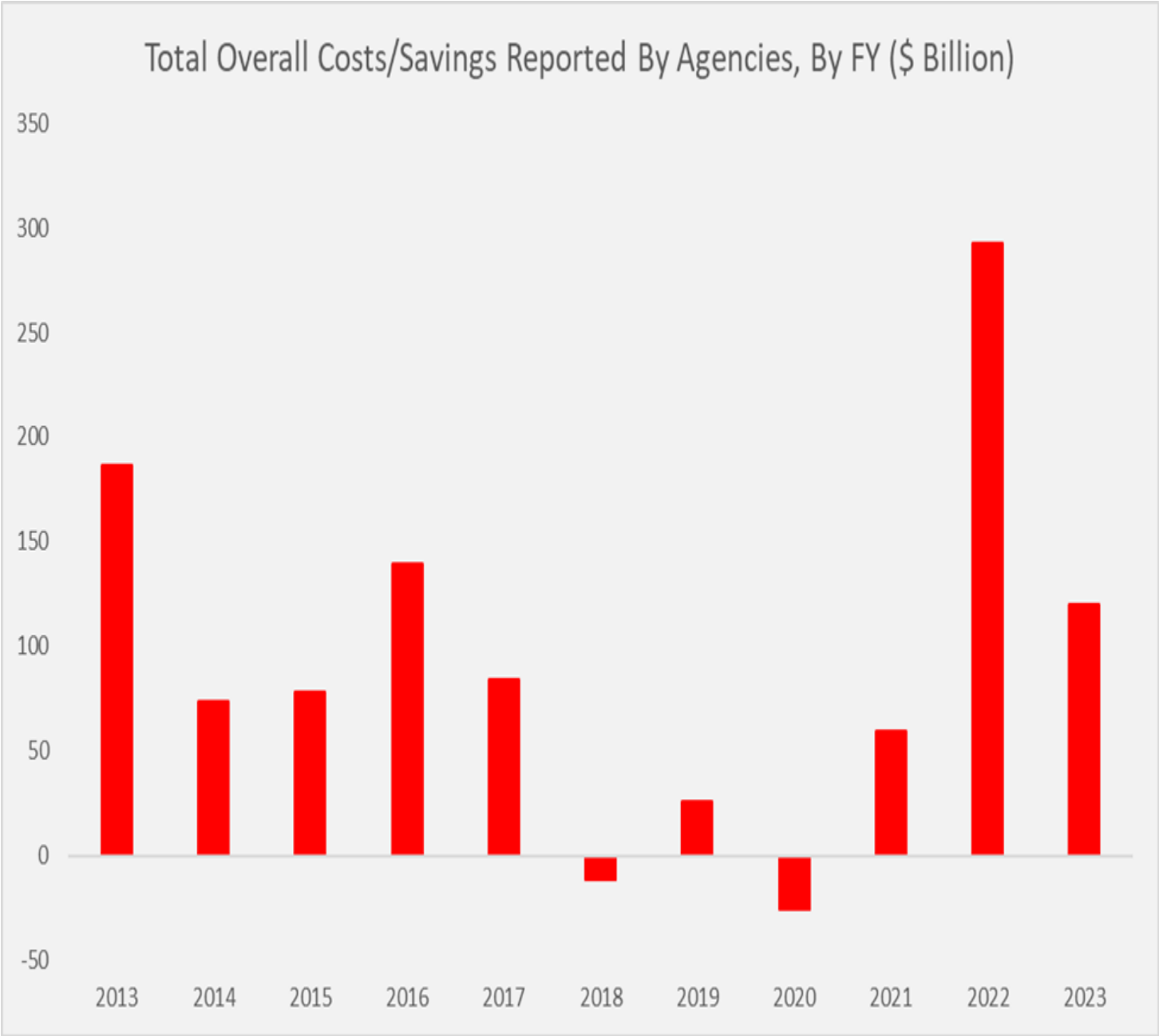
In these annual RFA Reports, Advocacy also discusses the rulemakings where it found that agencies made some kind of adjustment for small businesses but cannot quantify the exact impact such changes made. For this latest report, there was only [one](#) qualitative “success story” with the Environmental Protection Agency relaxing a particular permitting requirement under the Clean Water Act. The following chart shows the total sum of rules within each report that Advocacy highlighted as having *some* positive impact (either quantitatively or qualitatively) for small businesses.



The five total rulemakings included in this report mark a clear record low since FY 2013 and continues a downward trajectory that started with the FY 2021 report. For reference, the average number of “success stories” across the 10 reports preceding this one (FY 2013 through FY 2022) was 15.6.

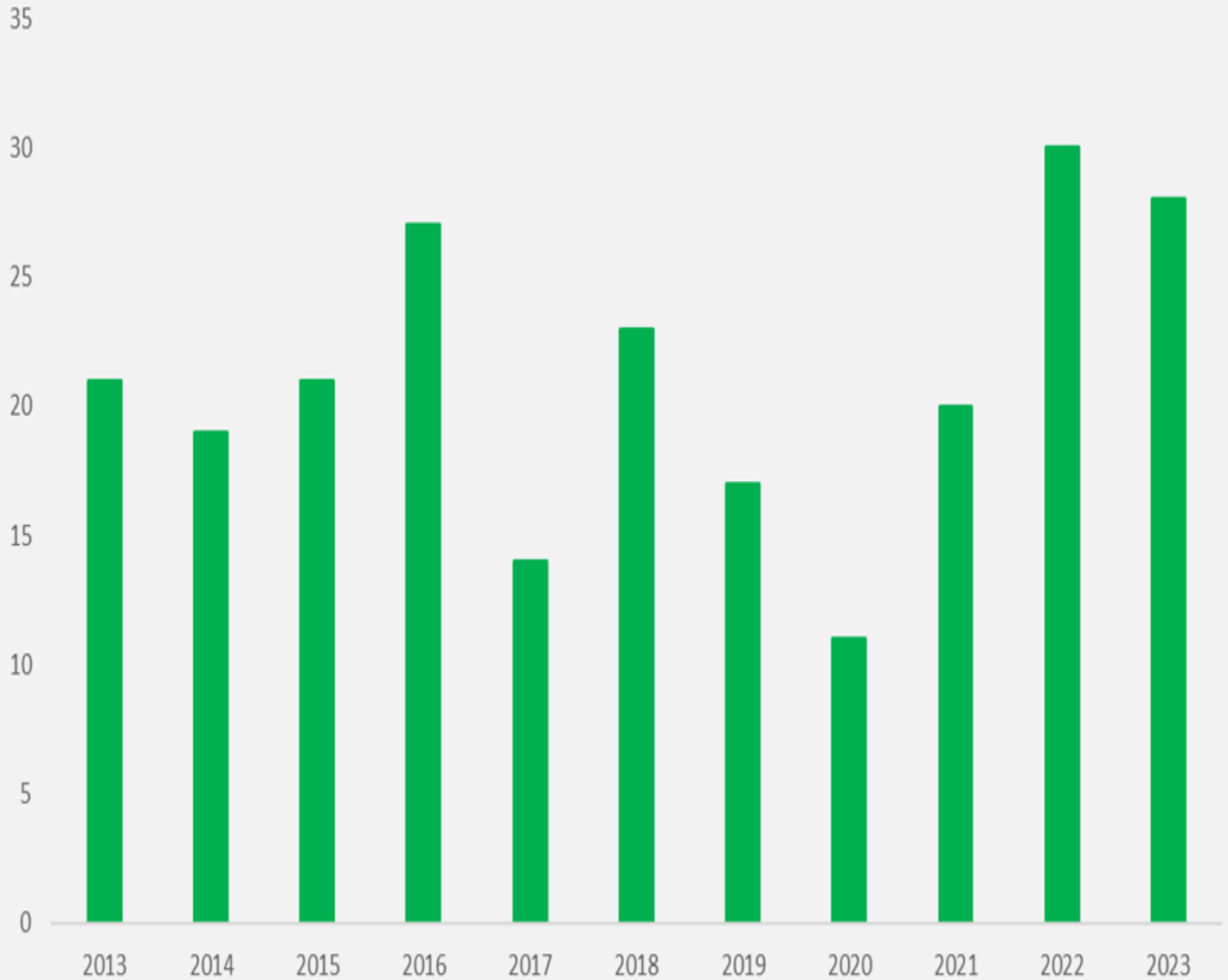
Still Not for Lack of Trying

As posited in AAF’s analysis of last year’s report, one possible explanation for these diminishing returns may be that there simply is not enough regulatory material from which to pull savings. A similar examination of the relevant data in this latest report largely confirms that that is not the case. As the following chart shows, while the total overall regulatory costs logged in FY 2023 did not exceed the record amount in FY 2021, it is still the fourth highest amount since FY 2013 at roughly \$120.3 billion. There are clearly plenty of new regulatory requirements to review and adjust.

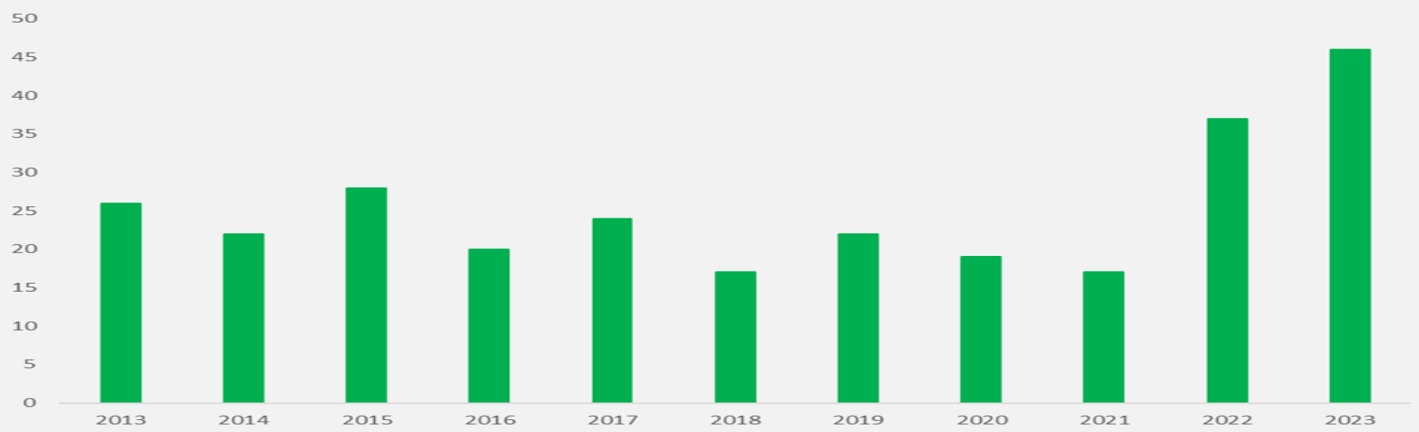


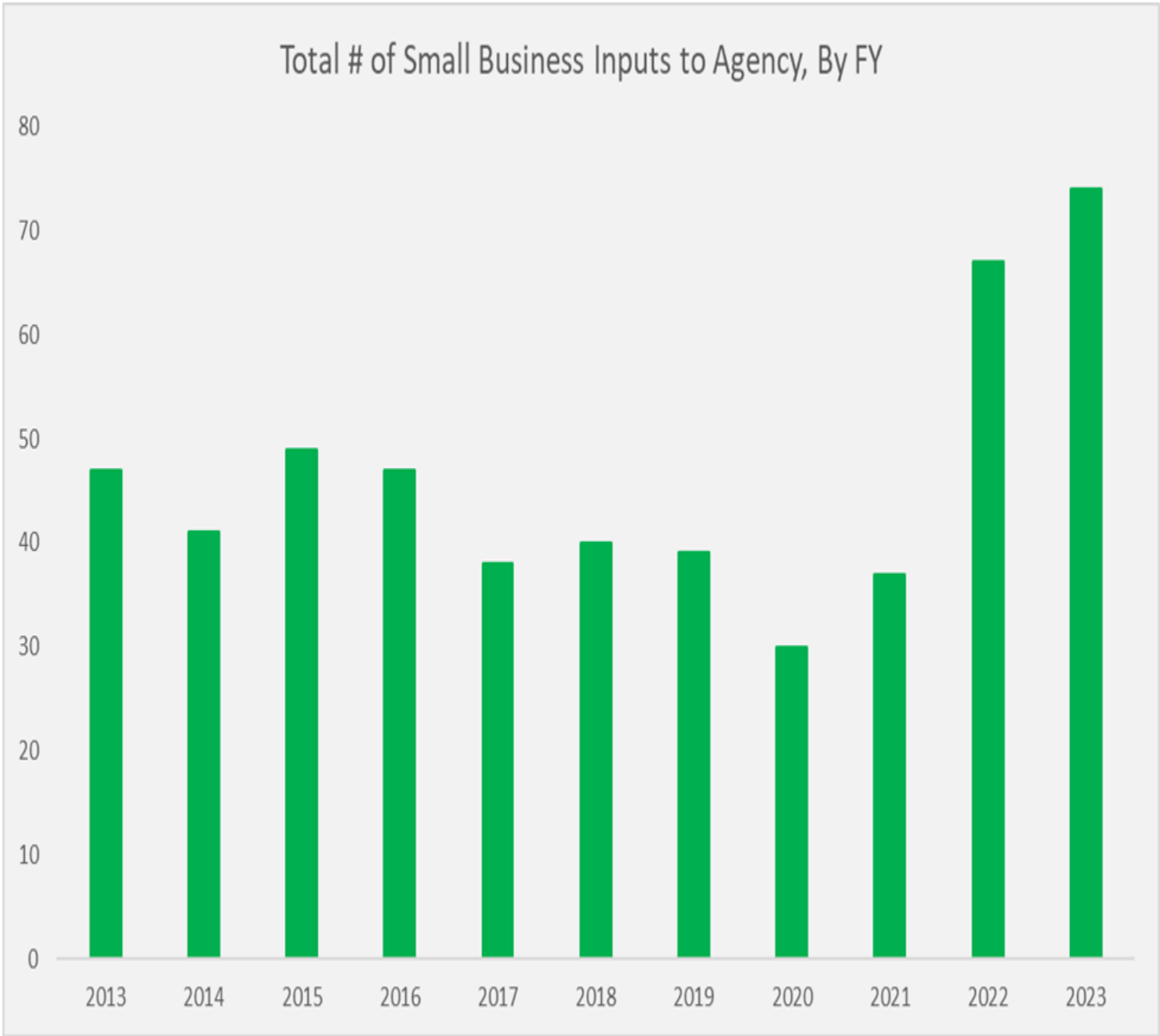
Furthermore, as the charts below illustrate, Advocacy continues to provide historically high levels of direct input – via either submitting comment letters or organizing “Regulatory Roundtables” where stakeholders and agencies directly engage on rulemaking issues. Despite this high level of activity on Advocacy’s part, it finds agencies continuing to produce historically meager levels of small business savings.

of "Regulatory Roundtables," By FY

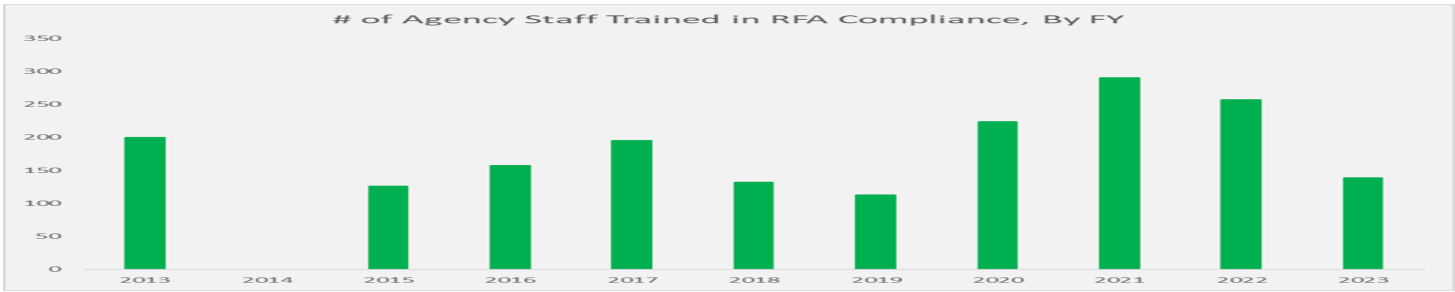


of Advocacy Comment Letters, By FY





The one area of Advocacy RFA work that did see a decline from the preceding year was the number of agency personnel for which Advocacy provided RFA Compliance Training. As the following chart shows, Advocacy trained only 139 agency staffers in FY 2023, a relatively middling total. It is worth noting, however, that this metric is likely the least meaningful in producing cost savings since it does not necessarily relate to the specific dynamics of any given rulemaking.



**Comparable data was not included in the FY 2014 report.*

IMPLICATIONS AND POTENTIAL SOLUTIONS

The main implication of this report is that evidence continues to mount that agencies under the Biden Administration, at best, are simply not prioritizing the small business considerations brought forward during the rulemaking process and, at worst, are actively disregarding such concerns. This Advocacy RFA Report comes shortly after the House Small Business Committee (HSBC) held a [hearing](#) on the matter and released its own [report](#) on agency compliance with RFA processes. That report's findings largely comport with the trends seen in these recent Advocacy RFA Reports.

As noted in the American Action Forum's analysis last year, the current administration's efforts to broaden and enhance the public engagement aspect of the rulemaking process under its "Modernizing Regulatory Review" program could help provide a starting point for a more robust consideration of small business concerns. Indeed, during the recent HSBC hearing, some highlighted how the Biden Administration was taking steps to further engage with the public to assuage concerns regarding this lack of small business savings. But greater agency-stakeholder *engagement* is all but meaningless if the agencies do not actually take that input into consideration.

The trends discussed above demonstrate that, despite high levels of engagement with Advocacy over multiple years, agencies are still producing historically low levels of small business regulatory savings. Policies seeking to address this issue will need to go beyond simply expanding how small businesses and other interested parties are able to submit their concerns. To more fully address this situation, reforms will need to give agencies greater direction in how to demonstrate that they are meaningfully incorporating stakeholder inputs into final rules and establishing consequences for agencies that do not properly take such actions.

CONCLUSION

Even as government reports on bureaucratic actions go, the annual Advocacy RFA Report is fairly obscure. Nevertheless, it provides a useful insight into how agencies are taking the specific concerns of small businesses into consideration during the regulatory process. This latest edition's findings establish that there is undoubtedly a series of ongoing trends in recent years – and more specifically, under the current administration – demonstrating that agencies are not properly accounting for such concerns in their final regulatory work. In particular, it is becoming increasingly clear that merely providing greater avenues for engagement with agencies is not enough; more fundamental reforms are needed that compel agencies to prove they've worked to meaningfully consider and address the issues.

[1] Per Advocacy: "Cost savings for a given rule are captured in the fiscal year in which the agency finalizes changes in the rule because of Advocacy's intervention. These are best estimates to illustrate reductions in regulatory costs to small businesses. Initial cost savings consist of capital or recurring costs foregone that may have been incurred in the rule's first year of implementation by small businesses. Recurring cost savings are listed where applicable as annual or annualized values as presented by the agency."