

Advocacy Letter Expresses Concern About Department of Homeland Security's "No-Match" Rule

On September 18, the Office of Advocacy wrote to the Department of Homeland Security (DHS) expressing concern over the agency's new rule, "Final Safe Harbor Procedures for Employers Who Receive a No-Match Letter" ("No-Match") rule. The rule requires employers who receive a letter from the Social Security Administration (SSA) indicating that an

employee's name and social security number in the SSA database do not match to take certain steps to resolve those discrepancies.

After DHS and its Bureau of Immigration and Customs Enforcement issued the final rule on August 15, the AFL-CIO and other labor groups filed a lawsuit against DHS in federal district court in Northern California. They claimed that the final rule would lead to the wrongful termination of workers because the SSA database is unreliable and was never intended to be used as an immigration enforcement tool. In response, the court issued a temporary restraining order directing DHS not to enforce the rule pending a court hearing on October 1.

Business groups including the San Francisco Chamber of

Commerce and the Golden Gate Restaurant Association intervened in the case, charging that DHS also failed to analyze the impact of the rule on small businesses in accordance with the Regulatory Flexibility Act (RFA). These small business groups then requested Advocacy assistance in support of their claim. Advocacy's letter to DHS offers to assist the agency in fulfilling its requirements under the RFA. The National Federation of Independent Business Legal Foundation has also filed an amicus brief in the case.

Federal regulations must undergo certain regulatory analyses before they are finalized, including an initial regulatory flexibility analysis (IRFA) under the RFA. An IRFA is required whenever a federal rule

Continued on page 3

In This Issue

Advocacy Letter Expresses Concern About Department of Homeland Security's "No-Match" Rule 1

Message from Region II

Puerto Rico's Periodic Rule Review Achieves Small Business and Public Health Goals 3

Regulatory News

r3 News—Best Practices Published 4

Proposed CMS Rule Affects Small Durable Medical Equipment Suppliers 2

SEC Proposal to Extend Regulation S-B Eligibility 2

Research Notes

Study Examines Linkages Between Gender and New Venture Performance 2



On September 12, Advocacy's Regulatory Flexibility Act training team conducted a multi-agency session, concluding the first round of a training effort begun in 2003. Advocacy has now offered training to 66 federal rulemaking entities.

Research Notes

Study Examines Linkages Between Gender and New Venture Performance

Gender may be linked to new venture entrepreneurial outcomes, according to the authors of a working paper released by the Office of Advocacy in September. The study empirically examines the influence demographic and psychographic variables have on new venture performance measures.

The authors find that when controlling for factors typically influencing entrepreneurial performance, gender does not affect new venture performance. However, differing expectations, reasons for starting a business, motivations, opportunities sought, and types of businesses started vary by gender; these differences result in differing outcomes.

In essence, men are not inherently better owners, they have different business goals.

“It’s not surprising that the data show entrepreneurs vary in their motivations and reasons for starting a business,” said Chad Moutray, Advocacy’s chief econo-

mist. “Small businesses and small business owners are unique, and that has important implications for policymakers as they debate issues affecting small business.”

Previous research has shown women-owned firms lagging male-owned firms on such business performance measures as average annual sales. However, a full understanding of the reasons for the differences has been lacking. The new working paper, *Are Male and Female Entrepreneurs Really That Different?*, analyzes a dataset of business startups in 1998 and 1999 to study the linkage between the gender of entrepreneurs and their firms’ development.

The report was co-authored by Erin Kepler and Scott Shane, professor of entrepreneurial studies at Case Western Reserve University, and was funded by the Office of Advocacy. The paper is online at www.sba.gov/advo/research/rs309tot.pdf.

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Regulatory News

Advocacy Comments on Small Business Impacts

Last month, the Office of Advocacy filed comments on proposals from the Centers for Medicare and Medicaid Services (CMS) and the Securities and Exchange Commission (SEC).

On September 13, Advocacy filed a comment letter with CMS concerning a proposed Medicare rule that will require, among other things, the suppliers of durable medical equipment to obtain a \$65,000 surety bond in order to participate in the Medicare program.

Advocacy’s letter can be found at www.sba.gov/advo/laws/comments/cms07_0913.html. A

fact sheet summarizing the letter is located at www.sba.gov/advo/laws/comments/factscms07_0913.pdf.

For more information, contact Assistant Chief Counsel Linwood Rayford at (202) 401-6889 or linwood.rayford@sba.gov.

In July, the SEC proposed to extend the simplified disclosure and reporting requirements under Regulation S-B to a broader range of smaller public companies. On September 11, Advocacy filed comments on the SEC proposal. Advocacy supported the extended eligibility but expressed concerns that this proposal would also eliminate the

scaled disclosure forms under Regulation S-B. Advocacy’s letter to the SEC may be accessed at www.sba.gov/advo/laws/comments and a fact sheet summarizing Advocacy’s letter is located at www.sba.gov/advo/laws/comments/factssec07_0911.pdf.

For more information, contact Assistant Chief Counsel Janis Reyes at janis.reyes@sba.gov or (202) 619-0312.

Message from Region II

Puerto Rico's Periodic Rule Review Achieves Small Business and Public Health Goals

by Christine Serrano Glassner, Region II Advocate

Puerto Rico's Regulatory Flexibility Act* requires agencies and departments to perform periodic reviews of existing regulations. Earlier this year, Puerto Rico's Department of Health conducted one such review at the request of small business owners and the Ice Manufacturing Association. The resulting rule change has been an improvement for small business owners and the island's public health.

Ice manufacturing is an important industry in Puerto Rico. Ice is an essential product for an island whose economy is driven in large part by tourism. In addition, Puerto Rico is prone to power outages, leaving businesses and residences to rely on bagged ice.

Puerto Rico's Rule 6090, "Reglamento General de Salud Ambiental," was meant to ensure that commercially produced ice is clean and uncontaminated. To ensure this, the rule requires bags that hold ice to be clear, allowing the entire bag to be easily inspected. The Department of Health interpreted the rule to mean that bags must be completely transparent, with no labeling whatsoever. In the course of inspecting ice plants, health inspectors would confiscate any bags printed with a company logo and issue fines for rule violations.

Business owners and the Ice Manufacturing Association met with Puerto Rico's Office of the Small Business Advocate/Ombudsman to discuss the situation and see if there was any hope for improvement. The representatives contended that a transparent bag with printing on one side still allowed a clear view of a bag's

entire contents. They also pointed out another issue of concern to the

"The Office of Advocacy's state model legislation initiative includes periodic review of existing regulation as one of the key elements of an effective regulatory flexibility law."

Department of Health: many ice manufacturers on the island were operating on the black market and not complying with any health or safety laws. Tests of ice at the point of sale had sometimes found illegally high levels of bacteria; a rule that prohibited identifying labeling actually made it more difficult for the Department of Health to ascertain the source of contaminated ice and stem public health concerns.

The Small Business Advocate submitted a formal request for review of the regulation and arranged for Department of Health and ice industry representatives to meet. After a thorough review and receipt of comments from business owners, the Department of Health agreed to modify the regulation to permit printing on one side of a transparent plastic bag, and it eliminated the associated fine. The result was a win for both the agency and small ice manufacturers. Businesses could legally place their logo on one side of the ice bag and still allow enough visible surface to ensure the cleanliness of the bag's contents.

The Office of Advocacy's state model legislation initiative includes periodic review of existing regulation as one of the key elements of an effective regulatory flexibility law. This example from Puerto Rico shows how regulatory review can be applied to ameliorate a burden on small business and advance public health goals at the same time. To learn more about the initiative, visit www.sba.gov/advo/laws/law_modeleg.html.

No-Match, from page 1

is expected to have a significant economic impact on a substantial number of small entities. However, DHS certified that the final "No-Match" rule would not have a significant impact on small business, a conclusion that Advocacy believes may have been improper because the rule would impose some legal obligations and costs on employers that DHS should have assessed.

A complete copy of Advocacy's letter to DHS is available at: www.sba.gov/advo/laws/comments.

For more information, please contact Assistant Chief Counsel Bruce Lundegren at (202) 205-6144 or bruce.lundegren@sba.gov.

*Law Number 454—"Ley de Flexibilidad Administrativa y Reglamentaria para el Pequeño Negocio"

r3 News—Best Practices Published

The Office of Advocacy's new small business Regulatory Review and Reform (r3) initiative addresses many of the issues raised in a recent GAO report, *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews*. The report spotlighted implementation of Section 610 of the Regulatory Flexibility Act (RFA), which mandates that agencies periodically examine their existing regulations to measure changing impacts on small business.

Advocacy has just published a best practices document for federal agencies on how to comply with Section 610. The document provides legal background, agency examples, and information to facilitate the review of existing regulations. Advocacy has also started to cover Section 610 compliance issues in the half-day RFA training sessions Advocacy offers to other federal agencies. This month, Advocacy will host a public roundtable to call for nominations of rules in need of reform. The rules selected as candidates for reform will be announced in Advocacy's annual report on the Regulatory Flexibility Act, to be released in early 2008.

Advocacy's r3 initiative is designed to identify and address existing federal regulations that should be revised because they are ineffective, duplicative, or out of date.

The best practices document can be found online at www.sba.gov/advo/r3/r3_section610.pdf.

For information on the initiative, visit the r3 home page, www.sba.gov/advo/r3.



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