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## Small Businesses Likely to See Big Benefits from RFA Training

Executive Order 13272, signed by President Bush in August 2002, requires for the first time that the Office of Advocacy train federal regulatory staff in how to comply with the Regulatory Flexibility Act (RFA). The RFA, together with the Small Business Regulatory Enforcement Fairness Act of 1996 and E.O. 13272, provides the legal framework for agencies to ensure that small business concerns are considered during the rulemaking process.

After a series of pilot training sessions with three federal agencies, the Office of Advocacy con-

ducted its first official training session at the Bureau of Alcohol, Tobacco, Firearms, and Explosives on Oct. 21 led by Advocacy Senior Counsel Claudia Rayford Rodgers.

In advance of the training, each agency receives a "drop" of written materials—the RFA Guide (officially, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*) and each registrant is emailed pre-classroom training materials and exercise scenarios.

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In October, Chief Counsel Thomas M. Sullivan and Oklahoma Lt. Gov. Mary Fallin addressed the Oklahoma State Chamber's Small Business Forum. Pictured outside the lieutenant governor's office are (from left) Eddie Howell, Oklahoma State Chamber; Reg Fair Board Member Joe Shepard; Thomas Sullivan; Lt. Gov. Mary Fallin; Region 6 Advocate Till Phillips; Oklahoma District Director Dottie Overal; and L. Matt Robison, Oklahoma State Chamber. (For more on regional advocacy, see page 3.)

## RFA Training, from page 1

Upon arrival on the day of the training, participants receive a Participant Guide. In a three-hour session, they first learn the importance of small business involvement in the rulemaking process, then take a brisk jog through the entire four-step RFA process:

- 1) determining whether the RFA applies;
- 2) conducting a threshold analysis;
- 3) preparing an initial regulatory flexibility analysis; and
- 4) preparing the final regulatory flexibility analysis.

For each of the three last stages, they work through a sample exercise in small group sessions.

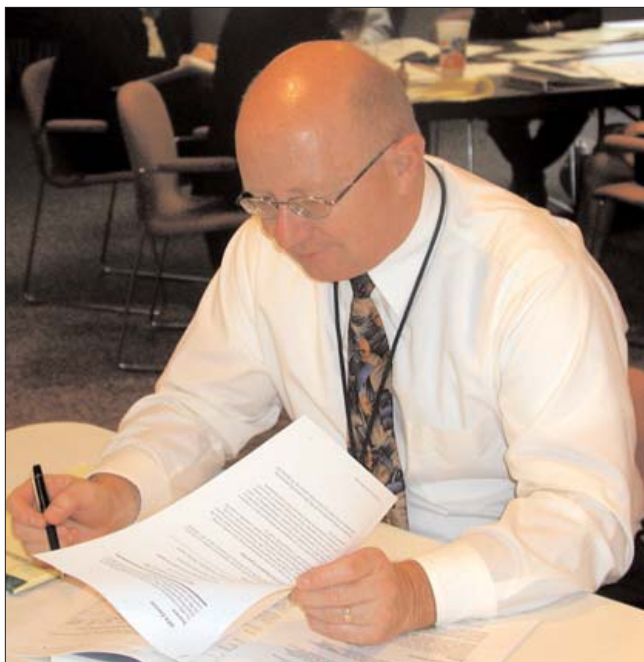
Early indications are that the training has had beneficial effects in the agencies. In addition to being receptive students, participants have provided useful feedback on the training itself. A few have been unexpectedly candid; when asked if the training was useful, one said,

“Too useful! Now we have to redo one of our regulations that just went over to the front office!”

Another wrote: “I just wanted to thank you for the training today. Everyone from the counsel’s office found it extremely helpful. You provided us with background—and lots of materials to use when we actually have to apply the lessons!”

At the ATF, points out Tom Hogue of the Firearms Program Division, the challenge is often to be able to get emergency regulations out as quickly as they are needed and still take small business concerns into consideration. “After all,” he says, “it’s important to us too, not to negatively affect the small manufacturers and retailers, the very people who are the first line of defense in safety concerns about guns and explosives.”

Sessions at additional agencies are being scheduled for 2003 and 2004. For more information, contact Senior Counsel Claudia Rayford Rodgers at (202) 205-6804 or [claudia.rayford@sba.gov](mailto:claudia.rayford@sba.gov).



Gary Bangs, technical advisor in the Firearms Programs Division of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, reviews a sample case during the RFA training session.



Rebekah Holman, attorney in the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and Robert Hinchman, senior counsel in the Department of Justice Office of Legal Policy, discuss the merits of various RFA approaches at the ATF training October 21.

## The Small Business Advocate

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## Message from the Chief Counsel

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### Regional Advocates: Helping Make Your Issues Advocacy's Issues

by Thomas M. Sullivan, Chief Counsel for Advocacy

Advocacy's team isn't limited to our headquarters staff. Our team of regional advocates represents the office across the country. Over the past year, they have been responsible for amazing things.

Thanks to their leadership in the regions, Advocacy's state model legislation initiative has paid great dividends. The initiative is based on the federal Regulatory Flexibility Act (RFA) which requires federal agencies to consider the impact of their regulations on small businesses prior to making them permanent. The model state RFA initiative has produced breakthroughs in four states: Colorado, Massachusetts, Missouri, and North Dakota. These states have either enacted laws establishing regulatory flexibility statutes or their governors have signed executive orders to implement elements of regulatory flexibility. Twelve states have introduced RFA measures that are making their way through the legislative process this year.

The regional advocates have also gotten stakeholder groups into the RFA spirit. Over the past year, the U.S. Chamber of Commerce and the American Legislative Exchange Council (ALEC) endorsed Advocacy's model legislation initiative. For ALEC, it was a rare endorsement of model legislation originating in a federal agency. Groups like the National Small Business Association, the National Federation of Independent Business, and Women Impacting Public Policy continue to be proactive at the state level.

This fall, I have a special opportunity to meet and reach out to over 400 state government affairs staff by addressing U.S. Chamber of Commerce regional conferences in

five cities around the country: Atlanta, Boston, Chicago, San Antonio, and San Francisco. The

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**Regional advocates serve in their regions as the chief counsel's "eyes and ears on Main Street," listening to small business issues and concerns.**

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aim of these conferences is to determine state chambers' legislative priorities for 2004. My office and I are pleased to join forces with the Chamber of Commerce to aggressively promote regulatory flexibility in the states.

Regional advocates serve in their regions as the chief counsel's "eyes and ears on Main Street," listening to small business issues and concerns. There are many ways they are able to get this information; however, they're also available to address small business owners, civic groups, trade association meetings, student classrooms—anywhere where small businesses and their issues can be found. They're eager to come to you to hear your concerns about making state and federal government regulations friendlier to small businesses all across America. I'm grateful for their dedication to small business, because they are the ones who bring small business issues to me. They are the ones making sure that your issues are Advocacy's issues.

For more information on regional advocacy, visit Advocacy's website at [www.sba.gov/advo/region.html](http://www.sba.gov/advo/region.html) or see the box on this page.

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## Regulatory News

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### Labor Department's Overtime Pay Proposal Held Up in Congress

Recently, the Office of Advocacy wrote a letter to Congress asking it to allow the U.S. Department of Labor to update and clarify the existing rule on overtime pay. Small businesses need a rule that makes it easier to determine which employees are overtime-eligible and which are not.

The Fair Labor Standards Act (FLSA) exempts three types of employees from the requirement that employees be paid for hours beyond 40 hours per week. The FLSA states that “executive, administrative, and professional” employees do not need to be paid overtime. However, simply paying an employee on a salary basis does not mean that an employee is exempt from the FLSA’s overtime pay requirement as an “executive, administrative, or professional employee.” The question remains, who is an “executive, administrative, [or] professional” employee?

Congress left it to the Department of Labor to explain exactly who fits into the three employment categories exempt from the overtime pay requirement.

The Department of Labor’s current rules tell employers that an employee is exempt from the overtime requirement if the employee is paid a certain minimum salary (the “salary test”) and performs specific duties (the “duties test”). The problem, however, is that the salary test hasn’t been adjusted for inflation in more than 20 years and the duties test is long and confusing. When employees or ex-employees sue for back overtime pay, they usually claim that their duties did not satisfy the complex duties test, and a court will look at a small business’s interpretation of the law long after the determination was made. The minimum salary cutoff doesn’t help much, considering that the salary test currently classifies an assistant manager making less than \$10,000 as an executive. Courts are understandably not willing to give much weight to the salary test in determining eligibility. Since the duties test is difficult for the average small employer to make heads or tails of, they wind up arguing that their interpretation of a vague law is better than a plaintiff’s attorney’s.

This outcome doesn’t serve either employer or employee well.

This year, the Department of Labor issued a proposed rule to update and clarify the rules governing overtime decisions. The new salary test would make employees paid \$22,100 or more exempt from overtime pay, provided the employees satisfied a new duties test that is designed to reduce some of the current confusion. According to the Department of Labor’s estimates, 1.3 million employees who currently do not receive overtime would be paid overtime for the first time. The Office of Advocacy was initially concerned about the rule’s potential cost to small businesses (\$502 to \$836 million), but small businesses and their representatives advised the Office of Advocacy that updating and clarifying the overtime rule was in the long-term interest of small business. The Office of Advocacy believes that the small business community deserves credit for its willingness to incur additional costs to update and clarify the Department of Labor’s overtime rules.

However, Senator Tom Harkin recently sponsored an amendment to the Department of Labor’s appropriations bill that would bar the agency from updating the rules on overtime pay. The House and Senate must now work out a final Labor appropriations bill in a conference committee.

Small businesses want an overtime rule that makes it easy to determine which employees are overtime-eligible and which are not. On behalf of small businesses, the Office of Advocacy is urging the conference committee to reject

*Continued on page 5*

### Agencies Encouraged to Link to Federal Regulatory Alerts Page

Dozens of state agencies, small business research and advocacy groups, and industry trade associations have inserted links on their websites to Advocacy’s Regulatory Alerts page. The page is located at [http://www.sba.gov/advo/laws/law\\_regalerts.html](http://www.sba.gov/advo/laws/law_regalerts.html). It contains summaries of selected pending rule proposals that Advocacy staff have identified as possibly having an impact on small business. The format is easy for small businesses to scan on a regular basis. Each item contains a link to the *Federal Register* announcement of the notice of proposed rulemaking and directs users to the proper site to comment on the proposals. Please help us get the word out about this useful tool by creating a link to it on your organization’s webpage. The code needed to create your own link is now contained at the bottom of the Regulatory Alerts page.

## OSHA Panels: Two Down, Two To Go

The Small Business Regulatory Enforcement Fairness Act (SBREFA) requires the Occupational Safety and Health Administration (OSHA) to convene small business panels on certain draft proposed regulations. The panels allow OSHA officials to hear directly from small businesses while they are in the process of drafting rule proposals. OSHA has recently convened two small business panels, and two more are planned in coming months.

**Construction of Electric Power Generation, Transmission and Distribution Lines.** This panel convened on May 1 and concluded on June 27 with the presentation of the final report to Assistant Secretary for Occupational Safety and Health John Henshaw.

Although the small entity representatives (from construction companies, small utility companies, tree trimming companies, and municipalities) acknowledged the need for an updated standard, the small employers and panel members were critical of the draft proposed regulation. The panel report pointed to several instances where OSHA had underestimated the costs of the draft rule and where new practices

required by the rule would actually create hazards. With the panel's final report as part of the record, it is expected that any proposed rule-making will reflect substantive changes to accommodate the views of small entities.

**Confined Spaces in Construction.** OSHA convened a panel to review a draft proposed rule on hazardous enclosed spaces and confined spaces in construction. The panel met Oct. 9 and 10; its final report is due in late November.

**Occupational Exposure to Crystalline Silica Dust.** OSHA has convened a panel on a draft proposal on occupational exposure to silica. Many industries would be affected by this, since silica is the primary component of sand, and the rule affects any industry in which sand may be pulverized or made airborne. The industries

affected include sandblasting, construction, bricklaying, jewelry making, and foundries. OSHA is scheduled to hear from industry representatives on Nov. 10-12. The panel report on the rule is due in December.

**Occupational Exposure to Hexavalent Chromium.** This panel process is set to start in January 2004. Thirty-two industries are affected by this panel. They include any industries that use pigments, spray paints, and coatings; and any industries that plate or weld chromium-containing metals, such as stainless steel. The OSHA webpage for hexavalent chromium is available at [www.osha.gov/SLTC/hexavalentchromium/index.html](http://www.osha.gov/SLTC/hexavalentchromium/index.html).

Advocacy's assistant chief counsel for occupational safety is Charley Maresca, who can be reached at (202) 205-6978 or [charles.maresca@sba.gov](mailto:charles.maresca@sba.gov).

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### Overtime Pay, from page 4

any measures that would prohibit or restrict the Department of Labor's current efforts to update and simplify rules on overtime pay.

### For More Information

For further information on this issue, please contact assistant chief counsel Michael See at (202) 619-0312 or by email at [michael.see@sba.gov](mailto:michael.see@sba.gov).



On Oct. 20, Assistant Chief Counsel Charley Maresca met with Tom Fisher (left), deputy CEO of Australia's National Occupational Health and Safety Commission, to discuss the role of Advocacy and small business in OSHA rulemaking. OSHA has convened three SBREFA panels involving occupational safety regulations in 2003, and a fourth is set to commence in 2004.

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## Tax News

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### IRS Exempts Certain Vans and Light Trucks from Depreciation Limits

On Oct. 6, 2003, the Office of Advocacy filed comments with the Internal Revenue Service (IRS) on new temporary and proposed regulations that exclude vans and trucks that are specially modified or manufactured for use in a business or trade from the depreciation limits on passenger vehicles used in business or trade. The comments can be found at [www.sba.gov/advo/laws/comments](http://www.sba.gov/advo/laws/comments). Advocacy applauds the proposal and urges the IRS to expand it to allow full depreciation of vehicles used predominantly for business purposes.

When Congress placed limits on depreciation of passenger vehicles used in business or trade, it authorized the IRS to issue regulations to exclude vans and light trucks from the cap. Small businesses have long supported regulations that would exclude vans and light trucks from these limits, allowing full depreciation of vans and light trucks required in business or trade.

On July 7, 2003, the IRS issued an immediately effective temporary regulation providing a limited

exclusion for vans and light trucks under 6,000 pounds that are specially designed or modified to the extent that it is unlikely they would be used for personal use. Small business taxpayers are already taking advantage of the exception and purchasing specially manufactured and modified vans and light trucks needed in business or trade.

The IRS also issued a notice of proposed rulemaking by cross reference to the temporary regulations. The IRS requested comment on the scope of the exclusion. In its comment letter, Advocacy commended the IRS for its outreach to affected small entities and urged the IRS to consider expanding the exception with a use test in lieu of the requirement that the vans and trucks be specially modified or manufactured for a special business purpose.

Advocacy urged the IRS to perform a small business analysis and conduct further outreach to determine alternative approaches to expand the exception to unmodified vans and light trucks required in

business and trade, where the business could substantiate the valid business need and that use of the vehicle for personal purposes was *de minimis*.

Advocacy's letter also noted that on Oct. 2, 2003, the IRS issued a related revenue procedure (RP-2003-75) that raised the depreciable amount on unmodified trucks and vans used in business to \$23,500 when combined with the 50 percent bonus depreciation enacted in the Jobs and Growth Reconciliation Act of 2003. While this is an improvement over the current cap, Advocacy urged expansion of the exception to enable taxpayers to fully depreciate unmodified vans and light trucks required for use in a business or trade.

#### For More Information

For more information, visit the Office of Advocacy website at [www.sba.gov/advo](http://www.sba.gov/advo) or contact Russell Orban at (202) 205-6946 or [russell.orban@sba.gov](mailto:russell.orban@sba.gov).

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### IRS Issues Guidance on Additional Bonus Depreciation Allowance

The Internal Revenue Service has issued temporary regulations providing detailed rules on the additional first-year, or "bonus," depreciation allowance.

As a result of recent amendments to the Internal Revenue Code, taxpayers may deduct an additional 30 or 50 percent first-year depreciation allowance for certain depreciable property. This depreciation allowance is in addition to the amount of depreciation otherwise allowable in the first year.

In general, the regulations provide the requirements that must be

met for depreciable property to qualify for the additional first-year depreciation deduction. Further, the regulations instruct taxpayers in how to calculate the additional first-year depreciation deduction and the amount of depreciation otherwise allowable for the property.

The regulations are effective for property that is acquired by a taxpayer after Sept. 10, 2001 (for purposes of the additional 30 percent first-year depreciation allowance), or acquired after May 5, 2003 (for purposes of the additional 50-percent first-year depreciation

allowance), and placed in service before Jan. 1, 2005 (or, in the case of certain property, placed in service before Jan. 1, 2006). The regulations are also effective for New York Liberty Zone property that is acquired by a taxpayer after Sept. 10, 2001, and placed in service before Jan. 1, 2007 (or, in the case of certain real property, placed in service before Jan. 1, 2010). The regulations, TD 9091, can be found at [www.irs.gov/pub/irs-regs/td9091.pdf](http://www.irs.gov/pub/irs-regs/td9091.pdf).



## Research Notes

### Business Success Rates Boosted by Prior Work Experience in Family-Owned Businesses

by Kathryn Tobias, Senior Editor

On Oct. 15, Dr. Robert Fairlie presented to Office of Advocacy employees a paper he is cowriting with Dr. Alicia Robb, a former Advocacy staffer. Dr. Fairlie is a visiting professor at Yale University on leave from the University of California at Santa Cruz.

Children of business owners are two to three times more likely than others to become business owners themselves—not a surprising finding for most people familiar with small businesses. But how does this intergenerational connection come about and what does having a relative in small business mean for the new small business owner?

In a recent study of self-employment in families, researchers Robert Fairlie and Alicia Robb analyzed data from the Census Bureau's 1992 and 1996 Characteristics of Business Owners Survey (CBO) to learn the reasons for the prevalence of small business ownership and success among family members. They hypothesized that the causes of these intergenerational links may be related to any of several factors:

- The acquisition of general business managerial experience in family-owned businesses (general business human capital);
- The acquisition of experience specific to the type of industry or firm started by the owner (specific business human capital);
- The inheritance of a business; and/or
- A correlation among family members in preferences for entrepreneurial activities.

The study also estimated the effects on small business outcomes (closure, sales, and profits) of having a self-employed family mem-



Dr. Robert Fairlie (Photo: Jennifer McNulty)

ber, of prior work experience in a family-owned business, and of prior work experience in a similar, but not family-owned business.

The study, *Families, Human Capital, and Small Business: Evidence from the Characteristics of Business Owners Survey*, found that the experience—or “human capital”—a business owner acquires while working in the family business is an important factor in the owner's subsequent business success. Simply having a relative who was a business owner is not enough—it's the general and specific kinds of skills gained working in the family-owned business that contribute most to higher sales and profits and lower closure rates.

The study also found that the transmission of actual business skills was more likely to drive the

relationship between parents' and children's self-employment than a taste for the self-employed lifestyle.

Inheriting a business was not the key factor leading to business ownership and success among family members. Previous research from the National Federation of Independent Business (NFIB) found that 14.2 percent of business owners inherited their businesses; however, the businesses in the NFIB survey were much larger than the typical business in the CBO, which is a nationally representative sample of 90 percent of businesses in the United States. Just 1.6 percent of all small businesses in the CBO are inherited, an indication that the role of business inheritance in these family links is limited.

The strongest finding is that previous experience in a family member's business is an important factor in the startup and success of businesses started by children and family members of business owners. Among the policy implications, the researchers suggest, is that efforts to provide mentoring, internships, or apprenticeships to disadvantaged business owners may help to create new and successful businesses by reducing historical inequities in business ownership patterns.

The current draft of this work in progress is available at <http://econ.ucsc.edu/faculty/fairlie/papers>.

#### Save the Date: March 26, 2004 Entrepreneurship in the 21st Century

**Please mark your calendars.** March 26, 2004, is the date of Entrepreneurship in the 21st Century, a forward-looking conference on small business cosponsored by the Office of Advocacy and the Ewing Marion Kauffman Foundation. More information will be published in future issues of the *Small Business Advocate*.

# Small Business: Your issues are our issues at the SBA Office of Advocacy.

Access Advocacy Listservs for the latest regulatory alerts and small business statistics. Email notices will provide a hotlink to the new material, so your in-box won't fill up with large documents. At <http://web.sba.gov/list>, check:

- Advocacy Communications
- Advocacy Newsletter
- Advocacy Press
- Advocacy Research



*A Voice for Small Business*

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