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State Legislator Organization Endorses Small Business Friendly Regulation

The nation's largest bipartisan membership association of state legislators, the American Legislative Exchange Council (ALEC), recently endorsed Office of Advocacy state model legislation promoting small business friendly policies. The vote in favor of the legislation marks a rare endorsement by ALEC of state model legislation proposed by a federal agency.

"Creating a healthy business environment is the fundamental purpose of the model bill," said Duane Parde, executive director of the American Legislative Exchange Council. "Small businesses account for a majority of today's work force and relieving the regulatory burden of businesses will stimulate job creation, innovation, and the growth and success of small businesses," he said.

"We're pleased with the ALEC endorsement," said Thomas M. Sullivan, Chief Counsel for Advocacy. "It means that the model legislation has strong grassroots support and that small business owners across the country can look forward to the legislation being introduced in their states. The backing of ALEC adds to the model legislation victories in the North Dakota and Colorado legislatures. It's good to see that state policymakers are realizing that piling on more and more regulations, without considering their impact on small business, destroys jobs and economic growth for their constituents," he said.

The legislation, modeled after the federal Regulatory Flexibility Act (RFA), requires state agencies

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The 2003 Advocacy and Special Award winners were honored at a Congressional luncheon during the National Entrepreneurial Conference and Expo. See pages 4 and 5 for additional photos.

Frequency of Small Business Failure Reassessed by Advocacy Economist

Businesses open. Businesses close. In between, good and bad things happen. To create arbitrary rules to define a successful length of time in business or a bar needed to reach for growth would not accurately depict entrepreneurship.

Businesses differ, owners differ, and reasons for closing a business are often unrelated to the status of the business at closure. A business may cease to exist because an owner retired or completed a contract. The bottom line: defining business success or failure is a tricky subject that calls for careful analysis.

Advocacy economist Brian Headd recently tackled the subject of business outcomes in an article titled "Redefining Business Success." The article used a unique U.S. Census Bureau database on owners (the Characteristics of Business Owners) to compare businesses that had survived many years to businesses that had closed, but whose owners felt that the business was successful at closure.

In a finding similar to previous research results, businesses with strong resources—such as financing and employees—tended to remain open longer. But factors that led to a short existence were often characteristics of businesses that closed successfully—such as having no start-up capital or having a relatively young owner. Taken together, few factors in businesses could be shown to lead to true failure, a short existence, or the closing of an unsuccessful business.

Equally important, the article challenged the commonly held belief that failure is a very likely outcome for a new business. The research found that about half of new employer firms survive beyond four years and about a third of closed businesses were successful

at closure. These are very significant findings.

The exercise showed that the practice of using closure as a proxy for failure can lead to distorted results. An extensive U.S. Census database—with 12,185 data points on business starts and 3,009 data points on closed businesses—enabled such an in-depth study to be conducted.

Headd also adds, "With new owners increasingly developing an exit strategy as part of their business plan, survival rates will become increasingly untrustworthy indicators of the status of entrepreneurship."

For More Information

Brian Headd's article, "Redefining Business Success: Distinguishing Between Closure and Failure," has been published in the August 2003 edition of *Small Business Economics*. This study was originally a Census Bureau working paper (see <http://148.129.75.160/paper.php?paper=101614>).

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to consider their impact on small business before imposing regulatory mandates. By listening to small business, state agencies can ensure that small business resources that would have been spent on overly burdensome new regulations are instead available for hiring new employees and making new investments. At the same time, agencies still meet their regulatory goals such as higher environmental quality, greater travel safety, better workplace conditions, and increased

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Currently states offer a patchwork of laws that protect small business owners and their employees from excessive regulatory mandates. Some states offer protections similar to the RFA and enforcement mechanisms that mirror the role of the Office of Advocacy. Other states offer little or no protection from the one-size-fits-all regulatory mentality.

Message from the Chief Counsel

Tearing Down Regulatory Barriers: Has EO 13272 Made a Difference?

by Thomas M. Sullivan, Chief Counsel, Office of Advocacy

In his Small Business Agenda of March 2002, President Bush announced the goal of “tearing down the regulatory barriers to job creation for small businesses and giving small business owners a voice in the complex and confusing federal regulatory process.” The Regulatory Flexibility Act (RFA), passed by Congress and signed into law in 1980, was the first effort to address the small business regulatory burden, but agency compliance with RFA requirements has been spotty over the years.

The President sought to strengthen the Office of Advocacy’s effectiveness by issuing an executive order that would direct agencies to work closely with us in considering the impact of their regulations on small entities. Executive Order 13272, issued Aug. 13, 2002, placed a number of requirements on federal agencies and directed Advocacy to report to the Office of Management and Budget annually on agency compliance with the order.

Last month, we released our first report, titled *Agency Compliance with EO 13272: A Report to the Office of Management and Budget*.

How are the agencies doing?

I’m happy to report that some agencies have responded to EO 13272 by soliciting Advocacy’s input on rules during the development stage. This crucial early involvement enables us to identify potential RFA compliance problems early and to address them with the agency more thoroughly.

What about the specific requirements of the executive order?

The EO first requires federal regulatory agencies to establish written procedures describing how they will measure the impact of their regulatory proposals on small

Executive Order 13272 directed Advocacy to report to the Office of Management and Budget annually on agency compliance with the order.

entities, then to vet those policies with Advocacy before publishing them. Nearly all cabinet-level departments submitted a written plan to us for review. While some plans were more comprehensive than others, we were generally pleased with the cabinet-level departments’ response to this section. We were less satisfied with the performance of independent agencies: of the 75 independent regulatory agencies, 16 responded to the requirements of the EO. Eight provided written procedures to Advocacy, six claimed not to regulate small entities, and two said they were exempt from the executive order.

Second, the EO requires agencies to notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the RFA. As part of our outreach to agencies, we created an email notification system, notify.advocacy@sba.gov, to make it easier for agencies to comply electronically. Most agencies have not yet met this requirement.

Third, agencies must give every appropriate consideration to Advocacy’s comments on draft rules. In reporting agency compliance with this requirement, we note that most rules on which we have commented have not been finalized during the past year, so most agencies have not yet had an opportunity to comply.

For our part, we also have responsibilities under EO 13272.

We were required to notify agencies of the RFA’s basic requirements by Nov. 13, 2002, and we did so, posting an RFA compliance guide on our website and asking for comments. With the benefit of input, we revised and issued the guide in final form last May.

We are also responsible for training agencies in the RFA’s requirements. Last June, we awarded a contract to Gillespie Associates to develop a training curriculum based on our RFA guide. The module was tested with three agencies, and each pilot training session provided a valuable occasion for input and discussion. The governmentwide rollout of the training is being scheduled and will continue into 2004. Training the entire federal government is a challenge for us, given limited resources, but we are committed to helping agencies take ownership of their responsibilities under the EO and the RFA.

The test of compliance with EO 13272 is whether an agency gives proper consideration to regulatory impacts on small entities and makes changes to reduce those impacts. We hope to support that objective through early involvement in rule-makings and submission of public comments on proposed rules.

And by the way, small businesses also have a role to play. To help give small businesses a direct voice in the process, we’ve developed a new “Regulatory Alerts” service on our website to provide early notification of major regulatory initiatives. To view the Regulatory Alerts page, as well as our first report on EO 13272, visit our website at www.sba.gov/advo. We’re looking for the help of small businesses and trade associations in determining

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Highlights of the 2003 Small Business Week Advocacy Luncheon



Minority Small Business Advocate of the Year Stephen Mee.



2003 Small Business Journalist of the Year Jeff Feingold, editor of the New Hampshire Business Review, (left) and Jerry Spumberg.



Women in Business Advocate Diane L. Browning with Senator Olympia J. Snowe, Chairman of the Senate Committee on Small Business and Entrepreneurship.



J.C. Watts, a small business owner and former member of Congress, talked about the importance of small business in his own history.



Small Business Research Advocate of the Year Robert H. Brockhaus and his wife, Dr. Joyce Brockhaus.



Chief Counsel Tom Sullivan presents the Small Exporter of the Year award to William A. Wilson.



House Small Business Committee Chairman Donald Manzullo spoke about the opportunities and challenges facing U.S. entrepreneurs and the importance of small manufacturing.



Chief Counsel Thomas M. Sullivan and Veteran Small Business Advocate of the Year Dennis DeMolet.



Advocacy staffer Kathryn Tobias and Financial Services Advocate of the Year Fran Jabara.



Entrepreneurial Success Award Winner Himanshu (Sue) Batia, husband Gulab, and family shared lunch.



Region 10 Administrator Conrad Lee, SBA Chief of Staff Lisa Goeas, and Young Entrepreneur of the Year Scott Jones.



Jack Faris, National Federation of Independent Business, addressed the luncheon guests.

Regional Roundup

Massachusetts Gov. Romney Signs EO Giving Small Businesses a Voice in the Regulatory Process

Chief Counsel for Advocacy Thomas M. Sullivan, joined by SBA Administrator Hector Barreto, praised Massachusetts Governor Mitt Romney for signing an executive order giving small businesses a voice in the state's regulatory process. "Massachusetts small business owners have a friend in Governor Romney," said Sullivan.

"By signing this executive order he's given them a seat at the table when regulatory decisions are made. When their voice is heard, better decisions are made, and that means more jobs and growth for Massachusetts," he said.

Signed by Governor Romney on Sept. 25, 2003, the executive order implements elements of small busi-

ness friendly regulatory legislation put forward as a model by the Office of Advocacy. Barbara Manning, New England regional advocate, is working closely with Governor Romney to ensure that state agencies consider their impact on small business before imposing regulatory mandates.

"With nearly half of the Massachusetts work force employed by small businesses, we cannot have government creating regulatory mazes that hamper the growth of small businesses," said Romney. "This executive order will protect and fortify the Commonwealth's small businesses by giving them a voice in the regulatory process."

For more information about the executive order, contact Region 1 Advocate Barbara Manning at barbara.manning@sba.gov or (617) 565-8418.



Massachusetts Governor Mitt Romney signs an executive order to ensure that state agencies consider their impact on small business before imposing regulatory mandates.

Small Business Finance Detailed In New Report

A new report issued by the Office of Advocacy details patterns in small business financing. Drawn from the Federal Reserve's Survey of Small Business Finances, the report features over 400 statistical tables comparing the borrowing patterns of various small business subgroups.

"The data contained in this report are a goldmine for policymakers and researchers," said Thomas M. Sullivan, Chief Counsel for Advocacy. "Sound public policy choices require sound data. This report is part of our office's ongoing commitment to provide sound data about small

business to federal, state, and local policymakers. It helps to fill in the gaps in our knowledge about how different small business subgroups use financing resources," he said.

The report, titled *Financing Patterns of Small Firms: Findings from the 1998 Survey of Small Business Finances*, surveyed small businesses' use of financing and examined it from various angles. Included are suppliers and kinds of credit, frequency of credit use, value of debt by kind of credit and credit supplier, and the value and percentage of debt and equity for firms by employment size categories. Financing patterns for all

small firms and minority-owned, Hispanic-owned, and women-owned firms are also compared.

For More Information

To find the report, research bulletin, and hundreds of tables of finance data, visit Advocacy's website, www.sba.gov/advo/stats and click on the "finance" button. Please direct any questions about the report to Dr. Charles Ou, Advocacy's senior economist, charles.ou@sba.gov or (202) 205-6966. The database tables were created by Dr. George Haynes, of Montana State University.

Small Business Friendly E-tools for State Regulations

Two states have recently made great progress in creating a user-friendly regulatory environment for small businesses. In the past year, both Colorado and Rhode Island have introduced online programs that send email alerts when a state agency creates or changes a regulation. Both state agencies and small businesses can benefit from these model programs, which make notice requirements less burdensome and allow small businesses to easily keep abreast of important regulatory changes.

Colorado's Reg Alerts Tool.

Colorado Gov. Bill Owens' goal is to make his state's regulators more accountable to the people and to prevent the imposition of needlessly onerous rules and regulations on small business. To tackle this important task, Governor Owens asked his Department of Regulatory Agencies (DORA) to create a user-friendly tool to help Coloradans keep abreast of the changing regulatory environment.

Assisted by new legislation that directs state agencies to submit digital copies of proposed rules, DORA was able to create an Internet-based process. This process, nicknamed "Reg Alert," allows any small business owner, trade association, chamber of commerce, or other interested party to go to DORA's website at www.dora.state.co.us/oecrr/ and sign up to receive automatic reg alerts.

When an agency submits a proposed new or amended rule to DORA, individuals who have signed up to receive reg alerts are instantly notified by email. To keep from being swamped by all proposed rules on every subject, recipients may select the areas that interest them from 40 subject categories (natural resources, health care, etc.).

"With a few quick mouse clicks, entrepreneurs can instantly be alert-

ed to any proposed regulation that impacts their business," Rick O'Donnell, executive director of DORA, stated, "without having to hire lawyers or lobbyists to track information for them or wading through dozens of different government agencies' websites."

Each reg alert states the title of the proposed rule and the contact information for the agency submitting the rule. The reg alert also includes the public hearing information, a link to the full text of the new or amended rule, and DORA contact information so small business owners can direct their comments to the responsible agency or to DORA.

For more information, contact Region 8 Advocate Jim Henderson at james.henderson@sba.gov or (303) 844-0503.



From left, Rick O'Donnell, Matt Mayer, and Nancy Lemein of the Colorado Department of Regulatory Agencies surrounded by Colorado's rules and regulations on the State Capitol steps.

Rhode Island's Rules Tracker.

Rhode Island's Secretary of State's Office instituted its regulatory alert program last summer. When a change in the administrative law required state agencies to file their regulations electronically, the Secretary of State's Information

Technology (IT) division got to work building a program that would allow users to access these rules online. The result is the Rules Tracker program, a completely automated email system.

Small business owners and other interested parties can sign up for Rules Tracker at www.rules.state.ri.us/rules/. The Rules Tracker offers daily, weekly, or monthly updates on agency rules. Rhode Island's initiative also allows individuals to customize their updates by specifying which agency or sub-agency—and even specific keywords—they wish to track. For example, a Rules Tracker user can receive daily news about rules submitted by the Department of Environmental Management's Fish and Wildlife Division that also include the key word "crustacean."

"Nearly 1,000 people have signed up to receive alerts via Rules Tracker," said Jim Willis, director of IT at Rhode Island's Secretary of State's Office. "The most common requests from users are for alerts on health, tax and environmental rules. When one of those agencies promulgates a rule, Rules Tracker sends close to 800 emails to interested parties by the next morning," he said.

The Secretary of State's office has plans to continue improving the technology. In the future, Rules Tracker may be used to post both pending rules and pending bills, and even allow users to comment electronically. And the program is of great interest to states that might be considering creating their own. The Rules Tracker program is an open source program, so the technology can be freely shared with any state interested in implementing a regulatory alerts program.

For more information, contact Jim Willis at jwillis@sec.state.ri.us or (401) 222-2357.

The Survey Is in the Mail

Small business owners should carefully watch their mailboxes, because thousands of them across the country will soon be receiving the 2002 Survey of Business Owners from the U.S. Bureau of the Census. The survey, taken every five years, provides the data that become the basis for sound small business public policy. Without these data, the Office of Advocacy would be unable to convince policymakers just how important small business is to our communities and economy.

The survey features new questions about the characteristics of business owners. Other new questions ask when the business was started, where the equity capital for start-up or acquisition came from, and the types of customers and employees. Also new are questions about home-based businesses, family-owned businesses, and franchises.

Advocacy encourages small business owners who receive the survey to fill out the forms accurately and completely and to return them in a timely manner. Remember that, as with information on IRS forms, your answers to the questions in the survey are confidential.

Some results of the prior 1997 survey can be found on Advocacy's website. Our "Small Business by the Numbers" FAQ, which relies on Census data, can be found at www.sba.gov/advo/stats/sbfaq.pdf. This is but one example of how these data are used. This is why, even though the forms are long and somewhat intrusive, it is important for all small business owners that they be promptly returned.

Business owners have 30 days to complete and return the forms. Survey participants may obtain assistance via a toll-free number, (800) 233-6132, between 8 a.m.

and 8 p.m. EDT, weekdays. An Internet help page is available at <http://help.econ.census.gov/econhelp/sbo/>.

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which regulatory proposals are most in need of our attention.

So, is EO 13272 succeeding? What is certain is that we've taken some important first steps. The ultimate test of the EO's success, of course, will be when small businesses feel the benefits—when they are increasingly freed from undue burdens of regulation to do what they do best—create new enterprises and put America to work developing innovative products and processes.

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