

Agencies Report Progress Toward Review and Reform of r3 Top 10 Rules

by Keith Holman, Assistant Chief Counsel

Federal agencies have begun to make progress on the 2008 Top 10 Rules for Review and Reform. Their efforts have been compiled by the Office of Advocacy in a status report issued six months from the time the top 10 rules were announced earlier this year on February 28 (see table).

The status report is part of the long-term Regulatory Review and Reform (r3) initiative, which encourages federal agencies to review and reform regulations that are outdated and ineffective based on recommendations/nominations by the small business community.

"I am pleased that agencies are willing to review and reform several of the 2008 Top 10 Rules," said Thomas M. Sullivan, chief counsel for advocacy. "This six-month

status update is a direct response to the small business community's request for transparency in agency review of rules."

The first six-month status report, available at www.sba.gov/advo/r3, underlines the fact that a comprehensive review of some existing rules will be a long-term process.

The Office of Advocacy is committed to helping reduce the \$1.1 trillion yearly cost to Americans of complying with federal regulations, which is more per household than the cost of health insurance. The smallest of businesses bear the brunt of business regulations. They annually pay 45 percent more per employee to comply with regulations than big businesses do. The intent of the r3 initiative is to help

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On August 8, 2008, Advocacy hosted a roundtable in New York City to examine the orphan works issue and bring together different segments of the creative community. (See story on page 10.)

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New Laws with Implications for Small Business

by LaVita LeGrys, Congressional and Public Liaison

Before adjourning for the August recess, Congress took action in a number of areas that could have significant implications for small business. Here are a few of the issues Congress tackled before the break.

Tax Gap Provision in Housing Bill. In late July, Congress passed and the President signed into law H.R. 3221, the Housing and Economic Recovery Act of 2008 (P.L. 110-289). The new law requires credit and debit card issuers to report annually to the Internal Revenue Service the electronic transactions of their business merchants. The requirement would take effect in 2011. As a result, small businesses may be subjected to additional reporting requirements and increased merchant fees once the provision takes effect.

E-Verify. On July 31, the House passed H.R. 6633, the Employee Verification Amendment Act of 2008, which would extend the “E-Verify” pilot program for another five years. The bill also would authorize a study by the Government Accountability Office (GAO) to examine the impact of the program on small businesses. Senate leaders are working with Senators Arlen Specter (R-Pa.) and Robert Menendez (D-N.J.), who have each sponsored separate E-Verify legislation, in order to craft compromise legislation that can pass the Senate before the initial pilot program expires in November.

Consumer Product Safety. On July 30, the House passed H.R. 4040, the Consumer Product Safety Modernization Act, which would overhaul the Consumer Product Safety Commission and establish tougher safety standards for toys and other consumer products. President Bush is expected to sign the bill.

Members of Congress also introduced legislation that could benefit small business. Here are two such bills that may be taken up when Congress returns in the fall:

H.R. 6601, the Small Business Tax Modernization Act of 2008, introduced by Rep. Nydia Velazquez (D-N.Y.), would simplify and reform the tax code by, among other things, creating a standard home office deduction, removing cell phones from listed property, allowing nonresident aliens to be S-corporation shareholders, and increasing the deduction for business meals and entertainment for qualified small businesses.

S. 3371, the Home Office Tax Deduction Simplification and Improvement Act of 2008, introduced by Sen. Olympia Snowe (R-Maine), would establish an optional standard home office tax deduction. The bill also would allow the home office deduction to be taken if the taxpayer uses the home to meet or deal with clients, regardless of whether the clients are physically present.

September Outlook. When the Senate reconvenes in September, it is expected to resume work on an extensive list of legislative measures, including E-Verify reauthorization, defense authorization, energy, tax break extenders, the alternative minimum tax (AMT) “patch,” and a second economic stimulus package. The Senate Small Business Committee is expected to mark up S. 2920, the SBA Reauthorization and Improvement Act of 2008. The House is expected to focus on passing the 12 remaining agency funding bills, the economic stimulus package, a House-leadership energy package, disaster assistance, and several small immigration measures. Stay tuned.

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r3 Top Ten Rule Progress, from page 2

lighten that load by streamlining, updating, or eliminating federal regulatory mandates.

Last year, small businesses and their representatives nominated over 80 rules for review and reform. In February, Advocacy announced the 2008 Top 10 Rules for Review and Reform, which were transmitted to the appropriate agencies for their action. Nominations for the 2009 top 10 are now being accepted. Visit www.sba.gov/advo/r3 to learn more.

Message from the Chief Counsel

After One Year, r3 Is Focusing Attention and Supplying Tools for Regulatory Review and Reform

by Thomas M. Sullivan, Chief Counsel for Advocacy

When the Office of Advocacy launched the Small Business Regulatory Review and Reform Initiative (r3) in fall of 2007, we were hopeful that, over time, it would accomplish two important goals. The first goal is to help federal agencies do a better job meeting their responsibilities under section 610 of the Regulatory Flexibility Act. Section 610 requires agencies to review their existing rules periodically to see if the rules should be updated because of changing technology, changing market conditions, or other factors.

The second goal is to provide a simple way for small businesses to point out existing agency rules that need to be reformed because they may be outdated, duplicative, or no longer needed. By spotlighting existing rules that need updating, r3 is intended to address the cumulative federal regulatory burden of more than \$1 trillion per year, of which the smallest businesses bear the most disproportionate share.

I am pleased to report that the r3 initiative is starting to show signs of success. Six months after I announced Advocacy's 2008 r3 2008 Top 10 Rules for Review and Reform, several federal agencies are making initial progress toward taking action on implementing our recommendations (as reported on page 1). Although the process of reviewing and reforming a rule can be a lengthy process, I am gratified that agencies are approaching the r3 nominations with a positive attitude.

Advocacy's Best Practices document on complying with section 610 has been recognized by the Government Accountability Office (GAO) and the Office of Management and Budget's Office

“I am gratified that agencies are approaching the r3 nominations as a positive element that can improve their relationship with small business.”

of Information and Regulatory Affairs (OIRA) as a good tool for agencies to use in conducting periodic reviews of their current rules. We expect agencies to take advantage of this tool to identify outdated rules in need of reform. (The r3 Best Practices link is www.sba.gov/advo/r3/r3_section610.pdf.)

I am also particularly pleased that the House Small Business Subcommittee on Regulations, Health Care and Trade chose to hold a hearing to focus on the r3 program and its potential to address the cumulative regulatory burdens faced by small business. At the committee hearing on July 30, witnesses testified that the r3 project will help keep agencies' attention focused on section 610 and improve the quality of their reviews of their existing regulations. Henry P. Van De Putte, owner of the Dixie Flag Manufacturing Company, testified that “the r3 program strikes right at the heart of one of the major burdens facing America's small business, the cumulative federal regulatory burden.”

Subcommittee Chairman Charles Gonzalez noted that “r3 has the potential to be an invaluable resource for small

firms. It will not only give them a voice in the federal regulation process, but will also address some of their most significant challenges.” Congress, the Office of Advocacy, and small business have a shared interest in ensuring the long-term success of the r3 program. Fortunately, after nearly a year, it looks like r3 is off to a very healthy start.



www.sba.gov/advo/r3

2008 Top 10 Current Rules for Review and Reform

Visit www.sba.gov/advo/r3/r3_status.html#advo

Nomination	Agency	Current Status
<p>Update Air Monitoring Rules for Dry Cleaners to Reflect Current Technology. EPA should revise outdated or inaccurate testing requirements so that modern dry cleaners can have a valid method for demonstrating compliance.</p> <p>Contact: Keith Holman keith.holman@sba.gov</p>	EPA	Revising the New Source Performance Standard (NSPS) for petroleum dry cleaning equipment is a priority for EPA. When implemented, the NSPS revision will update emission testing requirements to work with modern dry cleaning machines.
<p>Flexibility for Community Drinking Water Systems. EPA should consider expanding the ways for small communities to qualify to meet alternative drinking water standards, provided that the alternative standards are protective of human health and are approved by state authorities.</p> <p>Contact: Kevin Bromberg kevin.bromberg@sba.gov</p>	EPA	On March 2, 2006, EPA announced a review of the affordability criteria for small systems (http://edocket.access.gpo.gov/2006/pdf/06-1917.pdf , 71 Federal Register 10671). EPA has not announced when its review will be completed.
<p>Simplify the Rules for Recycling Solid Wastes. EPA should simplify the rules for recycling useful materials that, because of their current classification, must be handled, transported, and disposed of as hazardous wastes.</p> <p>Contact: Kevin Bromberg kevin.bromberg@sba.gov</p>	EPA	On October 28, 2003, EPA issued a proposal to revise the definition of solid waste (www.epa.gov/fedrgstr/EPA-WASTE/2003/October/Day-28/f26754.pdf). The agency issued a supplemental proposal on March 26, 2007 (www.epa.gov/fedrgstr/EPA-WASTE/2007/March/Day-26/f5159.pdf). The draft final rule (www.reginfo.gov/public/do/eAgendaViewRule?ruleID=287110) is under review at OIRA.
<p>EPA Should Clearly Define “Oil” in Oil Spill Rules. EPA should clarify the definition of “oil” in its oil spill program, so that small facilities that store nonpetroleum-based products are not unintentionally captured by spill prevention program requirements.</p> <p>Contact: Kevin Bromberg kevin.bromberg@sba.gov</p>	EPA	On May 30, 2008, EPA and representatives of the U.S. Coast Guard met with small business stakeholders. EPA has not formally announced its intention to review its definition of oil in its oil spill program.
<p>Update Flight Rules for Washington, D.C. Regional Area. FAA and other agencies should review the flight restriction rule for the region surrounding Washington, D.C, to determine whether the rules could be revised to avoid harming small airports within the region.</p> <p>Contact: Bruce Lundegren bruce.lundegren@sba.gov</p>	DOT/ FAA	On March 19, 2008, the FAA notified Advocacy by letter (www.sba.gov/advo/r3/faa08_0319.pdf) that it expects to finalize the flight restriction rules by January 2009. FAA indicated in the letter that the agency would work with Advocacy to ensure a transparent review of the rules’ impact on small entities.

2008 Top 10 Current Rules for Review and Reform

Visit www.sba.gov/advo/r3/r3_status.html#advo

Nomination	Agency	Current Status
<p>Eliminate Duplicative Financial Requirements for Architect-Engineering Services Firms in Government Contracting. The duplicative retainage requirement should be removed or reduced in architect-engineering services contracts, as has been done for other services.</p> <p>Contact: Major Clark major.clark@sba.gov</p>	<p>FAR Council</p>	<p>The Office of Federal Procurement Policy (OFPP) submitted Advocacy's r3 retainage proposal to the FAR Council. The FAR case number assigned to this issue is 2008-015. The FAR case is being reviewed by the FAR finance team, which anticipates completing a committee report by September 30, 2008. The report will indicate the Council's next steps regarding the proposed FAR change. (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=af578f0605dcf172475b4fe29b115955&rgn=div6&view=text&node=48:1.0.1.1.1.5&idno=48)</p>
<p>Simplify the Home Office Business Deduction. The IRS should revise their rules to permit a standard deduction for home-based businesses, which constitute 53 percent of all small businesses.</p> <p>Contact: Dillon Taylor dillon.taylor@sba.gov</p>	<p>IRS</p>	<p>On March 14, 2008, the IRS informed Advocacy that this issue has been assigned to IRS attorneys for review (www.sba.gov/advo/r3/irs08_0314.pdf). On July 30, 2008, the Deputy Commissioner of the IRS's Small Business/Self-Employed Division testified on this issue before the House Small Business Subcommittee on Regulations, Healthcare, and Trade (www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/IRS.pdf). The IRS is continuing to review this issue, including exploring opportunities to simplify the rules and make Form 8829, Expenses for Business Use of Your Home, (www.irs.gov/pub/irs-pdf/f8829.pdf) easier to use.</p>
<p>Update MSHA Rules on Use of Explosives in Mines to Reflect Modern Industry Standards. MSHA should update its current rules to be consistent with modern mining industry explosives standards.</p> <p>Contact: Bruce Lundegren bruce.lundegren@sba.gov</p>	<p>DOL/MSHA</p>	<p>MSHA has not formally announced its intention to update explosives standards. The group that nominated this issue testified before the House Small Business Subcommittee on Regulations, Healthcare and Trade on July 30, 2008. (www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/Santis.pdf).</p>
<p>Update OSHA's Medical/Laboratory Worker Rule. The current rule should be reviewed to determine whether it can be made more flexible in situations where workers do not have potential exposure to bloodborne pathogens.</p> <p>Contact: Bruce Lundegren bruce.lundegren@sba.gov</p>	<p>DOL/OSHA</p>	<p>OSHA has not formally announced its intention to review rules governing exposure to bloodborne pathogens.</p>

Table continues on page 6.

2008 Top 10 Current Rules for Review and Reform

Visit www.sba.gov/advo/r3/r3_status.html#advo

Nomination

Update Reverse Auction Techniques for Online Procurement of Commercial Items.
The current reverse auction techniques should be reviewed to determine whether a government-wide rule is necessary to create a more consistent and predictable online process.

Contact: Major Clark
major.clark@sba.gov

Agency

OFPP

Current Status

On October 4, 2006 the Office of Federal Procurement Policy (OFPP) announced to the acquisition community that this action item is under review to determine the appropriate course of action for this acquisition tool (www.sba.gov/advo/r3/ofpp06_1004.pdf). OFPP has completed surveys of vendors (<http://edocket.access.gpo.gov/2007/pdf/07-1967.pdf>) and users (<http://edocket.access.gpo.gov/2007/pdf/07-4065.pdf>). The surveys were targeted for government buyers who have never done a procurement using a reverse auction (http://www.dau.mil/performance_support/mdcsurvey/pros/pros.htm), and government buyers with significant experience using reverse auctions (http://www.dau.mil/performance_support/mdcsurvey/govtexp/govtexp.htm). The outcome of this review should be a FAR reverse auction regulation establishing conditions of applicability. This regulatory framework will be supplemented by a detailed “best practice” guide for the acquisition community.

Regional Roundup

Louisiana Steps Up Support for Small Business

by Kate Reichert

Louisiana’s 364,900 small businesses will benefit with passage and signing in July of House Bill 368, the Small Business Regulatory Flexibility Act. Representative Rickey Nowlin (Natchitoches) was the bill’s primary author.

“Our goal is to have state agencies really consider the impact of regulations on small businesses,” said Rep. Nowlin.

The new law requires state agencies not only to analyze the economic impact of proposed rules on small business but also to consider less burdensome alternatives that still accomplish the regulatory goal.

Louisiana’s new law is based on model legislation developed by Advocacy. For more information, visit www.sba.gov/advo/laws/law_modeleg.html.



The bill’s key supporters are pictured here (from left to right): Rachel Farmer, legislative/congressional liaison, Louisiana Economic Development; Renee Baker, state director, NFIB/Louisiana; Mark Zeldon, U.S. Chamber of Commerce; State Representative Rick Nowlin (Natchitoches) and H.B. 368 sponsor; Eric Munson, Advocacy’s regional advocate; and Brian Landry, governmental affairs, Louisiana Association of Business and Industry.

SECOND QUARTER 2008: THE ECONOMY AND SMALL BUSINESS

Trends

- The U.S. economy grew an annualized 1.9 percent in the second quarter of 2008, which was stronger than both of the previous two quarters. (The fourth quarter of 2007 was revised to reflect a decline in real GDP.) Two factors led to the increase in output in the second quarter – higher consumption (up an annualized 1.5 percent), perhaps assisted by economic stimulus checks, and a dramatic increase in real exports (up an annualized 9.2 percent). Meanwhile, residential investment continues to be a drag on economic growth, which was reflected in a 14.8 percent annualized decline in real gross private investment in the quarter. The industrial picture was mixed, with industrial production down and the Institute for Supply Management’s (ISM’s) manufacturers’ purchasing index up. Most significantly, though, the ISM index is now above 50, which is a possible sign of recovery in that sector.
- Americans remain pessimistic on the economy, as reflected by both the National Federation of Independent Business’s optimism index and the University of Michigan’s consumer sentiment survey. The NFIB survey shows a lack of desire by small business owners to hire or invest in their firm. These owners now state that inflation is their top concern, followed by taxes and poor sales.
- The unemployment rate in June rose to 5.5 percent, its highest point since July 2004. Moreover, the U.S. economy has lost jobs each month so far in 2008, with 412,000 fewer nonfarm payroll jobs in June 2008 than December 2007. The largest losses have come from the construction and manufacturing sectors, which combined, lost 254,000 net jobs in the second quarter. Bright spots for the quarter include education and health services (+166,000), government (+119,000), natural resources and mining (+17,000), and leisure and hospitality (+10,000). Unincorporated self-employment rose 0.6 percent from March to June 2007; it had fallen earlier in the year.
- The Federal Reserve Board of Governors cut its target interest rate in April by 25 basis points. The prime rate is 5 percent, down from 8.25 percent in September 2007. Both short-term and long-term government securities, however, ended the quarter up by about 0.60 percent. The Senior Loan Officers’ Survey suggests a slight improvement in small business lending demand; however, one could still characterize loan demand as weak. Venture capital deals were roughly equivalent to last year.
- Government statistics show higher overall prices. The producer price index was up nearly an annualized 30 percent for the quarter, reflecting higher costs for raw materials and intermediate goods. These costs, however, have not yet been passed along to the consumer, which suggests that large and small businesses saw their profits squeezed. The consumer price index rose 7.9 percent on an annualized basis over that time, but when energy and food prices were excluded, the “core” inflation rate was up an annualized 2.5 percent. West Texas intermediate crude oil averaged \$133.93 per barrel in June, and American consumers have become accustomed to paying \$4.00 or more per gallon for gasoline. Wages and salaries rose an annualized 3 percent for the second quarter, outstripping the 1.9 percent rise in benefits. Labor productivity remains strong, with nonfarm business output up an annualized 2.2 percent for the quarter.

Small Business Indicators

	Last five years					Last five quarters					Trends	
	2003	2004	2005	2006	2007	Q2-07	Q3-07	Q4-07	Q1-08	Q2-08	This Quarter	Q2-07 to Q2-08
Business bankruptcy filings (thousands)	35.0	34.3	39.2	19.7	28.3	6.7	7.2	8.0	8.7	--	--	--
Proprietors’ income (\$billion, current dollars)	811.3	911.1	970.7	1015.1	1042.6	1050.2	1063.8	1073.8	1071.7	1077.3	↑ 2.1% (a)	↑ 2.6%
Prime bank loan rate	4.1	4.3	6.2	8.0	8.1	8.3	8.2	7.5	6.2	5.1	↓ 1.1	↓ 3.2
Rates for smallest loans (less than \$100,000):												
Variable rate loans, repricing terms of 2-30 days	4.4	4.4	6.0	7.7	7.7	8.0	7.8	7.2	5.6	4.9	↓ 0.7	↓ 3.1
Variable rate loans, repricing terms of 31-365 days	6.4	6.2	7.1	8.4	8.6	8.7	8.6	8.1	7.4	6.9	↓ 0.5	↓ 1.8
Senior loan officers (percent of respondents):												
Net small firm C&I lending standards (those whose standards were eased minus those tightened)	-7.1	13.1	9.0	4.6	-4.3	-1.9	-7.7	-9.6	-30.4	-51.8	↓ 21.4	↓ 49.9
Net small firm demand for C&I loans (those whose demand was stronger minus those weaker)	-14.7	25.9	27.3	0.2	-11.0	-19.2	-11.8	-7.7	-23.6	-16.1	↑ 7.5	↑ 3.1
Venture investment: number of deals	2934	3084	3151	3653	3918	1033	978	1047	977	990	↑ 13	↓ 43
Venture investment: total invested (\$billion)	19.8	22.4	23.1	26.6	30.7	7.4	7.8	8.1	7.5	7.4	↓ 0.1	0

Notes: a=annualized growth rate. The second quarter figure is for April 2008. C&I = commercial and industrial loans. Trends may reflect rounding error.

Sources: Administrative Office of the U.S. Courts; Board of Governors of the Federal Reserve System; National Venture Capital Association; U.S. Department of Commerce, Bureau of Economic Analysis.

	Last five years					Last five months (2008)					Trends	
	2003	2004	2005	2006	2007	Feb	Mar	Apr	May	June	This Quarter	June 07 to June 08
NFIB Small Business Optimism Index (1986 = 100)	101.3	104.6	101.6	98.9	96.7	92.9	89.6	91.5	89.3	89.2	↓ 0.4	↓ 6.8
NFIB: next 3 months “good time to expand” (percent of respondents)	15.7	22.3	20.6	17.4	13.9	8.0	5.0	6.0	4.0	4.0	↓ 1.0	↓ 9.0
NFIB: net percent planning to hire in the next 3 months	10.2	15.3	14.4	14.6	12.9	11.0	3.0	5.0	2.0	5.0	↑ 2.0	↓ 7.0
Self-employed, incorporated (millions)	5.0	5.2	5.3	5.5	5.8	5.8	5.8	5.7	5.8	5.7	↓ 0.1	0
Self-employed, unincorporated (millions)	10.3	10.4	10.5	10.6	10.4	10.1	9.9	10.2	10.3	10.5	↑ 0.6	↓ 0.3

Sources: National Federation of Independent Business; Current Population Survey, U.S. Bureau of Labor Statistics.

For previous quarterly indicators, visit www.sba.gov/advo/research/sbei.html. Note that historical data are revised periodically, and this version reflects such changes.

Employment by Major Sector (millions)

	Percent small business	Last five years					Last five months (2008)					Trends	
		2003	2004	2005	2006	2007	Feb	Mar	Apr	May	June	This Quarter	June 07 to June 08
Goods-producing industries	57.88	21.81	21.88	22.19	22.53	22.22	21.82	21.74	21.63	21.58	21.50	↓0.24	↓0.77
Natural resources and mining	61.93	0.57	0.59	0.63	0.68	0.72	0.74	0.75	0.75	0.76	0.77	↑0.02	↑0.05
Construction	86.14	6.74	6.97	7.33	7.69	7.62	7.38	7.34	7.28	7.25	7.20	↓0.15	↓0.46
Manufacturing	44.18	14.51	14.32	14.23	14.16	13.88	13.69	13.64	13.59	13.57	13.54	↓0.11	↓0.35
Service-producing industries	48.72	108.18	109.54	111.51	113.56	115.40	116.10	116.09	116.14	116.14	116.17	↑0.07	↑0.81
Trade, transportation and utilities	45.27	25.29	25.53	25.96	26.28	26.60	26.58	26.55	26.50	26.45	26.44	↓0.12	↓0.16
Wholesale trade	60.94	5.61	5.66	5.76	5.90	6.03	6.06	6.05	6.04	6.04	6.04	↓0.02	↑0.01
Retail trade	41.12	14.92	15.06	15.28	15.36	15.49	15.43	15.40	15.36	15.33	15.33	↓0.08	↓0.16
Information	26.16	3.19	3.12	3.06	3.04	3.03	3.02	3.01	3.01	3.00	3.00	↓0.02	↓0.04
Financial activities	41.88	7.98	8.03	8.15	8.33	8.31	8.23	8.23	8.23	8.23	8.21	↓0.02	↓0.10
Professional and business services	43.88	15.99	16.39	16.95	17.57	17.97	18.07	18.01	18.03	17.98	17.94	↓0.07	↑0.01
Education and health services	47.84	16.59	16.95	17.37	17.83	18.33	18.67	18.71	18.76	18.82	18.88	↑0.17	↑0.56
Leisure and hospitality	60.89	12.17	12.49	12.81	13.11	13.47	13.66	13.68	13.69	13.68	13.69	↑0.01	↑0.23
Other services	85.57	5.40	5.41	5.39	5.44	5.49	5.52	5.52	5.53	5.53	5.52	0	↑0.03
Government	0	21.58	21.62	21.81	21.97	22.20	22.36	22.38	22.40	22.45	22.50	↑0.12	↑0.29

Notes: Seasonally adjusted. See www.bls.gov/ces/cessuper.htm for NAICS code equivalents for each sector. The small business percentage by sector is based on 2005 firm size data. See www.sba.gov/advo/research/us05_n6.pdf. Trends may reflect rounding error.

Sources: U.S. Small Business Administration, Office of Advocacy, using data from the U.S. Department of Commerce, Bureau of the Census; U.S. Department of Labor, Bureau of Labor Statistics.

Macroeconomic Indicators

	Last five years					Last five quarters					Trends (percent)	
	2003	2004	2005	2006	2007	Q2-07	Q3-07	Q4-07	Q1-08	Q2-08	This Quarter	Q2-07 - Q2-08
Real gross domestic product												
Level (\$billion)	10301.1	10675.7	10989.5	11294.9	11523.9	11491.4	11625.7	11620.7	11646.0	11700.6	↑1.9% (a)	↑1.8%
Annual percentage change*	2.5	3.6	2.9	2.8	2.0	4.8	4.8	-0.2	0.9	1.9		
Real personal consumption expenditures (\$billion)*	7295.4	7561.4	7791.7	8028.9	8252.8	8237.3	8278.5	8298.2	8316.1	8347.5	↑1.5% (a)	↑1.3%
Real gross private fixed investment (\$billion)*	1557.2	1613.1	1770.2	1869.3	1825.5	1822.9	1838.7	1781.3	1754.7	1686.0	↓14.8% (a)	↓7.5%
Federal government surplus or deficit (\$billion)	-372.2	-370.6	-291.7	-201.1	-229.3	-211.4	-244.3	-236.4	-325.3	--	--	--
Real exports of goods and services (\$billion)*	1026.1	1126.1	1205.3	1314.9	1425.9	1392.2	1466.2	1482.1	1500.6	1534.1	↑9.2% (a)	↑10.2%
Real imports of goods and services (\$billion)*	1545.0	1720.0	1821.9	1930.5	1972.4	1963.4	1978.0	1966.5	1962.6	1929.2	↓6.6% (a)	↓1.7%
Corporate profits after tax (\$billion)	749.9	923.9	1034.3	1199.6	1192.1	1204.0	1217.3	1177.6	1190.6	--	--	--
Nonfarm business sector output per hour for all persons (1992=100)	128.0	131.6	134.1	135.4	137.9	136.4	138.3	138.6	139.5	140.3	↑2.2% (a)	↑2.8%
Employment cost index: private sector wages & salaries (2005=100)	94.2	96.8	99.2	102.0	105.5	105.1	105.9	106.7	107.6	108.4	↑3.0% (a)	↑3.1%
Employment cost index: private sector benefits (2005=100)	88.8	94.8	99.2	102.1	104.5	104.2	105.0	105.8	106.4	106.9	↑1.9% (a)	↑2.6%

Notes: Seasonally adjusted; *Chained 2000 dollars; a=annualized growth rate. Real GDP and its components are preliminary data. Trends may reflect rounding error.

Sources: U.S. Department of Commerce, Bureau of Economic Analysis; U.S. Department of Labor, Bureau of Labor Statistics.

	Last five years					Last five months (2008)					Trends	
	2003	2004	2005	2006	2007	Feb	Mar	Apr	May	June	This Quarter	June 07 to June 08
Unemployment rate (seasonally adjusted)	6.0	5.5	5.1	4.6	4.6	4.8	5.1	5.0	5.5	5.5	↑0.4	↑0.9
Civilian employment—16 years and older (millions, seasonally adjusted)	137.7	139.2	141.7	144.4	146.0	146.0	146.0	146.3	146.0	145.9	0	↓0.2
Civilian unemployed—15 weeks and over (millions, seasonally adjusted)	3.4	3.1	2.6	2.3	2.3	2.4	2.4	2.6	2.8	2.9	↑0.5	↑0.6
Nonfarm payrolls (millions, seasonally adjusted)	130.0	131.4	133.7	136.2	137.6	137.9	137.8	137.8	137.7	137.7	↓0.2	0
Producer price index (1982=100)	138.1	146.7	157.4	164.8	172.7	182.7	188.1	190.7	196.5	200.7	↑29.6% (a)	↑15.5%
Consumer price index (all urban consumers and all items; seasonally adjusted, 1982-84=100)	184.0	188.9	195.3	201.6	207.4	212.6	213.3	213.7	215.1	217.4	↑7.9% (a)	↑4.9%
Consumer price index (all urban consumer; all items less food & energy; seasonally adj., 1982-84=100)	193.2	196.6	200.9	205.9	210.7	213.9	214.2	214.4	214.8	215.5	↑2.5% (a)	↑2.4%
Univ. of Mich. Consumer Sentiment (1966=100)	87.6	95.2	88.6	87.3	85.6	70.8	69.5	62.6	59.8	56.4	↓13.1	↓28.9
Spot oil price/barrel: West Texas intermediate crude	31.14	41.44	56.47	66.10	72.36	95.35	105.56	112.57	125.39	133.93	↑\$28.37	↑\$66.45
New privately owned housing units started (millions, seasonally adjusted at the annual rate)	1.9	1.9	2.1	1.8	1.3	1.1	1.0	1.0	1.0	1.1	↑0.1	↓0.4
ISM purchasing managers index—manufacturing composite (seasonally adjusted)	51.7	59.1	54.4	53.1	51.1	48.3	48.6	48.6	49.6	50.2	↑13.8% (a)	↓6.0%
Industrial production (2002=100, seasonally adj.)	101.2	103.8	107.2	109.6	111.4	112.2	112.2	111.4	111.2	111.7	↓1.7% (a)	↑0.3%
3-month Treasury bills (secondary market rate)	1.01	1.37	3.15	4.73	4.35	2.12	1.26	1.29	1.73	1.86	↑0.60	↓2.75
10-year Treasury note (constant maturity rate)	4.02	4.27	4.29	4.79	4.63	3.74	3.51	3.68	3.88	4.10	↑0.59	↓1.00

Notes: a = annualized growth rate. Trends may reflect rounding error.

Sources: Board of Governors of the Federal Reserve System; Dow Jones Energy Service; U.S. Department of Commerce, Bureau of the Census; Institute for Supply Management; U.S. Department of Labor, Bureau of Labor Statistics; University of Michigan, Survey of Consumers.

Regulatory News

Advocacy Recommends Additional Small Business Flexibilities for Americans with Disabilities Act Regulations

by Janis Reyes, Assistant Chief Counsel

On August 6, the Office of Advocacy filed a comment letter with the U.S. Department of Justice on their notice of proposed rulemaking (NPRM) that would revise the agency's 1991 regulations implementing Title III of the Americans with Disabilities Act. Title III sets standards for making buildings accessible for people with disabilities and requires existing facilities to remove barriers that conflict with these standards when such modifications are "readily achievable." These requirements were recommended in 2004 by another agency, the Architectural and Transportation Barriers Compliance Board.

In 2005, Advocacy commented to the Justice Department that applying these requirements retroactively would unfairly punish those small businesses that were trying to com-

ply with the 1991 regulations. Small businesses were also concerned that the "readily achievable" standard was still too vague to protect ADA-compliant businesses from lawsuits. In 2007, Advocacy submitted a report to the Justice Department which found that both small and large firms potentially face substantial costs from the adoption of these requirements.

DOJ's NPRM proposes two safe harbors to address these concerns. Under the "general" safe harbor, existing facilities' compliance with the current 1991 ADA standards may be sufficient to meet the new requirements. The "small business" safe harbor gives credit to small businesses that spend one percent of revenue on ADA modifications.

At a recent Advocacy roundtable, small business representatives were supportive of the gen-

eral safe harbor. However, these entities were concerned that the small business safe harbor could be interpreted as a minimum spending requirement.

In its comment letter, Advocacy urged the Justice Department to clarify both safe harbor provisions and to publish a Small Business Compliance Guide in conjunction with finalizing the rule. Advocacy also recommended that the agency include further small business cost estimates for its final regulatory flexibility analysis.

If you have any questions on this comment letter, please contact Assistant Chief Counsel Janis Reyes at (202) 205-6533. A complete chronology of Advocacy's ADA activities is available at: www.sba.gov/advo/laws/comments/ada.html.

Federal Small Business Contractors May Be Required To Use Mandatory Employment Verification System

by Major Clark III, Assistant Chief Counsel

On August 7, the Office of Advocacy filed a comment letter with the Federal Acquisition Regulatory (FAR) Council, Civilian Agency Acquisition Council, and the Defense Acquisition Regulations Council, in response to their notice of proposed rulemaking entitled, "Employment Eligibility Verification" (73 Fed. Reg. 33374, June 12, 2008). In its letter, Advocacy advised the councils to better calculate the impact of the E-Verify program on small business contractors and to delay implementation of E-Verify for small business contractors until greater accuracy of the system is guaranteed.

The E-Verify system is intended to prevent the hiring or continued employment of aliens by government contractors. It dates to 1996, when Congress included it as part of the amended Immigration and Nationality Act. The act authorized the President to establish a demonstration E-Verify project. The pilot program is scheduled to expire in November 2008 unless Congress renews it. On June 6, 2008, President Bush issued Executive Order 13465, directing federal agencies to use the E-Verify system as a mandatory employment verification system for federal contractors. The councils' draft regulations

of June 12 are meant to implement this mandate.

Advocacy held an E-Verify roundtable on July 17. Small business stakeholders from various industries attended and participants flagged several issues. Since the current E-Verify system is web-based, there is very little software cost. But small businesses without computers or with older ones will incur hardware costs, and there are costs for personnel to be trained to use the system. Business also identified flaws within the system, which will be made worse when the system becomes mandatory and

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Regulatory News

Advocacy Hosts Roundtable to Discuss the Orphan Works Legislation

by Cheryl Johns, Assistant Chief Counsel

The Office of Advocacy hosted a small business legislative roundtable in August to unite different segments of the creative community and to discuss S. 2913, “The Shawn Bentley Orphan Works Act of 2008.” Held at the Salmagundi Club in New York City, the roundtable featured representatives from various art, literary, and music organizations, as well as representatives from the U.S. Copyright Office and the United Nations.

The proposed legislation would change the law that governs “orphan works,” or copyrighted materials whose owners cannot be located. Currently, if an individual wishes to use an orphan work, that individual must search for the owner of the work and receive permission to do so. If the copyright holder cannot be located, the individual may risk significant lawsuits if the owner subsequently claims copyright ownership.

Among other things, S. 2913 would require creators of new works to digitize their creations and load them into a new searchable database. Artists, photographers, graphic designers, and musicians all expressed concerns over the economic and technical burdens this new requirement would impose on their businesses. Some artists explained that they could not fully comply with the database condition due to the large number of sketches they own and the costs associated with digitizing their works, which are sometimes quite high. Additionally, the creative community voiced concern that the bill failed to set out clear standards of searches for copyright owners prior to designating a work as orphaned. Without proper standards, individuals would decide on their own what constitutes a good faith effort to search for a copyright owner, whether a search lasts a few hours,

a few days, or a few months. It remains unknown how courts would assess this broad search standard.

Advocacy continues to work with various members of the creative community, Congress, and the U.S. Copyright Office, to ensure that legislative and regulatory changes related to orphan works will take small business concerns into account. Because the creative community is largely composed of small businesses, the orphan works legislation will have an impact on a substantial number of small entities. It is critical that the public and private sector work together to minimize the burden on these small copyright owners.

If you have any questions on this issue, please contact Assistant Chief Counsel Cheryl Johns at (202) 205-6533.

Regulatory Expert Jamie Belcore Joins Advocacy

Regulatory expert Jamie Belcore has joined the Office of Advocacy. As a full-time regulatory attorney, she will monitor federal agency compliance with the Regulatory Flexibility Act (RFA). Belcore was formerly a Mercatus Regulatory Studies SBA Fellow at the Office of Advocacy in summer 2006.

“I am pleased that Jamie Belcore is joining our office,” said Thomas M. Sullivan, chief counsel for advocacy. “The Mercatus Studies Fellowship brings to our office some of the brightest young legal minds in regulatory studies. When a fellow joins our office full-time, the relationship between the academic and practitioner side of small business regulatory law is strengthened.”

Belcore, a California native, was most recently a legal fellow for the Regulatory Studies Program at the Mercatus Center. She is a graduate of George Washington University and earned her law degree from the George Mason University School of Law, where she was a member of the *Journal of Law Economics and Policy*.

For over 25 years, the Mercatus Center at George Mason University has sought to bridge the gap between economic understanding and real-world decisionmaking. Mercatus applies scholarly research to the problems facing policymakers.



Research Notes

Working Paper Shows that Combining Size Classes and Definitions Can Skew Research Results

by John McDowell, Press Secretary

Mixing employer and non-employer data has a direct bearing on small business study results, according to researchers at the Office of Advocacy. They based their findings on examination of special tabulations from the U.S. Census Bureau's 2002 Survey of Business Owners. These tabulations, comparing non-employer and employer firms across a variety of firm and owner characteristics, appeared in a working paper published in August.

"Business definitions have always been tricky for researchers," said Advocacy economist Brian Headd, and one of the

paper's authors. "It's hard to determine what counts as a business. For instance, is there a minimum employee or revenue requirement, a length of time in business, or a contribution to owners' income?" He added, "Definitions are often based on convenience, such as what data is available to the researcher."

Co-authored by Headd and Radwan Saade, economists at the Office of Advocacy, the working paper *Do Business Definition Decisions Distort Small Business Research Results*, closely examines the differences between employer and non-employer businesses and

the relation those differences have to research results.

"Researchers need to be mindful about which sub-groups of businesses they are studying," said Saade. "The results may not be applicable to other sub-groups or small businesses as a whole." He noted that, "This is especially important in policymaking, where what appears to work for all businesses may in fact not work for non-employers, or vice versa."

The report is online at www.sba.gov/advo/research/rs330tot.pdf.

E-Verify Program,

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the number of businesses using it doubles. They also cited inadequate data to measure the economic impact on small businesses when this change takes place.

The proposed rule would apply only to employment in the United States. It does not apply to any employment outside the United States, including work in U.S. embassies or on military bases in foreign countries. Finally, the proposed rule does not apply to employees hired prior to November 6, 1986.

Advocacy believes that the economic analysis did not provide adequate data to measure the impact of the rule on small business, and provided evidence in the letter of the gaps in the existing analysis. The council's cost estimate assumed that only 162,125 small businesses (prime and subcontractors) participate in the federal procurement

system, but it did not adequately measure the different cost compliance levels on these businesses. Instead, it erroneously assumed that the cost compliance level would be the same on all small businesses.

For more information, please contact Assistant Chief Counsel Major Clark at (202) 205-6533. A copy of Advocacy's letter is available at www.sba.gov/advo/laws/comments/far08_0807.html.

Administrator Baruah Joins SBA

Sandy K. Baruah was designated Acting Administrator of the U.S. Small Business Administration (SBA) on August 15, 2008.

Prior to coming to the SBA, he was the Assistant Secretary for Economic Development at the U.S. Department of Commerce. In that capacity, he worked with the Office of Advocacy to promote conferences on regional and economic development for small businesses.

We welcome Sandy to the SBA and look forward to working with him again.



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 Newsletter
- Advocacy Press
- Advocacy Regulatory News
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