

Now Is the Time To Nominate Rules for The 2009 r3 Top 10

by John McDowell, Press Secretary

Earlier this year the Office of Advocacy unveiled the 2008 Top 10 Rules for Review and Reform. Drawn from over 80 rules nominated by small business owners and their representatives as part of the Regulatory Review and Reform (r3) initiative, the recommendations have been transmitted to the appropriate federal agencies for their action. Advocacy's regulatory experts are currently working with these agencies to prepare to release a status report on implementation in late August.

Changing markets, technology, and competition make it imperative that federal agencies periodically review how their current regulations affect small business. Only with regular evaluation can the enormous number of current regulations be sifted through to find those that are outdated and ineffective due to rapidly changing conditions.

That is why Advocacy is continuing the r3 process and announcing that now is the time to nominate rules for the 2009 Top 10.

If you are worried about complying with outdated or ineffective federal regulations, now you can do something about it by nominating them for regulatory review and reform. Help us streamline and update outdated or ineffective rules by telling us which ones to scrutinize.

Nominate them on the Office of Advocacy's r3 website at

www.sba.gov/advo/r3 or send an email to advocacy@sba.gov. Nominations are due by December 31, 2008. If you have any questions or would like help, please contact Assistant Chief Counsel Keith Holman at (202) 205-6533 or keith.holman@sba.gov.

Complying with all federal regulations now costs our economy \$1.1 trillion per year—that's more per household than the cost of health-care. The smallest businesses bear the brunt of the business regulations. They annually pay 45 percent more per employee to comply with regulations than big businesses do.

Working with federal agencies and small business owners, the r3 initiative can help lighten that load by streamlining and updating outmoded and ineffective regulations. Consideration will be given to nominations that fully address the nomination criteria and make constructive suggestions for improving the existing rule.



In This Issue

Top 10 Rules for Review and Reform in 2009 Sought 1

Message from the Chief Economist

Advocacy Seeks Quality Research through RFQs 3

Legislative Update

Home Office Deduction Act; AMT Bill's Small Business Impact; "Drug Pedigree" Bill . 2

Regulatory News

Proposed Real Estate Settlement Rule Examined. 4

Sarbanes-Oxley Act Relief . . . 4

Small Business Review Panel Takes Up Renewable Fuels . . . 5

ADA Regulations Proposed. . . 5

Research Notes

Annual Lending Study; Best Paper Award. 6

High-Impact Firms. 8

Regional Roundup

Florida Bill Signed; Louisiana Bill Advances. 6

News Items

Legal Interns Join Advocacy . . 7

Mercatus Fellow On Board . . . 7

Legislative Update

Advocacy Applauds Introduction of the Home Office Deduction Simplification Act

by LaVita LeGrys, Congressional and Public Liaison

Chief Counsel for Advocacy Thomas M. Sullivan hailed the introduction of H.R. 6214, the “Home Office Deduction Simplification Act,” a measure that would save small businesses an additional \$1,500 on their taxes next year. The legislation, introduced by Representative John M. McHugh (R-N.Y.), would make small business owners eligible to file a \$1,500 standard deduction for their home office expenses.

In his letter to Representative McHugh, Chief Counsel Sullivan wrote, “Tax complexity, combined with the fact that 53 percent of

America’s small businesses are home-based, prompted [the Office of Advocacy’s] support for H.R. 6214.”

According to the Office of Advocacy’s research, tax compliance is 67 percent more burdensome for the smallest businesses compared with their largest competitors. Last year, the National Association for the Self-Employed (NASE) identified the home office deduction as a tax provision that is unduly complex. In February, Advocacy selected the provision as one of the Top 10 Rules for Review and Reform, as part of the r3 initiative.

The Small Business Advocate

Editor Rebecca Krafft

Managing Editor Rob Kleinsteuber

Contributing Editors Jamie Belcore, Keith Holman, LaVita LeGrys, John McDowell, Chad Moutray, Kate Reichert, Jennifer Smith, Dillon Taylor, Kathryn Tobias

Production Assistant Angela Hamilton

The Small Business Advocate (ISSN 1045-7658) is published monthly by the U.S. Small Business Administration’s Office of Advocacy and is distributed to SBA field staff and members of the U.S. Congress. *The Small Business Advocate* is available without charge from the Office of Advocacy, U.S. Small Business Administration, MC 3114, Washington, DC 20416; advocacy@sba.gov; (202) 205-6533. For delivery changes, send your current address label with your request to the above address. For electronic delivery of this newsletter, visit, www.sba.gov/advo/newsletter.html.



Federal Recycling Program
Printed on recycled paper.

House AMT Bill Could Mean Higher Costs for Small Business

On June 25, the House passed by a 233-189 vote H.R. 6275, a bill that would provide a one-year “patch” to the alternative minimum tax (AMT). The bill included various revenue-raising offsets, including a provision requiring credit- and debit-card processors to report

annually to the Internal Revenue Service the electronic transactions of their business merchants. The requirement would take effect in 2011. The provision was included in the President’s FY 2009 budget and is intended to increase tax compliance. However, small busi-

nesses could face additional reporting requirements and increased merchant fees if the provision is enacted. The National Association for the Self-Employed views the provision as “detrimental to the nation’s smallest firms.”

—LaVita LeGrys

Advocacy and Ombudsman Applaud Bill Standardizing Drug Pedigrees

Chief Counsel Sullivan and Small Business Administration Ombudsman Nick Owens sent members of Congress a letter of support for H.R. 5839, the “Safeguarding America’s Pharmaceutical Act of 2008.” The legislation would create a single uniform pedigree standard nationwide. In their letter Sullivan and Owens wrote, “This standard is vitally important to small distributors, as it eliminates the current practice of having to navigate the

numerous (and sometimes conflicting) pedigree requirements currently being imposed by more than 30 individual states. This practice is not only costly, but often impedes the ability of pharmaceutical distributors to provide urgently needed products to caregivers during times of emergency.”

Small and independent pharmaceutical distributors have told Advocacy that the existing drug pedigree requirements negatively

affect 4,000 small businesses. In addition, the pedigree rulemaking promulgated by the Food and Drug Administration may have the unintended consequence of harming the integrity of the U.S. pharmaceutical supply chain. “We appreciate that you have undertaken this effort to help ensure the continued well-being and existence of secondary and independent distributors of pharmaceuticals,” Sullivan and Owens wrote. —LaVita LeGrys

Message from the Chief Economist

The Office of Advocacy Seeks Quality Research

by Chad Moutray, Chief Economist

Each year, the Office of Advocacy publishes at least 25 research reports on a wide range of topics. These studies are intended to educate policymakers, provide important information to small business owners, and expand academic knowledge about entrepreneurship. Some of Advocacy's analysis is written by staff economists, but much of it is drafted by small business contractors.

Once again, Advocacy is seeking quality research proposals. The office has posted seven requests for quotations (RFQs) on FedBizOpps. (See www.sba.gov/advo/research/rfq08.html.) Our office does not have grant-making authority; every contract issued is a procurement. In addition, these solicitations are all small business set-asides. This suggests that contracts cannot flow to a university or a large business; however, many academic researchers perform research work for us separate from their institutions.

The following solicitations are currently open. Proposals are due by July 22, 2008, 2 p.m. EDT.

Tax and Regulatory Barriers for Veteran Business Owners.

Proposals are sought that examine tax and regulatory barriers for veteran and service-disabled veteran-owned businesses. Several members of Congress formally requested this study in a letter to the chief counsel earlier this year. (SBAHQ-08-Q-0014)

The Impact of Regulatory Costs on Small Firms. Advocacy regularly examines the issue of regulatory compliance costs for small businesses. This RFQ would update the research in this area, specifically Hopkins (1995), Crain and Hopkins (2001), and Crain (2005),

which all showed a disproportionate burden being placed on very small business owners to comply with federal regulations (www.sba.gov/advo/research/rs264tot.pdf). This research series is Advocacy's most often cited work. (SBAHQ-08-Q-0018)

“Seven RFQs are currently open. Proposals are due by July 22, 2008, 2 p.m. EDT.”

Credit Markets for Small Businesses in the United States. This RFQ encourages research into the following topics:

- The role of micro-credit financing in assisting the growth of micro-enterprises and the prospect of developing private micro-lending programs for micro-enterprises;
- The impact of a national business credit card market on the cost and availability of credit to small firms;
- The implications of the recent credit market crisis on the availability of financing to small firms. (SBAHQ-08-Q-0019)

Research on Small Business Benefits. This RFQ seeks data on voluntary employee benefits, including health insurance and retirement. It should focus on providing data tables and analysis on employer and worker characteristics including firm size and industry. If possible, it should include information relevant to the self-employed. (SBAHQ-08-Q-0020)

Survival and Growth Research on Small Business. Research proposals are sought in several areas related to small business survival and growth:

- Survival analysis of select demographic groups such as minorities and women;
- Examination of the purchase and sale of small businesses; or
- The impact of local economic policies. (SBAHQ-08-Q-0021)

Small Business Research by Graduate Student(s). This RFQ seeks to promote doctoral student entrepreneurship research as part of our ongoing effort to reach out to up-and-coming researchers. (SBAHQ-08-Q-0022)

Other Small Business Topics Using Publicly Available Databases. This final request acknowledges that we do not have all of the best ideas. Bidders are encouraged to submit proposals in areas not mentioned above, and the possible topics are wide-ranging. See the statement of work for possible suggestions. As the title suggests, researchers should use existing databases for their analysis. (SBAHQ-08-Q-0023)

As these are open procurements, the Office of Advocacy is unable to address any questions that you might have regarding any of these RFQs. Inquiries should be directed to Myria Carpenter (myria.carpenter@sba.gov) in SBA's Procurement Division. Contracts will be awarded by the end of the fiscal year (September 30, 2008); researchers will have one year from the award date to complete their work.

In the meantime, you can check out all of Advocacy's research at www.sba.gov/advo/research/chron.html, and subscribers to our Listserv will receive regular updates on our releases. To subscribe, go to <http://web.sba.gov/list>, and sign up for the Advocacy Research Listserv.

Impact of Proposed Real Estate Settlement Rule Examined

by Jennifer Smith, Assistant Chief Counsel

On June 11, the Office of Advocacy filed comments on the Department of Housing and Urban Development's "Real Estate Settlement Procedures Act (RESPA): Proposed Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs." The proposed rule is intended to simplify and improve the disclosure requirements for mortgage settlement costs under the Real Estate Settlement Procedures Act of 1974 (RESPA) to protect consumers from unnecessarily high settlement costs.

Advocacy has worked on RESPA reform for several years. In July 2002, HUD proposed a RESPA rule that contained major changes to industry practices, including disclosure of mortgage broker fees and packaging. Because many of the businesses in the real estate industry are small, Advocacy submitted comments expressing concerns about the potential economic

impact of the changes on small entities in October 2002. HUD withdrew that proposal in early 2004 and subsequently held small business roundtables with Advocacy in Los Angeles, Chicago, and Dallas so HUD could hear small business concerns about the RESPA proposal.

On March 14, 2008, HUD published a new RESPA proposal which, among other changes, standardizes the good faith estimate form to make it easier to use for shopping among settlement service providers; provides a closing script to be read to borrowers; includes disclosure of the yield-spread premium; and clarifies when RESPA permits certain pricing mechanisms such as average cost pricing and volume-based discounts for settlement services. Advocacy held a roundtable on the new proposal in April 2008. Representatives from several sectors of the real estate industry, including realtors, mort-

gage brokers, bankers, and settlement service providers, attended the roundtable and provided Advocacy with much needed input on the proposal's impact on small entities.

Advocacy based its June 11 comments on input from the roundtable. Advocacy commented that although the agency put forth a significant amount of effort in its initial regulatory flexibility analysis, the agency may have underestimated the economic impact on small businesses as required by the Regulatory Flexibility Act (RFA). Advocacy suggested that HUD create a good faith estimate that mirrors the HUD-1 form to prevent consumer confusion and clarify the language on tolerances. Advocacy also suggested that HUD eliminate the closing script from the proposal and reconsider volume discounts and the yield-spread premium disclosure. Advocacy further requested a delayed implementation period for small entities if HUD decides to go forward with the proposal.

The June comment letter is online at www.sba.gov/advo/laws/comments/hud08_0611.html. To learn more contact Assistant Chief Counsel Jennifer Smith at (202) 205-6943.

SEC Approves One-Year Extension for Small Businesses

by Dillon Taylor, Assistant Chief Counsel

On June 20, the Securities and Exchange Commission (SEC) approved a one-year extension of Section 404(b) of the Sarbanes-Oxley Act of 2002 for smaller public companies. The extension of the auditor attestation requirement will allow the SEC to complete a cost-benefit study of Section 404 for small companies. More information is available at: www.sec.gov/news/press/2008/2008-116.htm.

The Office of Advocacy sent a letter on June 25 commending the SEC commissioners for their ongoing dedication to easing the difficult process of implementing Section 404 of the Sarbanes-Oxley Act. Advocacy is pleased that the SEC is considering the impact of Section 404 implementation on smaller public companies and applauds its continuing efforts to minimize the costs of compliance. For a complete chronology of Advocacy's Sarbanes-Oxley Act activities and comment letters, please visit our website at: www.sba.gov/advo/laws/comments/sarbanes_oxley.html.

Regulatory News

Small Business Review Panel Takes Up Renewable Fuels Proposal

by Keith Holman, Assistant Chief Counsel

The Office of Advocacy is reviewing the impact of a planned Environmental Protection Agency (EPA) rule on renewable fuels. The rule will require renewable fuels such as corn-based ethanol to be added to the nation's gasoline and diesel supplies. The review is being done through a Small Business Advocacy Review Panel, which EPA will convene on July 9.

In late 2007, Congress enacted the Energy Independence and Security Act. This law requires oil refiners to blend increasingly larger amounts of renewable fuels into gasoline and diesel each year, totaling 36 billion gallons of renewable fuels by 2022. Small refiners are concerned that some renewable fuels, such as those based on cellulose and biomass, may be difficult to obtain in sufficient quantities

and may only be available at high prices. This could add to the price of fuel or drive small refiners out of business. The small business review panel is evaluating the likely impacts of the renewable fuel mandate and examining ways to make it easier for small refiners to come into compliance with the new requirements.

Small business review panels are a required step for draft rules from EPA and the Occupational Safety and Health Administration that are anticipated to have a significant economic impact on a substantial number of small entities. The panel consists of officials from the agency that will propose the rule, the Office of Advocacy, and the Office of Management and Budget's Office of Information and Regulatory Affairs. Small entity represen-

tatives from the affected industries review the draft proposal, comment on the rule's likely impact, and propose possible alternatives to make the rule less costly and burdensome for small businesses. The panel members prepare a report with recommendations for flexibilities and ways to improve the rule. The panel report on the renewable fuels rule is due on September 9. For further information, please contact Assistant Chief Counsel Keith Holman at keith.holman@sba.gov.

Department of Justice Proposes ADA Regulations

by Jamie Belcore, Legal Fellow

The Department of Justice has proposed revisions to its regulations implementing Titles I, II, and III of the Americans with Disabilities Act. The proposed regulations adopt the 2004 Americans with Disabilities Act and Architectural Barriers Act Accessibility guidelines.

The Justice Department has proposed two "safe harbors" that may provide some flexibility to small businesses as they comply with the new regulations. First, it has proposed that any elements of a commercial facility that are already in compliance with the 1991 standards are exempt from the new standards. Second, it has proposed allowing qualified small businesses to assert that they have met the rule's requirements for readily achievable

barrier removal if they have spent one percent of gross revenue on barrier removal in the previous year.

Comments on the proposed regulations will be accepted until August 18. The Office of Advocacy is hosting a small business roundtable on July 14 to discuss the proposed regulations with representatives of small business and the Justice Department. Please contact Advocacy Legal Fellow Jamie Belcore at (202) 619-0312 or jamie.belcore@sba.gov if you would like to attend.

For information on the rule or to comment electronically, visit Advocacy's Regulatory Alerts webpage, www.sba.gov/advo/laws/law_regalerts.html. Advocacy's comments on the Justice Department's

2005 advanced notice of proposed rulemaking for the ADA regulations are online at www.sba.gov/advo/laws/comments/ada.html.

Research Notes

Small Firm Lending Pace Accelerated in 2007

by Kathryn Tobias, Senior Editor

The number of small business loans under \$1 million increased by 15 percent between June 2006 and June 2007 according to the Office of Advocacy's annual lending study released in June. The total dollar value of small business loans increased by 8 percent.

One subset of small business loans—from \$100,000 to \$1 million—increased by 32 percent. Loans under \$100,000 increased by 9.4 percent; this category includes many business credit card loans. All categories had higher growth rates than in the 2005-2006 period.

This year's study, *Small Business and Micro Business Lending in the United States for Data Years 2006-2007*, is written by Advocacy Economists Victoria Williams and Charles Ou. It relies on the Consolidated Reports of Condition and Income (call reports) from June 2007 and Community Reinvestment Act reports for 2006. The time frame covered does not extend to the current credit crunch.

The study ranks lenders in each state and territory by their small

business lending activities, as well as ranking large national financial institutions. It is online at www.sba.gov/advo/research/sbl_07study.pdf. A complete ranking of lenders

is available at www.sba.gov/advo/research/lending.html. Lenders are ranked on their overall small business lending, not by lending under SBA programs.

Advocacy's Best Paper Award Goes to Researchers at University of Texas at Dallas

by John McDowell, Press Secretary

Two professors and a doctoral student received the Office of Advocacy's Best Paper Award on June 6 at the Babson College Entrepreneurship Research Conference held in Chapel Hill, North Carolina. The winning paper, *Entrepreneurship and the Barrier to Exit: How Does an Entrepreneur-Friendly Bankruptcy Law Affect Entrepreneurship Development at a Societal Level?*, examines bankruptcy law and risk-taking behavior. It was written by Seung-Hyun Lee, Ph.D., Yasuhiro Yamakawa, and Mike W. Peng, Ph.D. of the School of Management at the University of Texas at Dallas.

The paper tests hypotheses related to the relationship between bankruptcy law and the value-

creating activities associated with risk-taking behavior by entrepreneurial firms. The study finds that a lenient, entrepreneur-friendly bankruptcy law encourages entrepreneurs to take risks and thus lets entrepreneurship prosper.

"This paper is an excellent example of the type of scholarship our Best Paper Award is intended to highlight," said Chad Moutray, Advocacy's chief economist. "This kind of research provides a sound theoretical basis for public policy choices, in this case analyzing the infrastructure that fosters value-creating activities by firms with high growth potential," he said.

The paper is online at www.sba.gov/advo/research/rs326tot.pdf.

Regional Roundup

Florida Governor Signs Regulatory Relief Bill

by Kate Reichert, Regulatory and Legislative Counsel for Regional Affairs

On June 10, Florida Governor Charlie Crist signed H.B. 7109, "Small Business Regulatory Relief." The new law requires Florida agencies to prepare a statement of estimated regulatory costs if a proposed rule will have an impact on small businesses. Preparing this statement will help make agencies aware of the disproportionate share of regulatory costs and burdens placed on small businesses. It will

also provide agencies with the tools to craft regulations that address this disparity in impact.

A second state bill may be close to becoming law. Louisiana's H.B. 368, which creates the state "Regulatory Flexibility Act," recently passed out of the legislature and was sent to the governor's office. The bill was sponsored by Representative Rickey Nowlin and Senator Ann Duplessis.

The Louisiana bill includes provisions that require agencies to prepare both economic impact analyses and regulatory flexibility analyses; it also defines "small business." The regulatory flexibility analysis would require agencies to consider methods of achieving their regulatory goals that would not disproportionately burden small businesses.

Legal Interns Enhance Advocacy's Work

by Rebecca Krafft, Editor

The Office of Advocacy's legal internship program gives law students firsthand experience of how federal rules are made. Interns work with staff attorneys on several small projects and complete one

large legal research project of significant importance to Advocacy. Two legal interns are joining Advocacy this summer.

Elisa A. Filman has completed her first year at Suffolk University

Law School in Boston. While at Advocacy, Filman is researching the difference between agency guidance and agency rulemaking and the impact that court decisions have had on small entities.

Filman received her undergraduate degree in history from Scripps College in Claremont, California, and did a semester abroad at Queen Mary, University of London. She worked as head of sales and marketing for a small software company before heading to law school.

Kevin Pickens has completed his first year at William and Mary School of Law in Williamsburg, Virginia. His chief project at Advocacy involves examining the difference between legislative and interpretative rulemakings. Specifically, he will examine how the Internal Revenue Service's utilization of interpretive and legislative rulemakings affects small entities. Pickens received his undergraduate degree from Washington and Lee University in Lexington, Virginia, where he double-majored in economics and European history.

For information about Advocacy internships, contact Assistant Chief Counsel Jennifer Smith at (202) 205-6943 or jennifer.smith@sba.gov.



The Office of Advocacy's legal internship program gives law students firsthand experience of how federal rules are made. This summer, law students Elisa Filman and Kevin Pickens are working with Advocacy's attorneys on several projects.

Mercatus Fellow Brings Food Science Expertise to Her Study of Regulatory Law

The Office of Advocacy's Mercatus Fellow for summer 2008 is Joan R. Rothenberg, who is in her final year at George Mason School of Law in Arlington, Virginia. Rothenberg is an accomplished food scientist with a business background; she has worked in product development and research for several major U.S. corporations. Rothenberg caught the "Potomac policy bug" during her year as a Congressional Science Fellow of the American Association for the Advancement of Science in 1999–2000. She has been involved in many aspects of food safety and food science policy since then.

The Mercatus Regulatory Studies Fellowship is the result of a

partnership between the Mercatus Center at George Mason University and Advocacy. The program offers second- and third-year law students who are interested in regulatory policy and small business issues the opportunity to work at Advocacy. While at Advocacy, Rothenberg is working on policy related to the Coast Guard, the Department of Agriculture, and other regulatory issues.

"The opportunity to participate in regulatory evaluation and analysis is a great experience for me," Rothenberg said. —Rebecca Krafft

Research Notes

High-Impact Firms Create Most Jobs and Growth

John McDowell, Press Secretary

“High-impact” firms create America’s new jobs and growth, according to a study released by the Office of Advocacy in June. These firms are distributed across all industries, and they account for almost all employment and revenue growth in the economy, the study concludes.

“While high-impact firms make up about 5 percent of firms with employees, their effects are huge,” said Advocacy Economist Brian Headd. “Surprisingly, the study shows that these firms are 25 years old on average, they are not predominantly high-tech, and they exist in every region of the country.”

The study was released at the International Council for Small Business 2008 World Conference

by Zoltan Acs, one of the researchers. The study, *High-Impact Firms: Gazelles Revisited*, re-examines the findings of small business researcher David Birch about fast-growing firms, or “gazelles.” Acs and his team examined “high-impact firms,” defined as those whose sales have at least doubled over a four-year period and which have significant employment growth.

The study notes that high-impact firms are found across all industries and in all geographic regions. It ranks regions, states, metropolitan statistical areas, and counties by their share of high-impact firms. The study finds, with some data limitations, that high-impact firms are not startups but are on average around 25 years old, and that they

come in all size classes. The report also documents that over the periods studied, nearly all job losses came from large low-impact firms.

Given the available data, the authors were not able to determine what factors drove firms to become high-impact or how to identify the firms in advance.

High-Impact Firms: Gazelles Revisited, by Zoltan Acs, William Parsons and Spencer Tracy of the Corporate Research Board, is online at www.sba.gov/advo/research/rs328tot.pdf.

U.S. Small Business Administration
Office of Advocacy
Mail Code 3114
409 Third Street, S.W.
Washington, DC 20416

Official Use
Penalty for Private Use, \$300

Return Service Requested