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The Small Business Advocate

Advocacy: the voice of small business in government

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Small Business Owners and Investors Well Represented in the Freshman Class of the 111th Congress

by LaVita LeGrys, Congressional and Public Liaison

Small business owners throughout the nation are bearing the brunt of the nation's economic malaise. Soaring energy prices, a housing market in decline, rising healthcare costs, and a tightening credit market have all converged to threaten the survival of many small businesses. Figuring out how to put the economy back on track will be the first order of business for the 111th Congress and the incoming Administration. Representing 99.7 percent of all employer firms, small businesses will no doubt play a vital role in steering the nation's economic recovery.

The freshman class of 2009 includes several new members of Congress with small business experience, both as entrepreneurs and investors. In fact more than one-third of the new members have small business backgrounds. Their presence in Washington, D.C., may provide some comfort to small business owners who, according to a recent poll by the National Association for the Self-Employed, overwhelmingly believe their needs are not being represented or protected in Congress. Well-versed in small business issues themselves, these new members will bring a hands-on perspective to such critical issues as healthcare reform, access to capital, tax equity, and energy reform.

These new members bring a variety of experiences, from family-run businesses to high-tech startups; farmers and restaurants; landscape architects and real estate agents; veterinarians and craft store owners. Turn to page 2 for a list of this year's new senators and representatives with small business backgrounds.

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Entrepreneurs Come to Capitol Hill

Among the incoming members of the 111th Congress are 24 small business entrepreneurs and investors.

Senate

Mark Begich (D-Alaska), property development company owner.
Jeff Merkley (D-Oregon), computer repair company owner.
Jim Risch (R-Idaho), lawyer, rancher, and former trailer company owner.
Jeanne Shaheen (D-New Hampshire), former jewelry store owner.
Mark Warner (D-Virginia), telecommunications and technology venture capitalist.

House of Representatives

Steve Austria (R-Ohio, 7th District), financial services firm owner.
Jason Chaffetz (R-Utah, 3rd District), public relations firm owner.
Mike Coffman (R-Colorado, 6th District), founded two property management companies and a leasing firm.
Kathy Dahlkemper (D-Pennsylvania, 3rd District), landscape architecture business owner.
John Fleming (R-Louisiana, 4th District), physician; sandwich shop owner.
Alan Grayson (D-Florida, 8th District), first president of a phone services company; investor in small companies.
Parker Griffith (R-Alabama, 5th District), physician; owner of a funeral home and a nursing home; real estate developer.
Brett Guthrie (R-Kentucky, 2nd District), vice president of family-owned automobile die-casting business.
Suzanne Kosmas (D-Florida, 24th District), real estate company owner.
Chris Lee (R-New York, 26th District), executive of family-owned shock absorber manufacturing business.
Blaine Luetkemeyer (R-Missouri, 9th District), co-owner and manager of family-owned bank and insurance agency; rancher.
Cynthia Lummis (R-Wyoming, At Large), manages family ranch operation.
Betsy Markey (D-Colorado, 4th District), ice cream and coffee shop owner; web services company owner.
Walt Minnick (D-Idaho, 1st District), founder of gardening retailer chain.
Chellie Pingree (D-Maine, 1st District), inn and restaurant owner; former owner of knitting and craft business; farmer.
Jared Polis (D-Colorado, 2nd District), Internet entrepreneur and venture capitalist; at-risk charter schools founder.
Kurt Schrader (D-Oregon, 5th District), small business owner; veterinarian; farmer.
Aaron Schock (R-Illinois, 18th District), real estate developer and home improvement company owner.
Harry Teague (D-New Mexico, 2nd District), oil well services company owner.

Blogomania Grips Advocacy Staff!

The rumors are true—Advocacy staffers are in the grip of an outbreak of blogomania. Whether scribbling their thoughts about the latest small business economic research, fielding comments from small businesses on proposed rules, or pointing readers in the direction of interesting news items, Advocacy's staff has been posting like mad on our new blog.

"The Small Business Watchdog" blog focuses on regulatory issues, small business research, and more. We encourage all small business stakeholders to check out the blog and leave us a comment.

Advocacy also has a Facebook fan page (non-official, posted by fans of the office).

Join with us in using social media to help spread the word about the importance of small business to our economy and reducing burdensome regulations on America's job creators. Visit the "Small Business Watchdog" at **http://weblog.sba.gov/blog-advo.**

The Small Business Advocate

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Message from the Acting Chief Counsel

The Office of Advocacy: The Voice of Small Business in Government

by Shawne McGibbon, Acting Chief Counsel for Advocacy

As the Office of Advocacy heads into a new year and a new Administration, I reflect upon my experiences. I joined the Office of Advocacy in 1994 as an assistant chief counsel for food, drug, and health issues. As a regulatory attorney, I worked daily with small nursing homes, home health care agencies, doctor's and dentist's offices, and the trade associations that represented them. As a representative of the office, one of the most gratifying events was always the moment when small business owners realized that there was a voice for them in the federal government. This revelation was always greeted with a great big "*Wow!* There actually is a government office looking out for the little guys?" This sums up the office's purpose, and it is the bedrock of the office's effectiveness.

During the transition to the new Adminstration, the Office of Advocacy will continue to fulfill its congressionally mandated role—as an independent voice for small business within the federal government. We will continue to work on our foremost task—to represent the nation's small businesses effectively within the federal government's legislative and rulemaking processes.

Statistically speaking, small businesses are the nation's job creators. In qualitative terms, they are the expression and fulfillment of individuals' determination to succeed; they are a path to the American Dream. And, sometimes they are the engines of economic and social transformation. Despite their accomplishments and contributions to the economy, they all share one thing as a result of their size: they are at a disadvantage in the realm of federal policymaking. They cannot afford lobbyists or government affairs staff to represent them in Washington, and their owners cannot spare the time to track or participate in the complex legislative and regulatory policymaking that influences their fortunes, and sometime, their survival.

As the economist E.F. Schmacher wrote, "Small is Beautiful." However it's also expensive. Small entities lack the economies of scale that make everything from office supplies to warehouse space more affordable for large businesses. This tendency to glorify "big" probably lies in the economic imperative to get things at the lowest cost.

But not everyone can be big—nor should they be. The fact is that most U.S. businesses are small. The U.S. economy is composed of a handful of big businesses—only a few thousand firms have over 500 employees—and these big firms generate about half of U.S. economic activity. The rest—*about 27 million businesses*—have 500 employees or fewer.

In addition to being most numerous, small businesses are also a mainstay of the nation's economic and social fabric. While they are responsible for about half of U.S. GDP, they create between *60 and 80 percent* of America's net new jobs. They are also a fount of inventiveness and innovation, as well as the time-honored pathway of immigrant success.

The lower unit costs that large businesses enjoy also extend to the costs involved in complying with laws and regulations—in tax, labor, safety, economic, environmental, and other areas. Economic studies commissioned by this office have repeatedly shown that federal regulatory costs fall much more heavily on small businesses than on large ones. The most recent study found that small businesses pay 45 percent more per employee than large ones do to comply with federal regulations.

Advocacy's previous five chief counsels found many ways to

Continued on page 4

At the 2005 symposium commemorating the RFA's 25th anniversary, Shawne McGibbon reflected on her experience with the RFA over the previous decade.

FAA Finalizes Washington, D.C., Area Flight Restriction Rules

by Bruce Lundegren, Assistant Chief Counsel

The Federal Aviation Administration (FAA) has finalized its Special Flight Rules Area (SFRA) rule for the Washington, D.C., metropolitan area. The new rule imposes flight restrictions on aircraft operating in and around the national capital area. Essentially, the rule imposes a 15-mile "flight restricted zone" extending 15 miles around Reagan National Airport and a broader "restricted access area" extending 30 miles around Reagan National (which is located on the Potomac River directly across from Washington, D.C.).

Flight restrictions for the Washington, D.C., area were first imposed in the aftermath of the terrorist attacks of September 11, 2001. FAA proposed to make those restrictions final in a proposed rule published in August 2005. However, that proposal received some 22,000 public comments, many of them in opposition. The Office of Advocacy was among those who commented, recommending that FAA more fully assess the economic impact of the proposed rule to the region and that it consider alternative approaches that would make the rule less costly while still meeting the agency's security objectives.

The restricted airspace is comprised of two concentric rings. The 15-mile interior ring can only be accessed by flights authorized by the FAA and the Transportation Security Administration. The outer 30-mile ring can only be entered if the pilot files a flight plan with air traffic control, maintains two-way radio communications, and operates the aircraft's radio transponder while in the area.

The FAA's Washington, D.C., area flight rule was the subject of a public nomination for review under the Office of Advocacy's Regulatory Review and Reform (r3) Initiative. The r3 Initiative is designed to identify federal rules that could be reformed to make them more effective and less burdensome to small business. The FAA rule was nominated by a small general aviation airport located within the restricted airspace and was selected as one of Advocacy's "Top 10" rules to review in 2008.

FAA's final rule creates a smaller restricted airspace than was originally imposed. The final rule reduced the size of the restricted area by approximately 1,800 square miles, removing some 33 small airports and helipads from the regulation. These changes were intended to reduce the economic impact of the rule while maintaining the FAA's security parameters. The change to a smaller, more uniform, airspace addressed many of the issues raised in public comments on the proposed rule, including those of the Office of Advocacy. For additional information about this rule, please contact Assistant Chief Counsel Bruce Lundegren at (202) 205-6144 or **bruce.lundegren@sba.gov.**

Message, *from page 3*

implement Congress's charge to the office, and these ideas have evolved over the 33-year history of the office. The responsibilies of the office have become better focused during this time. All rest on three key roles: economic research, participation in federal agency rulemaking, and education and outreach.

Now, as we make the transition to the new administration, Advocacy will focus on the most effective ways of bringing small business into the policymaking arena:

• Working with the 111th Congress and helping them tackle the critical economic issues affecting their small business constituents. Advocacy looks forward to providing data and input in these areas. The small business credentials of the incoming members of this Congress are impressive (see pages 1 and 2).

• Preparing the new staffs of federal agencies, both through firsthand information and data about the small entities they regulate and through staff training on the implementation of the Regulatory Flexibility Act (RFA). Implementation of the RFA is a key way that Advocacy helps balance such important regulatory goals as health, safety, and environment with the need to protect small businesses from outsized regulatory burdens.

• Providing data and information as the federal government's resource for statistics on small business. The office will also place renewed focus on research topics of concern during the economic crisis—health care, finance, job creation, taxes.

Like the entities it represents, the Office of Advocacy is also very small. During the coming months, the office will wisely focus its resources to make the best case for small businesses.

Changes in the Family Medical Leave Act and the Americans with Disabilities Act Affect Small Employers

by Janis Reyes, Assistant Chief Counsel

Two major changes in employment law will go into effect in January: amendments to the American with Disabilities Act (ADA) and revisions to the Family and Medical Leave Act of 1993 (FMLA).

President Bush signed the ADA Amendments Act into law in September, and the Act takes effect on January 1, 2009. The amendments overturn a series of Supreme Court cases, expanding the number of workers who are considered disabled under the ADA and increasing the number of employers that must make reasonable accommodations for these employees.

The ADA defines a "disability," in part, as "a physical or mental impairment that substantially limits a major life activity of an individual." The **ADA Amendments Act** emphasizes that this statute should be broadly interpreted to cover more individuals, and in particular, it directs the Equal Employment Opportunity Commission to interpret the term "substantially limits" in a future rulemaking. The amendments also provide commonly used examples for the undefined ADA term "major life activity," such as seeing, eating, sleeping, and thinking. This provision also adds "major bodily functions" such as "functions of the immune systems, digestive, and neurological functions" to this list, which could lead to an expansion of workers considered disabled under the ADA. This Act also makes it easier for individuals to claim that they are disabled based on the perception of disability (the "regarded as" prong of the ADA).

The amendments state that the beneficial effects of mitigating measures such as medications or prosthetics will not be considered in assessing whether an individual has a disability (there is an exception for eyeglasses or contact lenses). They also clarify that an impairment that is temporary or in remission, such as epilepsy or cancer, can be considered a disability.

The ADA amendments will shift the focus of litigation from whether an employee is disabled (allowing more plaintiffs to be considered disabled) to whether there was discrimination in the workplace. They also leave many questions unsettled—for instance which disabilities will be considered to "substantially limit" a major life activity and what types of reasonable accommodations employers may have to provide.

A second development in employment law with important ramifications for small employers is the recently finalized revisions to the **Family and Medical Leave Act of 1993** (FMLA). The new regulation takes effect on January 16, 2009.

Under the FMLA, employers with 50 or more employees are required to provide up to 12 weeks of unpaid leave for the birth or adoption of a child, or for a serious health condition. This new rule clarifies how FMLA leave affects the substitution of paid leave, perfect attendance awards, and light duty assignments. This rule also specifies that leave-takers with chronic conditions are required to have two doctor's visits a year.

This rule requires four types of employer notifications and provides more time for these notifications. Employees are also required to provide sufficient and timely notification to their employers, removing provisions that allowed employees to notify their employers up to two full business days after an absence. Employers can now require employees to comply with the employer's call-in procedures for notification.

Employers can now ask for annual medical certifications for conditions that last over a year, and they can request re-certifications and fitness-for-duty certifications under certain circumstances. The rule also sets new timelines for medical certification requests. A new military caregiver provision also expands FMLA coverage for family members taking care of covered service members.

The Department of Labor did not reform two provisions recommended by the Office of Advocacy that are particularly burdensome for employers—the definition of a "serious health condition" and the "intermittent leave" sections.

If you have any questions on these changes to the ADA or the FMLA, please contact Assistant Chief Counsel Janis Reyes at (202) 205-6533.

Research Notes

Immigrants Owning Businesses Make the American Dream Come True

by John McDowell, Press Secretary

Lost in the debates over immigration is an unheralded fact—immigrants are pursuing the American Dream through business ownership at a rate 30 percent greater than that of native-born citizens. The result is more jobs, more growth, more income, and ultimately more tax receipts than would otherwise be expected.

While immigration policy has been argued in Washington and state capitals across the country, until now there has been no broad study of business formation rates and performance among the immigrant population. That changed with the recent publication of *Estimating the Contribution of Immigrant Business Owners to the U.S. Economy*, written by Robert Fairlie with funding from the Office of Advocacy.

The report analyzes data from three Census Bureau sources: the 2000 Census Five Percent Public Use Microdata Sample, the 1996-2007 Current Population Survey, and the 1992 Characteristics of Business Owners. The report's findings may surprise some people.

Immigrants own 12.5 percent of our nation's businesses, while they represent 12.2 percent of the workforce. Those businesses annually generate $67 billion in income or 11.6 percent of all business income across the country. Moreover, immigrants own 11.2 percent of businesses with $100,000 or more in sales and 10.8 percent of all businesses with employees.

Not surprisingly, immigrant-owned businesses are not evenly distributed across the country, but are concentrated in coastal states. In Hawaii, Florida, and New Jersey, more than one-fifth of business owners are immigrants, while in New York almost one-quarter of business owners are immigrants. In addition, almost 30 percent of California's business owners were born outside the United States.

Neither is business ownership spread evenly across ethnic groups. Immigrants from Greece are most likely to own a business (26 percent), with Koreans, Iranians, and Italians not far behind. Mexican immigrants own the largest number of businesses, followed by Koreans, Indians, and Chinese. Average net business income per owner also varies significantly by ethnicity. Indians average the greatest income at $83,023 per owner, followed by Iranians, Canadians, and Greeks.

This report is the first time that immigrant business ownership rates and immigrant-owned business contributions to the economy have been studied in detail. These findings can make a noteworthy contribution to public policy debates not only over immigration, but over local and regional economic development as well. The report is available on Advocacy's website: **www.sba.gov/advo/research/rs334tot.pdf**.

Successful entrepreneurship requires hard work, discipline, and the ability to take risks with everything the owner has. These are all traits inherent in the immigrant experience, so it is no wonder that immigrant entrepreneurs are successfully starting and running businesses.

Small business ownership has traditionally brought immigrants into the mainstream of the American economy and the American Dream, and as this study points out, that is still happening today.

Regional Roundup

Ohio Regulatory Reform Task Force Unanimously Approves Report

by Kate Reichert, Regulatory & Legislative Counsel for Regional Affairs

The Ohio Regulatory Reform Task Force, a bipartisan group of Ohio legislators aiming to produce regulatory reform ideas for the state, has concluded a series of statewide hearings. The task force heard testimony from more than 50 witnesses, including small business organization representatives, business owners, and economic development professionals. The Office of Advocacy's director of regional affairs, Christiane Monica, testified at the task force's kick-off meeting on August 13. The directors of six state regulatory agencies were also given the opportunity to express their views.

In mid-December, the task force released a report that includes highlights of testimony from the hearings regarding the state's current regulatory environment. The task force voted on the report on December 17, and it was unanimously approved.

The report also includes a summary of the task force's findings and recommendations for improv-

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Economic News

Business Age Takes Center Stage

by Brian Headd, Economist

The U.S. Census Bureau's Longitudinal Business Database (LBD) is the most comprehensive source of individual business records tracked over time. However, for reasons of privacy, this data is not available for public consumption. Census's research wing, the Center for Economic Studies, has recently developed a new data product based on the Longitudinal Business Database which provides important data on business growth and survival without breaching business confidentiality.

This groundbreaking data collection program, Business Dynamic Statistics, tracks businesses over time to illustrate growth and survival based on initial start year, size, industry, and so on. The data contains annual aggregate tables by initial firm age, size, industry, and other characteristics beginning in 1977.

While economists have focused on firm size differences in recent decades, firm age differences have been largely ignored because of the lack of data. This dataset could evolve the discussion away from small businesses and toward young businesses.

The data will be valuable to researchers focusing on business growth, decline, survival, and associated job churn but will be very tricky for non-researchers to grasp.

For those researchers interested in the life-cycle of firms, the dataset is invaluable. A good introduction to it is Census's background paper on the dataset, *Business Formation and Dynamics by Business Age*, by John Haltiwanger, Ron Jarmin, and Javier Miranda, **www.ces.census.gov/index.php/bds/bds_publications**. Another CES paper provides an illustration of how this data can be put to use: **www.ces.census.gov/docs/bds/BD1_021208.pdf**. And, for those with the greatest interest in the topic, there are the data-rich tables themselves, located at **www.ces.census.gov/index.php/bds/bds_database_list**.

While the dataset may not be the place to go to get a basic statistic or two, expect to see interesting findings from researchers in the next few years on business survival and growth.

New Report Confirms Small Businesses' Innovative Edge

by John McDowell, Press Secretary

Small businesses are the innovators of the American economy as they obtain many more patents per employee than larger firms, according to a study released by the Office of Advocacy. Moreover, their patents outperform larger firms on a number of measurements, suggesting that small firm patents in general are more likely to be technologically important than those of larger firms.

"Small firms are the innovative driver of the American economy," said Chief Economist Chad Moutray. He added, "This report adds more weight to the evidence we already have that encouraging small firms is the best way to increase innovation, productivity, and jobs."

The report analyzes a database of 1,293 small and large technology firms and more than 1 million patent records between 2002 and 2006. *An Analysis of Small Business Patents by Industry and Firm Size*, written by 1790 Analytics, LLC, with funding from the Office of Advocacy, builds on earlier work of the authors in 2003 and 2004.

Not only do all small firms (those with fewer than 500 employees) obtain more patents per employee than larger firms, but the relationship seems to hold for all size classes. That is, firms with fewer than 25 employees have a higher patent per employee ratio than those with fewer than 50 employees and so on.

The authors found that during the period studied, small firms made up 40 percent of all firms with 15 or more patents. They also found that the smaller patenting firms are younger, with 56.5 percent under 15 years old, while 90 percent of the larger firms were 15 or more years old. The complete report is available on Advocacy's webpage at **www.sba.gov/advo/research/rs335tot.pdf**.

Ohio Task Force, *from page 6*

ing Ohio's regulatory climate. The report acknowledges earlier efforts by the governor and general assembly to create a friendlier regulatory environment, but it suggests that more can be done. The report states that "it is apparent from the testimony heard by the Regulatory Reform Task Force. . . that Ohio has an unfortunate reputation for red tape and bureaucracy that needs to be addressed to ensure we are competitive with other states and countries that are competing for the same jobs and economic investment."

Karen Mills Nominated to Head SBA

On December 19, President-elect Barack Obama designated Karen Gordon Mills as his pick for the next administrator of the U.S. Small Business Administration. Mills' nomination is subject to Senate confirmation.

Mills is a founding partner of the New York-based equity firm Solera Capital and the chairwoman of the Maine Governor's Council on Competitiveness and the Economy. She is also president of the MMP Group in Brunswick, Maine, and she serves on the boards of directors for the Maine Technology Institute and the Maine chapter of the Nature Conservancy

"I'm delighted that Karen Mills has been designated by President-elect Obama to be the next SBA administrator," said Shawne McGibbon, acting chief counsel for advocacy. "As a venture capitalist, Karen clearly understands the need to lower the regulatory hurdles growing small businesses face. She also knows how important small businesses are to the economy, especially in their roles as innovators and job creators. I look forward to working with her and her team to advance the small business agenda in Washington."

Mills graduated *magna cum laude* from Radcliffe College, part of Harvard University, with a degree in economics. She received her master's degree from Harvard Business School in 1977.

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