

## RFA Report Documents \$15 Billion in Small Business Cost Savings

by Kia Dennis, Assistant Chief Counsel

The Office of Advocacy celebrated the 30th anniversary of the Regulatory Flexibility Act (RFA) by helping small businesses save nearly \$15 billion in foregone regulatory costs in fiscal year 2010. This was accomplished, without undermining the goals of the federal agencies, by working with the agencies to improve proposed regulations under the requirements of the RFA. A detailed discussion of these savings can be found in the annual report on the RFA published by Advocacy.

Congress enacted the RFA in 1980 in response to frustration in the small business community which arose from the increasing and disproportionate burden of federal regulation on small entities. The law gives small businesses, small nonprofits, and small government entities a voice in the rulemaking process. The RFA requires federal agencies to analyze the impacts of their regulations, to publish this analysis with the

proposed rule, and to identify less burdensome alternatives. Agencies are required to notify Advocacy of their initial regulatory flexibility analyses (IRFA) and certification of rules with no significant effects on small entities.

Advocacy communicates with agencies through a variety of methods in order to improve regulations, including publishing comment letters regarding specific regulations. The most common concerns raised in Advocacy comment letters in FY 2010 were the failure to consider significant alternatives, inadequate economic analyses of small entity impacts, improper certifications, and inadequate or missing IRFAs. Several key regulations and comment letters are discussed in the annual report. Interagency communication and cooperation often results in regulations that avoid excessive burdens on the small business community. For example, Advocacy worked with

the Department of Justice on the 2010 update of the American with Disabilities Act rules. As a result of Advocacy's working with the agency, the proposed rules included two safe harbor provisions addressing concerns raised by small businesses.

Advocacy is also required to train the agencies in RFA compliance pursuant to Executive Order 13272. Between FY 2003 and 2010, Advocacy provided

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EPA has finalized several regulations on emissions (see page 4).

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## Research Notes

### Signs of Impending Growth in Small Business Lending

by Kathryn Tobias, Senior Editor

Lending to small firms by U.S. financial institutions continued to decline over the 2009–2010 period, but some loan size categories began to stabilize, according to the Office of Advocacy’s latest edition of *Small Business Lending in the United States*. The authors note that GDP has already turned upward, and that business lending may follow the pattern of other recessions, in which commercial and industrial lending grew only after recovery was well under way.

The term “small business lending” here refers to business lending in amounts under \$1 million. Total small business lending by these reporting institutions dropped by 6.2 percent, less than the 8.9 percent drop in lending to large businesses (loan amounts over \$1 million) over the 2009–2010 period.

The smallest or “micro” business lending is lending in amounts under

\$100,000. Micro lending began to stabilize in 2009–2010—the total was down by 1 percent, compared with a 5.5 percent drop in 2008–2009. Real estate loans accounted for the entire decline.

“Businesses and lenders continued to exercise caution in borrowing and lending through 2009–2010,” said Chief Counsel for Advocacy Winslow Sargeant. “As the economy improves, this study, through its state-by-state display of lender performance, can help both small business borrowers and lending institutions see where small firms are beginning to find the capital they need.”

The study was written by George Haynes and Victoria Williams of the Office of Advocacy. It relies on data reported by financial institutions to their regulatory agencies and compiles state-by-state rankings of these institutions with

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respect to their small business lending. Two types of reports are used: Consolidated Reports of Condition and Income (Call Reports) and Community Reinvestment Act (CRA) reports.

Because of data limitations, the study looks only at the supply side of the lending equation, but some small business credit demand indicators have recently begun to register increases. It’s important to note that the rankings are unrelated to banks’ status with respect to Small Business Administration lending programs.

*Small Business Lending in the United States, 2009–2010* may be found on the Advocacy website at [www.sba.gov/advocacy/852](http://www.sba.gov/advocacy/852).

#### 2010 RFA Report, from page 1

training to more than 60 federal agencies and departments. Advocacy also participates in Small Business Advocacy Review panels.

The report is available on Advocacy’s website at [www.sba.gov/content/report-regulatory-flexibility-act-fy-2010](http://www.sba.gov/content/report-regulatory-flexibility-act-fy-2010).

## Message from the Chief Counsel

### The Cost of Regulations

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

We are all very familiar with the expression, “Small businesses are the backbone of America’s economy.” But this is often said when someone would like to make a point, linking interest in small business with other issues. I agree that small businesses are the “backbone” of our economy, and should be treated as such; this should not simply be a sound bite in public, but should result in action and strong support for small business issues.

When my staff at the Office of Advocacy and I meet with small business owners, they tell us that complying with federal regulations is not their “core” business, and it can cause undue burdens in running their day-to-day operations. Why is complying with federal regulations any different for small businesses than for large businesses? First of all, the average small business owner wears multiple hats and performs multiple tasks. The silos of expertise for a particular function or task are lacking. For small business owners, multitasking

is not an option, it’s a fact of life.

No one disputes that regulations are needed for societies to properly function. We all benefit in society when sound and effective regulations are in place. Small business owners want a safe and healthy environment for their families and communities. They also are the entrepreneurs that seek to build and strengthen our economy and our way of life. Small businesses’ issue with regulation arises when uncertainty and unfairness enter into the process. President Obama made this point clear in his recent op-ed piece in the *Wall Street Journal* in which he stated that “Sometimes, those rules have gotten out of balance, placing unreasonable burdens on business.”

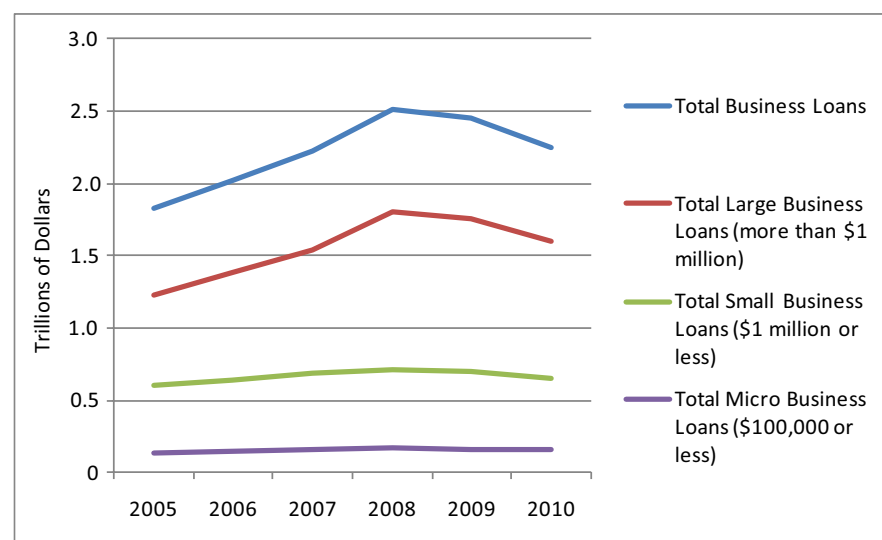
Recently, I spoke to a small business group about federal regulations. Those in attendance complained about the ever-increasing number of regulations and their inability to keep up with them. One participant ask me if it was possible to have a table of

contents and an index included as part of the *Federal Register*, because it was hard for him to track which regulations were applicable to his company and his industry. While this is a straightforward request, it also illustrates the problem of accurately determining the costs of regulations. The business owner’s need to pore over the *Federal Register* is an example of a cost that *may not be captured* in the calculation of how much it costs to comply with regulations.

Federal government and local leaders continue to look to small businesses to provide the majority of the net new jobs now and in the future. I am encouraged that recent initiatives to promote startups and entrepreneurship have put job creation at the heart of the national agenda. The job creators—small business owners—must be a co-equal partner for any of these initiatives to be successful. This will mean that agencies seeking to regulate new and emerging ideas and products must engage with these small business leaders early in the rulemaking process. The Office of Advocacy will continue to speak as the voice of small business in the federal government to ensure this communication is seriously considered.

The global economy has empowered entrepreneurs as never before to set up shop where favorable conditions exist for their enterprises. America’s culture of entrepreneurship is unmatched and is the envy of the rest of the world. We need to make sure that the cost to do business here does not encourage the current and next generation of small business leaders to seek other shores.

Total Value of Business Loans by Size of Loan, June 2005–June 2010



Source: Federal Deposit Insurance Corporation, Statistics on Depository Institutions, June 2005–June 2010.



Chief Counsel Sargeant attended the National Small Business Association Congress in February. With him are NSBA Chair of the Board of Trustees Larry Nannis and NSBA Vice-Chair for Membership Pedro Alfonso.

EPA Finalizes Emissions Rules

by David Rostker, Assistant Chief Counsel

On February 21, the Environmental Protection Agency (EPA) issued final rules establishing emissions standards for commercial and industrial boilers of all sizes, for commercial and industrial solid waste incinerators (CISWI) and sewage sludge incinerators (SSI), and it issued a rule on the definition of solid waste (DSW). EPA estimates these rules will impose almost \$2 billion in annual costs on the economy, with estimated health benefits of at least \$20 billion per year once the rules are fully implemented. The Office of Advocacy has been working on these rules since 2008 and continues to express concerns that EPA has not fully considered the effects of these rules on small businesses and institutions.

Advocacy has had different levels of involvement with each

of these rules. The Regulatory Flexibility Act requires EPA to convene Small Business Advocacy Review (SBAR) panels and develop initial regulatory flexibility and final regulatory analyses for rules expected to have a significant economic impact on a substantial number of small businesses and institutions. EPA convened a panel on boilers in 2009. Advocacy and the Office of Management and Budget participated, as required by law. EPA also prepared initial and final regulatory flexibility analyses for the boiler rules, and Advocacy participated in the deliberative OMB reviews of these rules and these analyses under Executive Orders 12866, 13272, and 13563. EPA will also issue small entity compliance guides in the near future. Advocacy filed public comments on these proposed rules,

and the final rules, while very costly, are significantly improved from the proposals. However, the final rule still includes requirements that are not justified by the benefits, such as energy audits, and EPA has not shown that the burdens on small entities are balanced by the health benefits of such measures.

EPA certified that the other rules did not impose a significant burden on a substantial number of small entities and therefore did not prepare regulatory flexibility analyses. However, Advocacy has concerns about the CISWI and DSW rules. In the case of the CISWI rule, changes between the proposed and final rule have increased the proportion of affected small entities that will experience a significant economic impact. For

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New Regulations for Electric Utilities Expected

To implement the goals of the Clean Water and Clean Air Acts, the Environmental Protection Agency is expected to issue a number of new rules in the next two years to govern operations of electric utilities. These will significantly affect their operations and, consequently, electricity prices for the rest of the economy.

EPA has agreed to court-ordered deadlines to propose and finalize three rules:

- Air toxics emission standards for electricity generating units (EGUs) under Clean Air Act section 112,
- Greenhouse gas emission standards for EGUs under section 111 of the Clean Air Act, and
- New requirements for cooling water intake structures under section 316(b) of the Clean Water Act.

These are in addition to the Air Transport rule, proposed in July 2010, which would impose new emission standards on power plants in 31 states and the District of Columbia. Although not under a court-ordered deadline, EPA's proposed rule on coal combustion residuals (coal ash) would also raise costs for coal-fired EGUs if finalized.

The Office of Advocacy has been active on all of these rules for many years. In 2003, Advocacy participated in the Small Business Advocacy Review (SBAR) panel for the cooling water intake rulemaking, which went all the way to the U.S. Supreme Court. And the office has participated in SBAR panels for the Air Transport Rule (formerly the Clean Air Interstate Rule or CAIR) and the air toxics emissions rulemaking. EPA has notified Advocacy of its intent to conduct a panel on the greenhouse gas emission standards rulemaking in the next few months. In addition, Advocacy is active in the interagency reviews of these rules.

Advocacy hopes that EPA will rigorously comply with the Regulatory Flexibility Act throughout these rulemakings, including a full consideration of regulatory alternatives that fulfill the stated goals of the Clean Air and Clean Water Acts while minimizing the economic impacts on small entities.

—David Rostker, Assistant Chief Counsel

New ADA Rules Take Effect in March

by Janis Reyes, Assistant Chief Counsel

The Department of Justice published revised final regulations implementing title III of the Americans with Disabilities Act (ADA) on September 15, 2010. The regulations update the 1991 ADA standards for making buildings accessible for people with disabilities; it applies to private entities with public accommodations (that is, places open to the public) and commercial facilities. The effective date of this regulation is March 15, 2011. This is separate from the compliance dates, which are spelled out below.

The Department of Justice will post a Small Business Compliance Guide for these regulations pursuant to the Regulatory Flexibility Act on March 15 on the website [www.ada.gov](http://www.ada.gov).

**New Construction and Alteration.** From September 15, 2010, to March 15, 2012, if a title III entity undertakes new construction or alterations, it may comply with either the 1991 standards or the 2010 standards.

On or after March 15, 2012, all newly constructed or altered facilities must comply with all of the requirements of the 2010 standards.

**Existing Facilities—Readily Achievable Barrier Removal:** Title III requires existing facilities to remove barriers that are readily achievable. “Readily achievable”

Emissions Rules, from page 4

the DSW rule, EPA asserts the rule has no direct impact. Advocacy filed public comments on the DSW rule, strongly recommending EPA prepare an economic analysis, but EPA did not.

Although these are final rules, the uncertainty is not over. EPA published these rules under court-ordered deadline. EPA has said

Compliance Dates for Title III Facilities		
	Date	Applicable Standard
New Construction and Alterations	September 15, 2010, to March 15, 2012	1991 or 2010 standard
	On or after March 15, 2012	2010 standard
Existing Facilities: Readily Achievable Barrier Removal	September 15, 2010, to March 15, 2012	1991 or 2010 standard
	On or after March 15, 2012	2010 standard

means easily accomplished and able to be carried out without much difficulty or expense.

Existing facilities that had already updated building elements to comply with the 1991 ADA standards will not be required to come into compliance with the 2010 standards until the elements are altered. This “safe harbor” provision prevents the law from imposing a double burden on entities that have already expended effort to comply with ADA standards. The Office of Advocacy submitted a public comment letter August 6, 2008, on this rulemaking supporting this safe harbor.

From September 15, 2010, to March 15, 2012, if the elements within a public accommodation do not comply with the requirements for those elements in the 1991 ADA standards, the elements must be modified to the extent readily

achievable using either the 1991 or the 2010 ADA standards. The entity must use only one standard for removing barriers in the entire facility.

On or after March 15, 2012, elements in a facility that do not comply with the 1991 ADA standards must be modified using the 2010 standards.

The title III regulations also include new requirements for exercise equipment; pools, saunas and steam rooms; children’s play areas; golf facilities; ticketing and hotel reservation policies, service animals, and the use of wheelchairs. For more information, please call the ADA information line at 800-514-0301 (voice) and 800-514-0383 (TTY). For other questions, please feel free to contact Assistant Chief Counsel Janis Reyes at (202) 205-6533 or [janis.reyes@sba.gov](mailto:janis.reyes@sba.gov).

some public comments may not have been fully addressed, and aspects of the final rule may need additional public comment. Therefore, EPA is beginning a reconsideration of major issues in these rules. However, EPA is not reconsidering everything in the rules, and changes to the rules are not definite. More petitions and litigation are likely. The picture is further complicated by efforts

in Congress to defund or prohibit these rules.

Nonetheless, some requirements will take effect next year, so most small entities will not have the luxury of waiting to see how it plays out.

For more information about these rules, see [www.epa.gov/airquality/combustion](http://www.epa.gov/airquality/combustion).

## Economic News

### Small Business Profiles for the States and Territories

by Rebecca Krafft, Editor

The Office of Advocacy's state small business profiles show detail about each state's small business makeup, as well as for the country as a whole. Each state's profile gives a snapshot of business ownership, demographics, industry breakout of firms and employment, employment turnover, and lending. Standardized profiles are presented for the United States, District of Columbia, and the 50 states. Limited available information is presented for four U.S. territories.

The profiles are online at [www.sba.gov/advocacy/848](http://www.sba.gov/advocacy/848). In addition to informative one-pagers on all the states, the raw data file is also online, which makes state-by-state comparisons possible. While it's not surprising that the largest

states have the biggest numbers of small firms (California, Florida, Texas, New York, and Illinois all have more than a million), most of these states also made the top five in terms of overall share of small firms. However, the list of states with the highest share of employment provided by small firms is very different. Montana topped the list, with 69.3 percent of employment provided by small firms. Wyoming, South Dakota, Vermont, Idaho, and Maine were also in the top ten.

Small firms are a critical part of each state's economy. On the high end, they make up 99.2 percent of California's firms, and at the low end, 92.7 percent of the District of Columbia's economy. Small firms'

overall share of employment ranges from Montana's high of 69.3 percent to Nevada's low of 42.8 percent, yielding a national average of 49.6 percent of all U.S. jobs created by small businesses.

This year's profiles also show changes in women's and minority business ownership, with Georgia and Nevada leading the way. Minority-owned firms increased by 91.3 percent in Georgia and by 87.5 percent in Nevada. Hawaii remained the state with the biggest share of minority-owned firms at 56.9 percent, and the District of Columbia had the highest share of women-owned firms at 34.5 percent.

*The tables on page 7 show the top ten states in nine categories.*

## Regulatory News

### Department of Labor Postpones Implementation of Higher H-2B Visa Wages

by Janis Reyes, Assistant Chief Counsel

On January 19, the Department of Labor released a final rule that delays by almost one year the implementation of a new wage methodology for the H-2B visa program that would result in higher wages for H-2B workers. The new methodology will now apply to wages paid for work performed on or after January 1, 2012. The agency projects that the total annual cost to all business from these higher wage rates is \$847.4 million dollars.

The H-2B program allows non-agricultural employers facing a shortage of U.S. workers to have access to temporary unskilled

workers from foreign countries during seasonal or peak times. The agency delayed this final rule in recognition of the costs of this rule on the small business community, in order to provide employers with sufficient time to plan for their labor needs for the next year, and to minimize the disruption to their operations.

The Office of Advocacy submitted a public comment letter to the Department of Labor based on concerns of small business stakeholders from the construction, hotel, landscaping, crab processing, amusement park, and food processing industries. The final rule's new

wage methodology, when implemented, will increase the hourly wages for H-2B workers by \$1.37 to \$10.61 per hour. The agency is seeking public comment on the feasibility and implementation of phasing in the new wage rates. To comment, visit [www.regulations.gov](http://www.regulations.gov) and search for the following Docket ID: ETA\_FRDOC\_0001-0161.

To learn more, contact Assistant Chief Counsel Janis Reyes at [janis.reyes@sba.gov](mailto:janis.reyes@sba.gov) or (202) 205-6533.

State	Estimated number of small businesses,* 2008
United States	27,300,000
California	3,400,000
Florida	2,200,000
Texas	2,200,000
New York	2,000,000
Illinois	1,100,000
Pennsylvania	994,745
Georgia	907,068
Ohio	902,369
Michigan	820,244
North Carolina	802,460

\*Employer plus nonemployer firms.

State	Small firms' share of all firms, 2008 (percent)
United States	99.7
California	99.2
New York	99.0
Florida	98.9
Texas	98.6
New Jersey	98.4
Pennsylvania	98.3
Michigan	98.3
Illinois	98.3
Washington	98.1
Ohio	98.1

State	Number of minority-owned firms, 2007
United States	5,762,940
California	1,221,040
Texas	723,162
Florida	680,263
New York	537,838
Georgia	263,439
Illinois	223,174
New Jersey	182,583
Maryland	164,253
Virginia	138,361
North Carolina	131,826

State	Number of women-owned firms, 2007
United States	7,793,425
California	1,039,642
Texas	610,279
New York	594,447
Florida	581,026
Illinois	343,151
Georgia	278,250
Pennsylvania	265,083
Ohio	249,083
Michigan	248,351
North Carolina	225,503

State	Share of employment by small firms, 2008 (percent)
Montana	69.3
Wyoming	65.6
South Dakota	61.9
Vermont	61.4
Idaho	59.8
Maine	59.7
North Dakota	59.5
Oregon	56.9
Rhode Island	55.9
New Mexico	55.5
United States	49.6

State	Share of minority-owned firms, 2007
Hawaii	56.9
District of Columbia	40.2
California	35.6
Florida	33.8
Texas	33.4
New Mexico	31.1
Maryland	31.1
Georgia	29.2
New York	27.5
New Jersey	23.3
United States	21.3

State	Share of veteran-owned firms, 2007
South Carolina	12.9
West Virginia	12.6
Virginia	12.4
Tennessee	11.9
Alabama	11.8
Mississippi	11.6
Rhode Island	11.0
Georgia	10.9
Nevada	10.7
Montana	10.6
United States	9.0

State	Change in number of women-owned firms, 2002-07
Georgia	41.8
Nevada	32.9
Florida	32.8
Alabama	31.4
Texas	30.2
North Carolina	29.7
South Carolina	29.5
Mississippi	29.2
Utah	26.8
Delaware	26.6
United States	20.1

State	Change in number of minority-owned firms, 2002-07
Georgia	91.3
Nevada	87.5
Alabama	84.6
North Carolina	66.2
Florida	66.1
Tennessee	65.7
Pennsylvania	63.5
Utah	63.2
Delaware	58.8
Mississippi	57.3
United States	45.6

## Startup America Roundtables Scheduled

As part of the recently announced Startup America initiative, senior White House and executive branch officials will visit eight cities to meet with entrepreneurs and hear their ideas and suggestions for reducing barriers to build a more supportive environment for entrepreneurship and innovation.

In January, President Obama issued an executive order instructing federal agencies to identify and take steps to address regulations that are outdated or overly burdensome. This roundtable series builds on that directive and is part of the Administration's overall Startup America efforts to support startups and entrepreneurs with tools and resources to succeed.

The first Startup America: Reducing Barriers roundtable was held in Durham, N.C., on March 3. A second event will be held at the

annual South by Southwest Festival in Austin, Texas, on March 12. The festival includes a focus on emerging technologies, which has made it an important destination for entrepreneurs and startup firms.

The following additional cities will host Reducing Barriers roundtables: Boston, Silicon Valley, Atlanta, Pittsburgh, Minneapolis, and Boulder. Chief Counsel for Advocacy Winslow Sargeant will participate in the Minneapolis event.

Space at the roundtables is limited and the Small Business Administration has already received a large number of invitation requests. If you're interested in attending, please submit your name, contact info, and business information to [reducingbarriers@sba.gov](mailto:reducingbarriers@sba.gov) and you will be contacted as space opens up. For small busi-

ness owners and entrepreneurs who are not able to attend one of the roundtables, Startup America will provide the opportunity to submit ideas, comments, and suggestions online. Entrepreneurs and small business owners interested in learning more should email [reducingbarriers@sba.gov](mailto:reducingbarriers@sba.gov) or visit [www.sba.gov/startupamerica](http://www.sba.gov/startupamerica).

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