

## Advocacy Announces the 2009 Top 10 Current Rules Ready to Review

by Keith Holman, Assistant Chief Counsel

The Office of Advocacy has updated the Top 10 Rules for Review and Reform for 2009. Two new rules have made the “Top 10,” and eight of last year’s rules remain on the list awaiting final review and/or reform.

The first addition is the removal of the “foreign exemption” in federal procurement policy. Removing this exemption would create an incentive for agencies to award contracts for work outside the United States to small and disadvantaged businesses. The second is to eliminate the requirement that commercial truck drivers undergo a second background security check when they apply for a hazardous materials endorsement, even when applicants have already been fully

screened. The two new rules were selected from 38 nominations.

The complete list begins on page 3 of this newsletter. The list includes eight rules carried over from 2008 with current updates on agency progress in reviewing them. The two rules removed from last year’s Top 10 were the Environmental Protection Agency’s “Definition of Solid Waste” and the Federal Aviation Administration’s “Flight Rules for the Washington, D.C., Area.” Both were success stories for the r3 initiative and for small businesses.

The Top 10 list is a principal feature of Advocacy’s Regulatory Review and Reform (r3) initiative. “This year’s Top 10 list of rules is an opportunity for federal

agencies to streamline and update their regulations and ease the federal regulatory burden placed on struggling small businesses,” said Shawne McGibbon, acting chief counsel for advocacy. “At a minimum we will work with agencies to ensure the identified rules are reviewed to determine if they are duplicative, outdated, ineffective, or overly complex. We certainly hope agencies will begin the process to reform the rules.”

Advocacy created the r3 program in 2007 to address the growing cumulative burden of federal regulations. For continuing updates on Advocacy’s r3 program, visit [www.sba.gov/advo/r3/r3\\_status.html#advo](http://www.sba.gov/advo/r3/r3_status.html#advo).

## Tracking Trends: The Small Business Economy

by Kathryn Tobias, Senior Editor

How did small firms fare in the economic environment of 2007? Small businesses, particularly in the service sectors, continued to be important job generators, even as the economy began to slow. In the first quarter, they created 74 percent of net new jobs; by the third, net job growth was declining in all sectors.

The latest edition of *The Small Business Economy* looks at small business economic, financing, and federal procurement trends in the changing 2007 economy (the latest year data were available).

Here are some highlights:

- Exports were the most positive trend for the year. Most U.S. goods exporters are small (97 percent), but small exporters’ share of total

export value fell from 31 percent in 1996 to 29 percent in 2006.

- What leads to successful start-ups? The most important factor for success in starting a business is knowing the industry and aggressively pursuing the opportunity.

- Small businesses provide as much training as larger firms, and they often pay a great deal to hire and train their employees. Two out of three workers get their first jobs in small firms, and the training they receive tends to be general, informal, and flexible.

For a complete copy of the report, visit [www.sba.gov/advo/research/sbe.html](http://www.sba.gov/advo/research/sbe.html). Print copies are available by calling the Office of Advocacy, (202) 205-6533.

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# Message from the Acting Chief Counsel

## Small Firms and the Recession

by Shawne McGibbon, Acting Chief Counsel

The Office of Advocacy, which is charged to study the role of small business and entrepreneurship in the U.S. economy, has been receiving many calls asking about the effects of the current recession on small firms. Because of the timing of data collection, the hard-data answers to many questions will not be available for some time. The lack of current data by firm size makes it difficult to say anything about the number of firms that have either closed or opened.

The figures that are available are mostly attached to minus signs. The latest edition of the *Quarterly Indicators* (see pages 6-7) notes that the unemployment rate is at 7.6 percent, and the country has lost nearly 3.6 million jobs.

Nearly every industry is experiencing employment losses. More than half of the declines are in manufacturing and construction, which have seen their workforces shrink by 7.7 percent and 10.4 percent, respectively, since December 2007. Alone among the goods-producing sectors, the natural resources and mining sectors have seen job growth because of increased oil exploration. On the services side, the professional and business services industry has lost 4.7 percent of its workforce. The trades, information services, financial activities, and leisure and hospitality sectors also lost jobs. Education and health services, on the other hand, showed a healthy 3.1 percent employment increase.

But the sketchy information about the current business cycle presents only a partial picture and leaves many questions unanswered. Are some job losses related to structural changes, and do the circumstances of particular industries—such as construction

and banking—make this a different kind of recession?

What we can say is that the Office of Advocacy has had more than a quarter century to observe how small firms fare in periods of economic recession and across the business cycle. As early as 1982, with very little historical data to go on, Advocacy observed in *The State of Small Business* that while small firms absorbed much of the shock of the 1974–1976 recession in their

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**“Advocacy has had more than a quarter century to observe how small firms fare in periods of recession and across the business cycle.”**

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profit positions, they also (collectively at least) maintained their employment share in the economy as a whole. The following year’s report observed that small business employment was either up more, or down less, than that of large businesses over the 1981–1982 recessionary period.

“So what is going on here?” some economists began to ask. “What can we learn from the ways small and large firms deal with economic peaks and troughs?” Over the years, it appeared that recovery often started in the more nimble small firm sector, as dozens of entrepreneurs brought new products and services into the economy.

Looking forward from this recession, we would expect more entrepreneurship taking place; indeed, it may help lead the economic turnaround. Some self-employment will come out of economic necessity; the talent and experience of workers being laid off will prod some of them to sell those talents as their

own boss. Some may have previously contemplated striking out on their own, but were not ready to forego the stability of an existing job. Others will see new opportunities for innovations in the midst of the economic adversity.

From the long view, today’s pain is felt at a low point of an economic cycle in which small firms play a critical role. As Zoltan Acs noted in *Are Small Firms Important?* “Small firms...are an integral part of the renewal process that pervades and defines market economies. New and small firms play a crucial role in experimentation and innovation. . . In short, small firms are about change and competition because they change market structure.”

If history is a guide, and if small firms can pull through today’s challenges, the light at the end of the recessionary tunnel is likely to be in the hands of entrepreneurs.

### The Small Business Advocate

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## 2009 Top 10 Rules for Review and Reform

Rule	Agency	Description / Current Status
<b>New Rules for 2009</b>		
<p><b>Remove the “Foreign Exemption” from Federal Contracting</b></p> <p>Contact: Major Clark <a href="mailto:major.clark@sba.gov">major.clark@sba.gov</a></p>	FAR Council	Remove the “foreign exemption” from federal procurement policy, increasing federal agencies’ incentive to award government contracts to small and disadvantaged businesses seeking to work outside of the U.S. According to the nominator, these businesses lose over \$20 billion worth of work outside of the U.S. each year because of the foreign exemption.
<p><b>Eliminate Duplicative Background Checks for Commercial Truck Drivers</b></p> <p>Contact: Bruce Lundegren <a href="mailto:bruce.lundegren@sba.gov">bruce.lundegren@sba.gov</a></p>	TSA	Eliminate the current Transportation Security Administration requirement that commercial truck drivers who hold a valid Transportation Worker Identification Credential (TWIC) must undergo a duplicate security background check when they apply for a hazardous materials endorsement. According to the nominator, this duplicative background check requirement needlessly adds as much as \$28 million to the costs truckers must pay each year.
<b>Rules Nominated in 2008</b>		
<p><b>Update Air Monitoring Rules for Dry Cleaners to Reflect Current Technology.</b> 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 <a href="mailto:keith.holman@sba.gov">keith.holman@sba.gov</a></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><b>Flexibility for Community Drinking Water Systems.</b> 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 <a href="mailto:kevin.bromberg@sba.gov">kevin.bromberg@sba.gov</a></p>	EPA	On March 2, 2006, EPA announced a review of the affordability criteria for small systems ( <a href="http://edocket.access.gpo.gov/2006/pdf/06-1917.pdf">http://edocket.access.gpo.gov/2006/pdf/06-1917.pdf</a> , 71 <i>Federal Register</i> 10671). EPA has not announced when it will complete the review.
<p><b>Clearly Define “Oil” in Oil Spill Rules.</b> 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 <a href="mailto:kevin.bromberg@sba.gov">kevin.bromberg@sba.gov</a></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.

## 2009 Top 10 Rules for Review and Reform (continued)

Rule	Agency	Description / Current Status
<p><b>Eliminate Duplicative Financial Requirements for Architect-Engineering Services Firms in Government Contracting.</b> 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  <a href="mailto:major.clark@sba.gov">major.clark@sba.gov</a></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 finance team issued a report indicating the council's next steps regarding the proposed FAR change. (<a href="http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;sid=af578f0605dcf172475b4fe29b115955&amp;rgn=div6&amp;view=text&amp;node=48:1.0.1.1.1.5&amp;idno=48">http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;sid=af578f0605dcf172475b4fe29b115955&amp;rgn=div6&amp;view=text&amp;node=48:1.0.1.1.1.5&amp;idno=48</a>) On January 7, 2009, a proposed rule implementing the change was sent to OFPP for approval (<a href="http://www.acq.osd.mil/dpap/dars/opencases/farcasenum/far.pdf">www.acq.osd.mil/dpap/dars/opencases/farcasenum/far.pdf</a>).</p>
<p><b>Simplify the Home Office Business Deduction.</b> 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  <a href="mailto:dillon.taylor@sba.gov">dillon.taylor@sba.gov</a></p>	<p>IRS</p>	<p>On March 14, 2008, the IRS informed Advocacy that this issue has been assigned to IRS attorneys for review (<a href="http://www.sba.gov/advo/r3/irs08_0314.pdf">www.sba.gov/advo/r3/irs08_0314.pdf</a>). 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 (<a href="http://www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/IRS.pdf">www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/IRS.pdf</a>). 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, (<a href="http://www.irs.gov/pub/irs-pdf/f8829.pdf">www.irs.gov/pub/irs-pdf/f8829.pdf</a>) easier to use. On February 5, 2009, Advocacy hosted a roundtable on important tax issues, including the Home Office Business Deduction. A representative from the Internal Revenue Service's Taxpayer Advocate Service (TAS) made a presentation demonstrating the current complexity of the deduction and the need to simplify it.</p>
<p><b>Update MSHA Rules on Use of Explosives in Mines to Reflect Modern Industry Standards.</b> MSHA should update its current rules to be consistent with modern mining industry explosives standards.</p> <p>Contact: Bruce Lundegren  <a href="mailto:bruce.lundegren@sba.gov">bruce.lundegren@sba.gov</a></p>	<p>DOL/MSHA</p>	<p>The group that nominated this issue testified before the House Small Business Subcommittee on Regulations, Healthcare and Trade on July 30, 2008. (<a href="http://www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/Santis.pdf">www.house.gov/smbiz/hearings/hearing-7-30-08-regulatory/Santis.pdf</a>). On November 6, 2008, MSHA committed in a letter to Chairman Gonzalez of the House Subcommittee on Regulations, Healthcare and Trade that MSHA would review the rule (<a href="http://www.sba.gov/advo/r3/gonzalez08_1106.pdf">www.sba.gov/advo/r3/gonzalez08_1106.pdf</a>). Subsequently, MSHA listed this rule in the Fall 2008 <i>Unified Agenda and Regulatory Plan</i> and indicated that the rule would be reviewed under Section 610 of the Regulatory Flexibility Act (<a href="http://www.reginfo.gov/public/do/eAgendaViewRule?ruleID=291765">www.reginfo.gov/public/do/eAgendaViewRule?ruleID=291765</a>).</p>

## 2009 Top 10 Rules for Review and Reform (continued)

Rule	Agency	Description / Current Status
<p><b>Update OSHA's Medical/Laboratory Worker Rule.</b> 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 <a href="mailto:bruce.lundegren@sba.gov">bruce.lundegren@sba.gov</a></p>	DOL/ OSHA	<p>On October 22, 2008, OSHA noted in a letter to Chairman Gonzalez of the House Small Business Subcommittee on Regulations, Healthcare and Trade that this rule was being considered for review (<a href="http://www.sba.gov/advo/r3/resgonzalez08_1022.pdf">www.sba.gov/advo/r3/resgonzalez08_1022.pdf</a>). Subsequently, OSHA listed this rule in the Fall 2008 <i>Unified Agenda and Regulatory Plan</i> and indicated that the rule would be reviewed under Section 610 of the Regulatory Flexibility Act (<a href="http://www.reginfo.gov/public/do/eAgendaViewRule?ruleID=291742">www.reginfo.gov/public/do/eAgendaViewRule?ruleID=291742</a>).</p>
<p><b>Update Reverse Auction Techniques for Online Procurement of Commercial Items.</b> 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.</p> <p>Contact: Major Clark <a href="mailto:major.clark@sba.gov">major.clark@sba.gov</a></p>	OFPP	<p>On October 4, 2006 the Office of Federal Procurement Policy (OFPP) announced a review to determine the appropriate course of action for this acquisition tool (<a href="http://www.sba.gov/advo/r3/ofpp06_1004.pdf">www.sba.gov/advo/r3/ofpp06_1004.pdf</a>). OFPP has completed surveys of vendors (<a href="http://edocket.access.gpo.gov/2007/pdf/07-1967.pdf">http://edocket.access.gpo.gov/2007/pdf/07-1967.pdf</a>) and users (<a href="http://edocket.access.gpo.gov/2007/pdf/07-4065.pdf">http://edocket.access.gpo.gov/2007/pdf/07-4065.pdf</a>). The surveys were targeted for government buyers who have never done a procurement using a reverse auction (<a href="http://www.dau.mil/performance_support/mdcsurvey/pros/pros.htm">www.dau.mil/performance_support/mdcsurvey/pros/pros.htm</a>), and government buyers with experience using reverse auctions (<a href="http://www.dau.mil/performance_support/mdc-survey/govtexp/govtexp.htm">www.dau.mil/performance_support/mdc-survey/govtexp/govtexp.htm</a>). 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.</p>

## 2008 Rules Reformed by Federal Agencies

<p><b>Simplify the Rules for Recycling Solid Wastes.</b> Advocacy requested that EPA simplify the rules for recycling useful materials that, because of their classification, had to be handled, transported, and disposed of as hazardous wastes. EPA's 2008 rule changes are estimated to have saved small entities \$48 million each year.</p>	EPA	<p>On October 28, 2003, EPA issued a proposal to revise the definition of solid waste (<a href="http://www.epa.gov/fedrgstr/EPA-WASTE/2003/October/Day-28/f26754.pdf">www.epa.gov/fedrgstr/EPA-WASTE/2003/October/Day-28/f26754.pdf</a>). The agency issued a supplemental proposal on March 26, 2007 (<a href="http://www.epa.gov/fedrgstr/EPA-WASTE/2007/March/Day-26/f5159.pdf">www.epa.gov/fedrgstr/EPA-WASTE/2007/March/Day-26/f5159.pdf</a>). The final rule was promulgated by EPA on October 30, 2008. The rule and other relevant information can be found at <a href="http://www.epa.gov/epawaste/hazard/dsw/rulemaking.htm#2008">www.epa.gov/epawaste/hazard/dsw/rulemaking.htm#2008</a>.</p>
<p><b>Update Flight Rules for Washington, D.C. Regional Area.</b> Advocacy asked FAA and other agencies to review the flight restriction rule for the region surrounding Washington, D.C., to determine if they could be revised to avoid harming the region's small airports. The FAA rule changes enacted in 2008 are responsible for small entity savings of \$300 million over 10 years.</p>	DOT/ FAA	<p>On March 19, 2008, the FAA notified Advocacy by letter (<a href="http://www.sba.gov/advo/r3/faa08_0319.pdf">www.sba.gov/advo/r3/faa08_0319.pdf</a>) that it expected 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 rule's impact on small entities. The final rule decreased restricted flight zones; it was promulgated by FAA on December 16, 2008 (<a href="http://edocket.access.gpo.gov/2008/pdf/E8-29711.pdf">http://edocket.access.gpo.gov/2008/pdf/E8-29711.pdf</a>).</p>

## FOURTH QUARTER 2008: THE ECONOMY AND SMALL BUSINESS

### Trends

- In the fourth quarter of 2008, the U.S. economy suffered its worst decline since 1982; real GDP fell by an annualized 3.8 percent. Real exports, which had been a bright spot in previous quarters, declined nearly 20 percent (annualized) as the global recession weakened demand for U.S. products. Real imports fell 15.7 percent. Individual and business spending fell too. In annualized terms, real consumption declined 3.5 percent and real gross private fixed investment fell 12.3 percent. Echoing weakened demand, manufacturing output fell to historic lows: the manufacturers' purchasing index sank to its lowest point since 1980, and industrial production declined by an annualized 6 percent.
- The United States lost 2.97 million jobs in 2008, more than half of them in the fourth quarter. Unemployment rose to 7.2 percent in December. Only education and health services experienced job gains in the quarter. The sectors hit hardest were trade, transportation and utilities; manufacturing; construction; and professional and business services. Small businesses make up a significant share of these. With fewer workers, labor productivity increased at an annualized 3.2 percent. Unincorporated self-employment declined by 500,000 to 9.6 million; incorporated self-employment was unchanged at 5.8 million.
- According to the National Federation of Independent Business's monthly survey, small business owners' top concern was poor sales. Respondents indicated that the next three months were not a good time to hire and that they may even be likely to lay off workers. Overall, consumers and small businesses were very pessimistic in their economic outlook.
- In light of the banking sector's weakness, the Federal Reserve and the U.S. Treasury took aggressive actions, including October's Emergency Stabilization Act and the Troubled Asset Relief Program. In addition, the Federal Reserve cut its target federal funds rate to essentially zero. The yields on three-month Treasury bills fell to 0.03 percent in December, reflecting this significant relaxation of monetary policy. Overall, the prime rate was five percentage points lower than in September 2007. Banking standards were much tighter, small business loan demand remained weak, and there were fewer venture capital deals.
- The effects of inflation earlier in the year were reversed, with the consumer price index falling at an annualized 12.7 percent to return to its 2007 level. Much of this deflation was the result of dramatic declines in oil prices, which fell from \$145 per barrel in July to \$41 in December. Reduced demand was also a factor. Only 550,000 new homes (on an annual basis) were constructed in December, one-quarter of the level of housing starts in 2005.

### Small Business Indicators

	Last five years					Last five quarters					Trends	
	2004	2005	2006	2007	2008	Q4-07	Q1-08	Q2-08	Q3-08	Q4-08	This Quarter	Q4-07 to Q4-08
Business bankruptcy filings (thousands)	34.3	39.2	19.7	28.3	--	8.0	8.7	9.7	11.5	--	--	--
Proprietors' income (\$billion, current dollars)	911.6	959.8	1014.7	1056.3	1072.4	1073.8	1071.7	1076.9	1080.5	1060.5	↓ 7.2% (a)	↓ 1.2%
Prime bank loan rate	4.3	6.2	8.0	8.1	5.1	7.5	6.2	5.1	5.0	4.0	↓ 1.0	↓ 3.5
Rates for smallest loans (\$10,000 to \$99,999): *												
Variable rate loans, repricing terms of 2-30 days	4.4	6.0	7.7	7.7	5.0	7.2	5.6	4.9	4.9	4.7	↓ 0.2	↓ 2.5
Variable rate loans, repricing terms of 31-365 days	6.2	7.1	8.4	8.6	6.9	8.1	7.4	6.9	6.7	6.4	↓ 0.3	↓ 1.7
Senior loan officers (percent of respondents):												
Net small firm C&I lending standards (those whose standards were eased minus those tightened)	13.1	9.0	4.6	-4.3	-55.5	-9.6	-30.4	-51.8	-65.3	-74.6	↓ 9.3	↓ 65.0
Net small firm demand for C&I loans (those whose demand was stronger minus those weaker)	25.9	27.3	0.2	-11.0	-15.6	-7.7	-23.6	-16.1	-15.4	-7.4	↑ 8.0	↑ 0.3
Venture investment: number of deals	3093	3155	3675	3952	3808	1051	988	1043	959	818	↓ 141	↓ 233
Venture investment: total invested (\$billion)	22.5	23.2	26.7	30.9	28.3	8.1	7.9	7.7	7.3	5.4	↓ 1.9	↓ 2.7

\* Effective this quarter, the rates for the smallest loans are for loans ranging from \$10,000 to less than \$100,000; earlier figures are for loans values of less than \$100,000.

Notes: a=annualized growth rate. Senior loan officers' responses are from the Oct. 2008 survey. C&I = commercial and industrial loans. Trends may reflect rounding error.

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

	Last five years					Last five months (2008)					Trends	
	2004	2005	2006	2007	2008	Aug	Sept	Oct	Nov	Dec	This Quarter	Dec 07 to Dec 08
NFIB Small Business Optimism Index (1986 = 100)	104.6	101.6	98.9	96.7	89.8	91.1	92.9	87.5	87.8	85.2	↓ 7.7	↓ 9.4
NFIB: next 3 months "good time to expand" (percent of respondents)	22.3	20.6	17.4	13.9	6.5	6.0	11.0	5.0	7.0	7.0	↓ 4.0	↓ 7.0
NFIB: net percent planning to hire in the next 3 months	15.3	14.4	14.6	12.9	3.8	9.0	7.0	0	-4.0	-6.0	↓ 13.0	↓ 17.0
Self-employed, incorporated (millions)	5.2	5.3	5.5	5.8	5.8	5.9	5.8	5.9	5.9	5.8	0	0
Self-employed, unincorporated (millions)	10.4	10.5	10.6	10.4	10.1	10.3	10.1	9.7	9.6	9.6	↓ 0.5	↓ 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](http://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	
		2004	2005	2006	2007	2008	Aug	Sept	Oct	Nov	Dec	This Quarter	Dec 07 to Dec 08
<b>Goods-producing industries</b>	<b>58.48</b>	<b>21.88</b>	<b>22.19</b>	<b>22.53</b>	<b>22.23</b>	<b>21.41</b>	<b>21.35</b>	<b>21.25</b>	<b>21.06</b>	<b>20.81</b>	<b>20.56</b>	<b>↓0.68</b>	<b>↓1.48</b>
Natural resources and mining	49.21	0.59	0.63	0.68	0.72	0.77	0.79	0.79	0.79	0.79	0.79	0	↑0.05
Construction	85.36	6.97	7.33	7.69	7.63	7.21	7.18	7.13	7.07	6.94	6.85	↓0.28	↓0.67
Manufacturing	44.43	14.32	14.23	14.16	13.88	13.42	13.39	13.32	13.20	13.08	12.92	↓0.40	↓0.86
<b>Service-producing industries</b>	<b>48.24</b>	<b>109.54</b>	<b>111.51</b>	<b>113.56</b>	<b>115.37</b>	<b>115.64</b>	<b>115.70</b>	<b>115.49</b>	<b>115.29</b>	<b>114.94</b>	<b>114.61</b>	<b>↓0.87</b>	<b>↓1.50</b>
Trade, transportation and utilities	43.93	25.53	25.96	26.28	26.63	26.38	26.35	26.26	26.16	26.01	25.86	↓0.40	↓0.87
Wholesale trade	61.12	5.66	5.76	5.90	6.02	5.96	5.95	5.95	5.92	5.89	5.85	↓0.09	↓0.19
Retail trade	40.05	15.06	15.28	15.36	15.52	15.36	15.33	15.28	15.22	15.13	15.04	↓0.23	↓0.52
Information	26.32	3.12	3.06	3.04	3.03	3.00	2.99	2.99	2.98	2.97	2.94	↓0.05	↓0.08
Financial activities	41.80	8.03	8.15	8.33	8.30	8.14	8.14	8.12	8.09	8.04	8.02	↓0.10	↓0.23
Professional and business services	43.11	16.39	16.95	17.57	17.95	17.78	17.73	17.68	17.61	17.49	17.38	↓0.29	↓0.73
Education and health services	47.76	16.95	17.37	17.83	18.32	18.86	18.95	18.96	18.98	19.04	19.09	↑0.13	↑0.52
Leisure and hospitality	60.89	12.49	12.81	13.11	13.43	13.46	13.45	13.43	13.40	13.34	13.31	↓0.12	↓0.24
Other services	85.44	5.41	5.39	5.44	5.49	5.53	5.53	5.53	5.54	5.51	5.48	↓0.05	↓0.04
Government	0	21.62	21.81	21.97	22.22	22.50	22.56	22.54	22.54	22.54	22.53	0	↑0.16

**Notes:** Seasonally adjusted. See [www.bls.gov/ces/cessuper.htm](http://www.bls.gov/ces/cessuper.htm) for NAICS code equivalents for each sector. The small business percentage by sector is based on 2006 firm size data; leisure and hospitality uses 2005 information due to 2006 data suppressions. See [www.sba.gov/advo/research/us06\\_n6.pdf](http://www.sba.gov/advo/research/us06_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)	
	2004	2005	2006	2007	2008	Q4-07	Q1-08	Q2-08	Q3-08	Q4-08	This Quarter	Q4-07 - Q4-08
Real gross domestic product Level (\$billion)	10675.7	10989.5	11294.9	11523.9	11671.3	11620.7	11646.0	11727.4	11712.4	11599.4	↓3.8% (a)	↓0.2%
Annual percentage change*	3.6	2.9	2.8	2.0	1.3	-0.2	0.9	2.8	-0.5	-3.8		
Real personal consumption expenditures (\$billion)*	7561.4	7791.7	8028.9	8252.8	8276.2	8298.2	8316.1	8341.3	8260.6	8186.9	↓3.5% (a)	↓1.3%
Real gross private fixed investment (\$billion)*	1770.2	1873.5	1912.5	1809.7	1702.2	1781.3	1754.7	1702.0	1703.7	1648.5	↓12.3% (a)	↓7.5% (a)
Federal government surplus or deficit (\$billion)	-370.6	-291.7	-201.1	-229.3	--	-236.4	-330.7	-649.6	-547.7	--	--	--
Real exports of goods and services (\$billion)*	1126.1	1205.3	1314.9	1425.9	1518.6	1482.1	1500.6	1544.7	1556.1	1472.8	↓19.8% (a)	↓0.6%
Real imports of goods and services (\$billion)*	1720.0	1821.9	1930.5	1972.4	1906.7	1966.5	1962.6	1926.0	1909.1	1829.2	↓15.7% (a)	↓7.0%
Corporate profits after tax (\$billion)	923.9	1034.3	1199.6	1192.1	--	1177.6	1190.6	1126.5	1121.3	--	--	--
Nonfarm business sector output per hour for all persons (1992=100)	131.6	134.1	135.2	137.1	141.0	138.6	139.5	140.8	141.3	142.4	↑3.2% (a)	↑2.7%
Employment cost index: private sector wages & salaries (2005=100)	96.8	99.2	102.0	105.5	108.7	106.7	107.6	108.4	109.0	109.6	↑2.2% (a)	↑2.7%
Employment cost index: private sector benefits (2005=100)	94.8	99.2	102.1	104.5	107.2	105.8	106.4	106.9	107.5	107.9	↑1.5% (a)	↑2.0%

**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	
	2004	2005	2006	2007	2008	Aug	Sept	Oct	Nov	Dec	This Quarter	Dec 07 to Dec 08
Unemployment rate (seasonally adjusted)	5.5	5.1	4.6	4.6	5.8	6.2	6.2	6.6	6.8	7.2	↑1.0	↑2.3
Civilian employment—16 years and older (millions, seasonally adjusted)	139.2	141.7	144.4	146.0	145.4	145.3	145.0	144.7	144.1	143.3	↓1.7	↓3.0
Civilian unemployed—15 weeks and over (millions, seasonally adjusted)	3.1	2.6	2.3	2.3	3.2	3.4	3.7	4.1	4.0	4.5	↑0.9	↑2.0
Nonfarm payrolls (millions, seasonally adjusted)	131.4	133.7	136.2	137.6	137.1	137.1	136.7	136.4	135.8	135.2	↓1.6	↓3.0
Producer price index (1982=100)	146.7	157.4	164.8	172.7	189.7	199.9	197.2	186.4	177.5	171.3	↓43.1% (a)	↓4.1%
Consumer price index (all urban consumers and all items; seasonally adjusted, 1982-84=100)	188.9	195.3	201.6	207.3	215.2	218.9	218.8	216.7	213.1	211.5	↓12.7% (a)	0
Consumer price index (all urban consumer; all items less food & energy; seasonally adj., 1982-84=100)	196.6	200.9	205.9	210.7	215.6	216.7	217.0	216.8	216.8	216.8	↓0.3% (a)	↑1.7%
Univ. of Mich. Consumer Sentiment (1966=100)	95.2	88.6	87.3	85.6	63.8	63.0	70.3	57.6	55.3	60.1	↓10.2	↓15.4
Spot oil price/barrel: West Texas intermediate crude	41.44	56.47	66.10	72.36	99.57	116.61	103.90	76.65	57.44	41.02	↓\$62.88	↓\$50.71
New privately owned housing units started (millions, seasonally adjusted at the annual rate)	1.9	2.1	1.8	1.3	0.9	0.9	0.8	0.7	0.7	0.6	↓0.3	↓0.5
ISM purchasing managers index—manufacturing composite (seasonally adjusted)	59.1	54.4	53.1	51.1	45.5	49.3	43.4	38.7	36.6	32.9	↓10.5	↓16.2
Industrial production (2002=100, seasonally adj.)	103.8	107.2	109.6	111.4	109.5	109.8	105.2	107.1	105.7	103.6	↓6.0% (a)	↓7.8%
3-month Treasury bills (secondary market rate)	1.37	3.15	4.73	4.35	1.37	1.72	1.13	0.67	0.19	0.03	↓1.10	↓2.97
10-year Treasury note (constant maturity rate)	4.27	4.29	4.79	4.63	3.67	3.89	3.69	3.81	3.53	2.42	↓1.27	↓1.68

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

**Sources:** Federal Reserve Board; 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.

# President Obama Orders Review of E.O. 12866

by Jennifer Smith, Assistant Chief Counsel

On January 30, President Barack Obama called for a review of Executive Order 12866. The E.O. is intended to minimize duplication and conflicts in federal regulations and ensure that agencies only promulgate regulations that are required by law, necessary to interpret the law, or are necessary by compelling public need.

The Office of Management and Budget will produce recommendations for a new E.O. on federal regulatory review within 100 days. These recommendations are to be developed in consultation with representatives of regulatory agencies, as appropriate. They should address the relationship between OMB's Office of Information and Regulatory Affairs (OIRA) and the agencies, as well as provide guid-

ance on disclosure and transparency; encourage public participation in agency regulatory processes; offer suggestions on the role of cost-benefit analysis; and other important considerations.

Currently, E.O. 12866 requires agencies to prepare a cost-benefit analysis if a rule is economically significant (costing the economy over \$100 million annually); adversely affects the economy in a material way; creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency; materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raises novel, legal, or policy issues arising out of legal mandates, the

president's priorities, or the principles set forth in the E.O.

The cost-benefit analysis must assess the action's anticipated benefits and costs, as well as those of feasible alternatives. Significant rules are usually subject to OIRA review and clearance, which generally takes 90 days to complete.

Advocacy works closely with OIRA during the regulatory review process to ensure that small entity concerns are considered. Advocacy's legal team will discuss E.O. 12866 reform at an upcoming regulatory roundtable and develop recommendations based on small business input.

The presidential memorandum is located at <http://edocket.access.gpo.gov/2009/pdf/E9-2434.pdf>.

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