

## Winslow Sargeant Begins 2012 as Advocacy's Sixth Senate-Confirmed Chief Counsel

by Kathryn Tobias, Senior Editor

On November 18, 2011, the U.S. Senate unanimously confirmed Dr. Winslow Sargeant as the Office of Advocacy's sixth Chief Counsel for Advocacy. In so doing, the Senate sent a strong message of its support for small business and Advocacy's important role in speaking on behalf of small business within government.

President Obama nominated Dr. Sargeant in 2009 and installed him in office through a recess appointment in August 2010. During his tenure as chief counsel prior to confirmation, Advocacy held more than 40 roundtables to hear from small businesses about their concerns. Dr. Sargeant visited entrepreneurs in 23 states in all 10 SBA regions, transmitted nearly 60 comment letters to federal agencies, and helped save small businesses

\$11 billion in regulatory costs in FY 2011 alone.

As Advocacy's accomplishments under Dr. Sargeant's leadership grew, small business owners and leaders of business and trade organizations voiced their support for the new chief counsel.

One business owner, Paul G. Tyson of Thermoformed Plastics in Biddeford, Maine, toured several Maine factories with Dr. Sargeant. He later wrote that "Dr. Sargeant noticed an unanswered complex mathematical formula on [the company's] white board and suggested a solution. . . .Dr. Sargeant's experience and insight [were] evident as he talked about the need to align regulations with international standards....[The company's] management team expressed how fortunate

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Chief Counsel Winslow Sargeant tours Wright Therapy Products, a small business in Pittsburgh, Pa. With him, from left, are John Friel, company board member; Eric Huston, key account manager; Mike Landweber, Advocacy senior advisor; and Carol Wright, chief technology officer.

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## Confirmation, from page 1

American business was to have someone with Dr. Sargeant's intellect, experience, and practicality in Washington and that they looked forward to working with him."

Most of the major small business and trade associations voiced their support for Dr. Sargeant. Many echoed the sentiments of John Arensmeyer of the Small Business Majority, who wrote: "Dr. Sargeant has proven himself as a champion of the small business community and an effective leader. He has consistently put small business interests first while gaining respect among key players in the business world."

Four former chief counsels, Frank Swain, Tom Kerester, Jere Glover, and Tom Sullivan, signed a joint letter of endorsement: "The need for small business input to lead federal agencies towards less burdensome [regulatory] alterna-

tives is at an all time high....Dr. Sargeant has an impressive background and has demonstrated his ability to act as an independent advocate for small business as chief counsel for advocacy." Dr. Sargeant worked alongside Advocacy's first chief counsel, the late Milt Stewart, at the National Science Foundation.

Going forward in the new year, Chief Counsel Sargeant will have the benefit of new tools—Advocacy's independent mission has been reinforced by a new separate budget appropriation. And there will be new challenges, particularly in monitoring the development of new regulations as the Consumer Financial Protection Bureau becomes fully operational. Fortunately, Advocacy and America's small businesses have a stronger voice because of the Chief Counsel Sargeant's confirmation.

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## Regulatory News

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### Progress on Small Business Review Panels for CFPB Rules

by Charles Maresca, Director of Interagency Affairs

In a hearing before a House subcommittee on January 24, 2012, Richard Cordray, director of the Consumer Finance Protection Bureau (CFPB), testified that the assumption going forward is that Small Business Advocacy Review panels will be convened in advance of new proposed rules to be issued by the agency. In his testimony before the Subcommittee on TARP, Financial Services, and Bailouts of Public and Private Programs, Cordray said specifically that new rules on mortgage disclosure forms

under the Real Estate Settlement Procedures Act and the Truth in Lending Act (RESPA/TILA) would be subject to the panels. Cordray stated that although CFPB is the only financial regulatory body to be covered by the panel requirement, it was "totally appropriate" that Congress would impose that requirement.

Cordray also said that his agency had published in November 2011 a request that the public identify provisions of "inherited regulations" that could be updated and stream-

lined. His testimony can be found at [http://oversight.house.gov/images/stories/Testimony/1-24-11TARP\\_Cordray.pdf](http://oversight.house.gov/images/stories/Testimony/1-24-11TARP_Cordray.pdf). The hearing can be viewed at <http://www.youtube.com/watch?v=M5u9s9Go-t8>.

The Office of Advocacy has been working with the CFPB to prepare for Small Business Advocacy Review panels, including the upcoming RESPA/TILA panel, which has not yet convened.

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## Message from the Chief Counsel

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### A Year of Accomplishments in 2011 Is a Solid Foundation for 2012 Business

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

The Office of Advocacy entered 2012 with a continued priority to amplify the voice of small business before Congress, the White House, and federal agencies. As we reflect on 2011, I believe it is important to highlight Advocacy's involvement in important issues vital to small businesses.

For Advocacy and small businesses, the year was framed by two impressive bookends. In January 2011, President Obama issued Executive Order 13653, along with two Presidential memos reinforcing the implementation of the Regulatory Flexibility Act. The President instructed executive branch agencies to use retrospective analysis in their rulemaking process. With this action, Advocacy received a seat at the table alongside the White House's Office of Information and Regulatory Affairs, allowing us to offer our assistance to federal agencies as they seek to comply with this executive order.

The second bookend was put in place on December 23, when President Obama signed legislation which provided the office for the first time with its own separate budget appropriation. This event was the culmination of prolonged Congressional efforts to strengthen Advocacy, reinforcing our independence and ensuring that our office continues to provide the representation small businesses require.

Throughout 2011, our office's three arms—regional, economic, and interagency—were engaged in the most relevant areas of greatest concern to small business in these tough economic times.

I attended the launch of the Startup America partnership in January 2011 and participated in

the Minneapolis session in April. Our 10 regional advocates, who continue to be a valuable asset to the office, each participated in the Startup America sessions in their respective regions.

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**I continue to hear that the top three concerns for small businesses are access to capital, affordable and accessible health care, and a clear and transparent regulatory process.**

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In concert with our regional advocates, I visited each of the 10 SBA regions in 2011. I was reminded at every turn how blessed America is by our country's strong

and enduring entrepreneurial spirit. The drive to take control of one's economic destiny has not diminished during these challenging times. As I meet small business owners and entrepreneurs, I ask them for their input on the issues they face in starting and growing their business. I continue to hear that the top three concerns for small businesses are access to capital, affordable and accessible health care, and a clear and transparent regulatory process. Other concerns include the lack of consumer demand for products and services, and the need for a simplified tax code.

In response to the access to capital problem, Advocacy's Office of Economic Research has worked on a number of fronts. Advocacy's

*Continued on page 4*



In October, Pittsburgh Economic Development Director Ed Gainey and Mayor Luke Ravenstahl welcomed Chief Counsel Sargeant and Advocacy Senior Advisor Mike Landweber for small business discussions at the mayor's office.

**Message, from page 3**

September symposium, the “Small Business Capital Crunch: Debt and Equity,” brought together leaders in the banking and venture capital sectors. This forum provided valuable input to us and allowed small business owners to make their voices heard. In addition, Advocacy’s research primer, *Frequently Asked Questions About Small Business Finance*, has helped fill the information gap about the financial ecosystem. The publication provides definitions, data, and links to a library of research, including Advocacy’s comprehensive small business lending studies. This annual series highlights the financial institutions in each state that are making small business loans.

Advocacy’s regulatory arm, the Office of Interagency Affairs, was invigorated in 2011 by E.O. 13653, and it has been engaged in representing the small business viewpoint in the most critical



As part of a small business listening tour in November, New York City Council Member and Small Business Chair Diana Reyna and Region II Advocate Teri Coaxum toured Tom Cat Bakery in Queens, New York. They met with owners and employees to hear firsthand about their challenges and concerns.

areas of federal policy. The newly launched Consumer Financial Protection Bureau (CFPB), created to address the financial and

accounting weaknesses revealed in the wake of the 2007–2008 financial collapse, has a small business safeguard in its founding legislation. CFPB is subject to the Small Business Regulatory Enforcement Fairness Act, which requires its rule proposals to be vetted before panels including small business representatives. Advocacy worked closely with CFPB throughout 2011 to design and launch these influential panels.

In addition, Advocacy’s regulatory staff continues to train federal regulatory officials in their obligations under the Regulatory Flexibility Act. In 2011, the total number of training sessions held since 2002 reached more than 66 agencies, involving more than 1,900 officials.

In 2012, the Office of Advocacy will continue its work on behalf of America’s small businesses, in concert with Congress, the White House and federal agencies—to fight for small business success, job creation, and economic resurgence in the months to come.



In November, the Office of Advocacy presented a special roundtable on regulation at the annual meeting of the Maine Mortgage Professionals Association (MMPA). Special focus went to mortgage issues to be considered by the Consumer Finance Protection Bureau. At the head of the table are Dick Morrin, MMPA president, Chief Counsel Winslow Sargeant, and Region I Advocate Lynn Bromley. Participants included MMPA members, and credit union, banking, and other mortgage professionals.

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## Congressional Update

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### Notable Breakthroughs in 2011

by Kyle W. Kempf, Assistant Chief Counsel for Congressional Affairs

The first session of the 112th Congress produced a very significant small business victory, while the Small Business Administration and the Office of Advocacy both continued their efforts to assist and protect America's entrepreneurs.

#### **Independent Office of Advocacy Appropriation Signed into Law**

Although Congress created the Office of Advocacy in 1976, the Office received its first-ever independent budget and appropriation in 2011. On December 23, President Obama signed the Consolidated Appropriations Act for FY 2012, which included \$9,120,000 for Office of Advocacy operations for FY 2012. Having an independent budget and appropriation further strengthens the independence of small businesses' watchdog in the federal regulatory process.

#### **Small Business Innovation Research Program Reauthorized**

One of the real small business breakthroughs of 2011 was the extension of the Small Business Innovation Research (SBIR) program, which is widely recognized as one of the most effective small business programs in the nation's history. About 25 percent of *R&D Magazine's* top 100 annual innovations have come from companies receiving SBIR awards over several years, and SBIR awardees have created four times as many jobs and generated four times more revenue than comparable firms.

In mid-December, Congress approved the National Defense Authorization Act (H.R. 1540), which included an amendment reauthorizing the SBIR program until September 30, 2017. President Barack Obama

signed the legislation into law on December 31.

In addition to extending SBIR's authorization, the legislation increases its allocation from 2.5 percent to 3.2 percent through the course of the authorization period. It also allows for larger award sizes: the maximum for Phase One awards was raised by \$50,000, to \$150,000; and the maximum for Phase Two awards was raised by \$250,000, to \$1 million.

The legislation also expands the criteria for eligible firms. Firms that are majority owned by venture capital, private equity, and hedge funds are now eligible to win up to 25 percent of the grants available at National Institutes of Health, the U.S. Department of Energy, and the National Science Foundation, and up to 15 percent of grants from other participating agencies.

The program had undergone several temporary extensions since its last full-term authorization

lapsed in 2008. This full reauthorization will restore much-needed stability to the program.

#### **SBA Launches Revamped CAPLines**

Against a backdrop of \$30 billion in FY2011 lending, a record high for the agency, the SBA launched the reformulated CAPLines program in November. CAPLines provides small business owners with SBA-guaranteed revolving lines of credit so they can compete for and execute public and private contracts, subcontracts, and purchase orders.

CAPLines addresses one of the biggest "growing pains" associated with winning a new contract: a business often lacks the necessary cash on hand to hire workers and buy the materials needed to satisfy the contract. CAPLines provides a way for entrepreneurs to finance contracts while avoiding high-interest rates.



# Advocacy Continues to Train Federal Agencies on RFA Compliance

By Bruce Lundegren, Assistant Chief Counsel

Since 2002, the Office of Advocacy has been training officials at federal agencies on how to comply with the Regulatory Flexibility Act (RFA). RFA training continued throughout 2011, as Advocacy held 14 training sessions for 250 federal agency personnel over the course of the calendar year. The list of agencies Advocacy trained includes

Department of Homeland Security,  
Department of Housing and Urban Development,  
Department of Labor,  
Department of Transportation,  
Department of Treasury,  
Environmental Protection Agency,  
Federal Communications Commission,  
Federal Energy Regulatory Commission,  
Food and Drug Administration, and  
General Services Administration.

Advocacy has held multiple sessions for some of the larger agencies. And since 2002, Advocacy has conducted over 90 training sessions for more than 1,900 federal regulatory officials, reaching over 66 agencies.

The RFA requires federal agencies to assess the impact of their proposed regulations on small entities and to consider less burdensome alternatives. Congress

understood that regulations developed for big business were often inappropriate for small entities, and could impose unnecessary and disproportionate burdens on them. As such, Congress specified that federal agencies must consider alternative approaches to regulations for small business that meet the agency's objectives in a less burdensome way.

In the early years following enactment of the RFA in 1980, federal agency compliance was uneven. As a result, the goal of the RFA—reducing the burden of federal regulations on small entities—went unfulfilled. This changed with the issuance of Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking*, in 2002. E.O. 13272 required Advocacy to publish detailed guidance on how to comply with the RFA, and it directed Advocacy to train federal agencies on RFA compliance.

Research conducted by Advocacy bolsters Congress's understanding of the importance

of small business to the economy. For example, small firms represent over 99 percent of all employer firms and employ about half of all private-sector employees. Small businesses are also the biggest generators of new jobs and the drivers of innovation in the economy. However, research shows that regulations cost small firms about 36 percent more per employee than their large business counterparts.

Federal agency compliance with the RFA has improved greatly since 2002, and Advocacy's RFA training will continue in 2012 and beyond. Indeed, with President Obama's 2011 memoranda on Regulatory Flexibility, Small Business, and Job Creation, the need to ensure that "regulations are designed with careful consideration of their effects on small businesses" will only increase. And the President's call to consider small business makes Advocacy's RFA training more important than ever.

## To Learn More

For information, please contact Assistant Chief Counsel Bruce Lundegren at (202) 205-6144 or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov). President Obama's memos on Regulatory Flexibility, Small Business, and Job Creation are online at [www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre](http://www.whitehouse.gov/the-press-office/2011/01/18/presidential-memoranda-regulatory-flexibility-small-business-and-job-cre).

## Research Notes

### Recent Additions to Advocacy's Website

Three publications from the Office of Advocacy's Office of Economic Research have been posted on the website recently.

The *Annual Report of the Office of Economic Research* recaps Advocacy's research activity between October 2010 and September 2011 (FY 2011). During this period, the office published 25 separate contract and internal research reports on topics including small business innovation, demographics of ownership, and capital formation. The office launched two new quarterly publications, as well as an information primer, *Frequently Asked Questions about Small Business Finance*. The Office of Economic

Research continued to provide extensive data tables and reports for download from the website, and it sponsored two research conferences in FY 2011. The first conference, on innovation and financing in high-impact businesses, was held in October 2010; the second, on the small business capital crunch, took place in September 2011.

The *Annual Report of the Office of Economic Research* is located at: [www.sba.gov/advocacy/7540/37331](http://www.sba.gov/advocacy/7540/37331).

Advocacy's newest *Quarterly Lending Bulletin* reported on third quarter 2011. It found that financial conditions in the third quarter continued to be supportive of economic growth. Nonetheless,

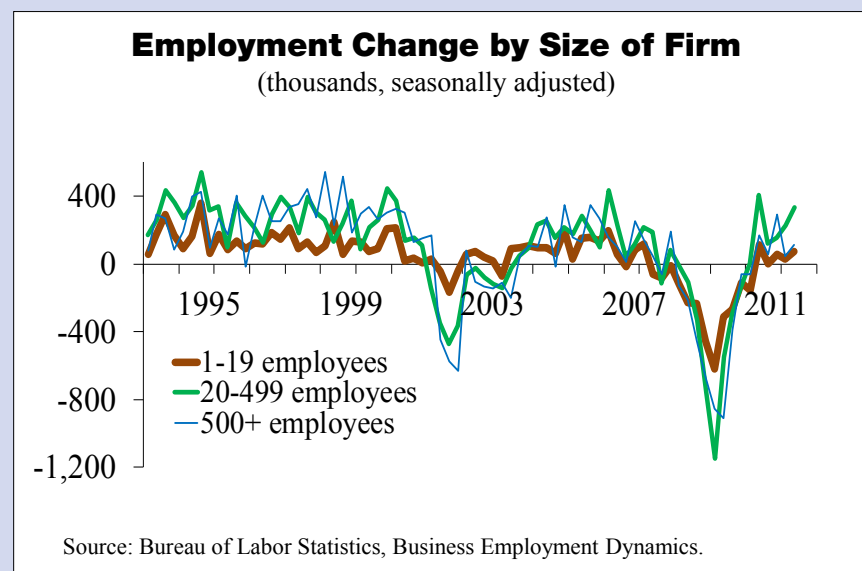
demand for commercial and industrial (C&I) loans remained weak. Overall, the results indicate that small business lending appears to be stable when compared to previous quarters and other economic indicators. The bulletin is located at: [www.sba.gov/sites/default/files/SBL\\_2011Q3.pdf](http://www.sba.gov/sites/default/files/SBL_2011Q3.pdf).

The *Small Business Quarterly Bulletin* for the third quarter of 2011 analyzes small business employment and financing trends. The latest edition shows economic variables related to small business trending up in the third quarter. This publication is located at: [www.sba.gov/advocacy/10871/29961](http://www.sba.gov/advocacy/10871/29961).

### Firms with 20-499 Employees Lead Private-Sector Job Growth

by Brian Headd, Economist

Small businesses with 20-499 employees are leading the charge in increasing private-sector employment (See Chart). From the beginning of 2010 to the second quarter of 2011 (the latest firm size data available), private-sector employment rose and these larger small businesses represented 63 percent of the growth. Small businesses with fewer than 20 employees represented only 6 percent of the employment growth over this time period. Historically, this smaller size class has represented about a quarter of net employment increases. The larger size class of small businesses is the only one of the three size classes to record significant net employment growth since the end of the downturn.



## Research News

### Latest Edition of Small Business Profiles Now Online and in Print

by Rebecca Krafft, Editor

The Office of Advocacy's *Small Business Profiles for the States and Territories* show detail about each state's small business makeup, as well as the country as a whole. Each state profile uses the latest data available to create a snapshot of business ownership, demographics, industry breakout of firms and employment, firm and employment turnover, and lending. 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, Texas, Florida, 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

topped by less populous states. Montana topped this list, with 68.2 percent of the state's employment provided by small firms. Wyoming, South Dakota, North Dakota, and Vermont followed in the top five.

The profiles also track employment and self-employment by state. The 2010 data appear here (see table, opposite page). The trends for the previous year and decade are included in each state profile.

State	Estimated number of small businesses,* 2009
United States	26.8 million
California	3.4 million
Texas	2.2 million
Florida	2 million
New York	1.9 million
Illinois	1.1 million
Pennsylvania	972,102
Georgia	902,694
Ohio	886,099
Michigan	805,902
North Carolina	786,749

\*Employer plus nonemployer firms.

State	Small firms' share of all firms, 2009 (percent)
United States	99.7
California	99.2
New York	99.0
Florida	98.9
Texas	98.7
New Jersey	98.4
Illinois	98.3
Pennsylvania	98.3
Michigan	98.3
Washington	98.1
Ohio	98.1
North Carolina	98.0

State	Share of employment by small firms, 2009 (percent)
United States	49.2
Montana	68.2
Wyoming	64.8
South Dakota	61.0
North Dakota	60.2
Vermont	59.5
Maine	57.7
Idaho	57.4
Oregon	56.2
Rhode Island	55.2
Hawaii	54.6
Louisiana	54.4

Source: *Small Business Profiles for the States and Territories*, published January 2012 by the U.S. Small Business Administration, Office of Advocacy, [www.sba.gov/advocacy/848](http://www.sba.gov/advocacy/848).



## Employment and Self-Employment by State, 2010 (Thousands)

State	Employment		Self-Employment				
	Private Sector	Government	All	Female	Male	Minority	Veteran
United States	107,337	22,482	14,684	4,953	9,731	3,094	1,337
Alabama	1,482	387	169	57	112	36	14
Alaska	239	85	31	10	21	8	5
Arizona	1,961	417	317	115	202	91	25
Arkansas	945	218	136	47	89	10	10
California	11,469	2,423	2,140	755	1,385	820	138
Colorado	1,827	393	351	131	220	43	27
Connecticut	1,363	245	205	56	149	33	16
Delaware	349	64	34	14	20	6	4
District of Columbia	465	246	25	10	15	12	2
Florida	6,060	1,115	843	266	577	229	80
Georgia	3,148	678	444	140	304	127	60
Hawaii	462	125	60	23	38	40	4
Idaho	484	119	107	43	63	5	10
Illinois	4,754	857	575	186	390	85	49
Indiana	2,355	438	229	70	159	20	23
Iowa	1,216	254	185	61	124	9	18
Kansas	1,061	262	140	52	88	16	15
Kentucky	1,438	331	172	55	117	15	27
Louisiana	1,518	366	174	48	126	36	20
Maine	489	103	84	32	52	2	6
Maryland	2,012	501	253	97	156	70	15
Massachusetts	2,748	438	327	103	224	21	29
Michigan	3,226	636	337	140	197	66	23
Minnesota	2,221	417	291	107	183	12	42
Mississippi	841	249	116	29	87	24	11
Missouri	2,197	451	273	90	183	34	39
Montana	338	91	87	26	60	3	13
Nebraska	770	169	121	45	76	8	13
Nevada	961	155	118	43	75	28	8
New Hampshire	526	97	82	26	56	2	12
New Jersey	3,212	643	353	88	265	71	28
New Mexico	602	199	111	44	67	35	11
New York	7,043	1,510	805	290	516	183	43
North Carolina	3,158	704	436	145	291	66	46
North Dakota	296	80	57	21	35	3	4
Ohio	4,248	782	590	156	435	42	59
Oklahoma	1,187	340	190	80	110	29	11
Oregon	1,300	300	241	92	149	27	28
Pennsylvania	4,859	757	523	147	376	54	40
Rhode Island	397	62	45	12	33	5	3
South Carolina	1,460	345	178	56	122	37	19
South Dakota	324	79	70	22	48	2	10
Tennessee	2,181	432	321	91	230	37	39
Texas	8,482	1,860	1,034	347	687	406	113
Utah	965	216	109	37	72	9	15
Vermont	243	55	47	16	31	1	5
Virginia	2,924	703	373	150	222	80	46
Washington	2,231	547	382	146	236	71	22
West Virginia	593	153	56	20	37	2	8
Wisconsin	2,315	421	305	106	199	18	26
Wyoming	210	73	34	14	20	2	4

Source: *Small Business Profiles for the States and Territories*, published January 2012 by the U.S. Small Business Administration, Office of Advocacy, [www.sba.gov/advocacy/848](http://www.sba.gov/advocacy/848).

## An Office of Advocacy Welcome

This fall, the Office of Advocacy welcomed two new staff members.

**Sarah Bresolin Silver** joined Advocacy's Office of Interagency Affairs in October as assistant chief counsel. She is working on Environmental Protection Agency regulations and Small Business Advocacy Review panels.

Bresolin Silver obtained her J.D. from the University of Western Ontario in London, Canada, in 2006, and LL.M. from the George Washington University Law School in January 2011. She is licensed to practice law in New York, Massachusetts, and Ontario. After



law school, Bresolin Silver practiced for one year in corporate and securities law in Toronto and in litigation in Boston. In 2010–2011, she worked for the World Bank in their international arbitration center and with the United Nations Conference on Trade and Development. Most recently, she has provided legal counsel to an environmental product development company in Boston, Massachusetts, drafting option awards and nondisclosure agreements and advising on commercial issues.

You can reach Assistant Chief Counsel Bresolin Silver at [sarah.bresolin@sba.gov](mailto:sarah.bresolin@sba.gov) or (202) 205-6790.

In November, **Kyle W. Kempf** joined Advocacy's Office of Information as assistant chief counsel for Congressional affairs. Most recently, Kempf served as senior director of government affairs for the National Small Business Association, advocating on behalf of small business on financial services, regulatory, energy, and environmental issues. Prior to that, he served as director of government relations for a number of other organizations.

Kempf has worked in the offices of a U.S. senator, a British member



of parliament in London, and an Italian member of the European Parliament in Brussels. He graduated *summa cum laude* from Boston University with a bachelor's degree in political science and holds a master's degree with merit in comparative politics from the London School of Economics and Political Science.

Assistant Chief Counsel Kempf can be reached at [kyle.kempf@sba.gov](mailto:kyle.kempf@sba.gov) or (202) 205-6888.

## Social Media Update

Here's the Office of Advocacy's latest list of electronic handles.

Advocacy is on Facebook at: [www.facebook.com/AdvocacySBA](http://www.facebook.com/AdvocacySBA)

- We are on Twitter at: [@ADVOCACYSBA](https://twitter.com/ADVOCACYSBA).
- Our blog, "The Small Business Watchdog," is at <http://weblog.sba.gov/blog-advo>.
- You can join any or all of our four email lists (for news releases, newsletter, small business research and statistics, or regulatory communications) by visiting <http://web.sba.gov/list>.

Friend us, follow us, comment, or visit our redesigned website at [www.sba.gov/advocacy](http://www.sba.gov/advocacy).

### Implementation of Two Labor Rules Postponed

by Janis Reyes, Assistant Chief Counsel

Some recent developments have postponed the implementation of two new labor rules that have concerned small business. The Office of Advocacy has been working with representatives of the affected small business industries in both cases.

#### Congressional Action Halts H-2B Visa Wage Increases

On December 23, 2011, President Obama signed into law the 2012 Consolidated Appropriations Act, which includes language that prohibits the use of any FY2012 federal funding to enforce the Department of Labor's final rule on wage methodology for the H-2B visa program. Under the final rule, the wages of H-2B visa holders in the affected industries would have increased by \$1.23 to \$9.72 per hour. Prior to this congressional action, the agency had also postponed the effective date of this rule numerous times.

The H-2B program allows seasonal employers to temporarily hire low-wage foreign workers. Some of the top industries that utilize the H-2B program are landscaping, lodging, construction, restaurants, and seafood processing. In the past year, Advocacy has held two small business roundtables and submitted four public comment letters on the H-2B visa issue. Small businesses have expressed concern that the wage increases in this final rule would shut small businesses out of this vital program, jeopardizing their business operations. Advocacy will continue to monitor the H-2B issue and its effect on small businesses.

#### NLRB Postpones Effective Date of Rights Posting Rule to April 30

The National Labor Relations Board (NLRB), an independent federal agency, has agreed to postpone the effective date of a rule requir-

ing the display of an employee rights poster in workplaces. This was done at the request of a federal court in Washington, D.C., which is hearing a legal challenge to the rule. The board determined that postponing the effective date would facilitate the resolution of the legal challenges that have been filed with respect to the rule. The new implementation date is April 30, 2012.

Most private sector employers will be required to post the 11-by-17-inch notice by the new implementation date of April 30. The notice is available at no cost from the NLRB ([www.nlrb.gov](http://www.nlrb.gov)), which has additional information on posting requirements and NLRB jurisdiction.

For more information, contact Janis Reyes, assistant chief counsel for labor and immigration at (202) 205-6533 or [janis.reyes@sba.gov](mailto:janis.reyes@sba.gov).

### Task Force To Help with Anti-Discrimination Law Compliance

The U.S. Equal Employment Opportunity Commission (EEOC) has launched an internal task force to expand and improve outreach and technical assistance to small businesses. The Small Business Task Force, led by Commissioner Constance S. Barker, will work to find ways in which the agency could better collaborate with the small business community to ensure compliance with federal anti-discrimination laws. Employers who meet the threshold number of employees are subject to the laws enforced by the EEOC; details about their applicability can be found at [www.eeoc.gov/employers/coverage\\_private.cfm](http://www.eeoc.gov/employers/coverage_private.cfm).

The Office of Advocacy provided input to the EEOC on the challenges that small businesses face complying with the agency's regulations. Advocacy also provided data on the number of small businesses covered by the EEOC's laws, as well as examples of how to improve the commission's small business outreach.

The Small Business Task Force will focus on newly established small businesses and those that are too small to afford lawyers or to employ human resources personnel. The task force will work during 2012 to develop recommendations on how to:

- Utilize new technology to expand outreach to small businesses;
- Develop technical assistance and training initiatives for small businesses;
- Identify specialized approaches to aid small businesses owned by women and minorities;
- Identify specialized approaches for microbusinesses (generally those with 50 or fewer employees); and
- Enhance small business information and training on the commission's website.

The commission invites members of the public to submit written input on the task force. Public comments may be e-mailed to [smallbusiness@eeoc.gov](mailto:smallbusiness@eeoc.gov).

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## Regulatory News

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### Three Percent Withholding Requirement Repealed

*by Dillon Taylor, Assistant Chief Counsel*

On November 21, 2011, President Obama signed legislation repealing a requirement that would have required federal, state, and local governments with expenditures of more than \$100 million to withhold 3 percent of payments for products and services worth more than \$10,000. This withholding requirement was scheduled to take effect on January 1, 2013.

The 3 percent requirement would have adversely affected the accounts of all small businesses that provide services to government

entities. Most of these small businesses would have had to increase their debt level in order to ensure sufficient cash flows and potentially pass these additional expenses on to their government customers. If small firms were unable to secure additional debt, the requirement threatened to force them out of the federal contracting market.

The Office of Advocacy has consistently worked on this issue. Advocacy responded to an Internal Revenue Service request in March 2008 with a public comment

letter dated April 24, 2008. In it, Advocacy recommended ways that the IRS could reduce the burdens of the requirement on small business. And in May 2011, the chief counsel for advocacy called for the elimination of the 3 percent requirement.

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Office of Advocacy  
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