

## Advocacy's Legislative Priorities Seek To Improve RFA

by Thad Inge, Assistant Chief Counsel for Congressional Affairs

In March, Chief Counsel for Advocacy Winslow Sargeant released his legislative priorities for the 112th Congress. These priorities, which focus on the Regulatory Flexibility Act (RFA), seek to improve this important law and make it a more effective tool while not overwhelming its unique purpose or undermining its effectiveness.

The federal government has saved small entities billions of dollars in foregone regulatory costs by following the RFA's direction and minimizing the impact of regulatory mandates on small business. In one case after another, regulatory sensitivity toward small entities has been achieved without sacrificing environmental protection, workplace safety, border security, and other goals of federal regulations.

In addition to these top legislative priorities, the Office of Advocacy is prepared to work

with Congress on other ideas for improving the RFA and on other legislation supporting small business.

In keeping with the 112th Congress's emphasis on reducing barriers and promoting small business, Advocacy has proposed three amendments to the RFA.

### 1. Review of Existing Rules

With the promulgation of new regulations each year, the impact of existing rules can be extremely burdensome on small business. Evaluating these regulations periodically helps minimize this impact. Currently the RFA requires agencies to review rules that are 10 years old. Advocacy believes there should be additional triggers for such reviews.

*Amendment: Strengthen section 610 of the Regulatory Flexibility Act to provide for public petitions for review and analysis of burdensome regulations without regard for how long the rules have been*

*in place. Additionally, the list of scheduled section 610 reviews should be incorporated into the section 602 Regulatory Agenda.*

### 2. Improve Small Business Advocacy Review (SBAR) Panels.

The SBAR panel process plays an important role in allowing for small business comment at the Environmental Protection Agency, Occupational Safety and Health Administration, and Consumer

*Continued on page 2*



Advocacy's team of regional advocates convened in Washington and discussed small business policy with Senate Small Business Committee Chair Mary Landrieu.

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## Research Notes

### Banking on a Second Chance

by Brian Headd, *Economist*

Can a business rise from the ashes, like a phoenix and fly upward? Or does this concept have more in common with that other mythical beast, the unicorn? U.S. business bankruptcy laws are designed with business survival or a “fresh start” as a goal and Aparna Mathur put the results to the test in an Office of Advocacy–funded report, *Beyond Bankruptcy: Does the Bankruptcy Code Provide a Fresh Start to Entrepreneurs?*

The study uses data from the Federal Reserve Board’s now-defunct Survey of Small Business Finances. At some point in the previous seven years, owners of 2.6 percent of firms filed for bankruptcy. With about 1 percent of businesses filing for business bankruptcy every year and scores more filing personal bankruptcy, it is difficult to calculate how many firms entered bankruptcy but ended up surviving.

Surprisingly, previously bankrupt firms perform similarly to non-bankrupt firms. They are just as burdened as other small firms by problems such as poor cash flow, high health insurance costs, or excessive taxes, and they attain similar employment firm sizes. While the system helps certain small businesses maintain operations, access to credit remains a problem. These issues increase the probability that firms will not even seek credit after a bankruptcy.

The report also finds some worrisome differences in credit access across minority-owned businesses. Black- and Hispanic-owned businesses are charged higher interest rates and are more likely to be denied loans, while Asian-owned businesses essentially mirror U.S. averages.

Mathur concludes, “While the bankruptcy code does help certain businesses get back on their feet,

#### The Small Business Advocate

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



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the persistence of credit access issues after bankruptcy suggests that the promise of the ‘fresh start’ has not been fully realized.”

The full report is available on Advocacy’s website, [www.sba.gov/advocacy](http://www.sba.gov/advocacy).

#### Priorities, from page 1

Financial Protection Bureau. If small business panels are to work efficiently and to allow maximum small business input, at least two months’ notice of an impending panel is required. Over the years, disagreements have arisen about the amount and quality of information provided to the small entity representatives in the SBAR panels. Amending section 609 of the RFA would address these issues and help achieve better panels.

*Amendment: Modify section 609 of the RFA to require more detailed notification in advance of convening a panel and to specify information that must be provided to small entity representatives to the panel.*

#### 3. Narrowly Analyze Indirect

**Economic Impacts.** Under the RFA, agencies are not currently required to consider the impact of a proposed rule on small businesses that are not directly regulated by the rule, even when the impacts are foreseeable and often significant. Advocacy believes that indirect effects should be part of the RFA analysis, but that the definition of indirect effects should be specific and limited so that the analytical requirements of the RFA remain reasonable.

*Amendment: Amend section 601 of the RFA to define “impact” as including the reasonably foreseeable effects on small entities that purchase products or services from, sell products or services to, or otherwise conduct business with*

*entities directly regulated by the rule; are directly regulated by other governmental entities as a result of the rule; or are not directly regulated by the agency as a result of the rule but are otherwise subject to other agency regulations as a result of the rule.*

In addition, Advocacy is prepared to work with Congress on other ideas for improving the RFA or on other legislation to support small business. The RFA has been an increasingly effective tool over the years, and Advocacy is wary of any changes that would potentially overwhelm its unique purpose or undermine its effectiveness. However, we do believe that a number of measured and technical changes could improve the RFA.

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## Message from the Chief Counsel

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### Network of Regional Advocates Transmits Small Businesses' Voices

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

The Office of Advocacy prides itself as an independent voice for small business within the federal government. This has been our mission for more than 35 years. But with more than 27 million small business (27.5 million according to the latest Advocacy estimates) located throughout the United States and territories, how is it possible to stay on top of all the pressing issues? Advocacy stays in touch through its “eyes and ears on Main Street”—our regional advocates.

We have just completed assembling the team of 10 regional advocates. And already the feedback we are receiving highlights the importance of having direct contact with small business owners. This outstanding team of regionals has a combination of experience that adds up to more than 150 years in every area of business.

We know that small business owners are forced to multitask in order to stay in business. This leaves very little time for them to read the *Federal Register* for regulations that will affect them or to take advantage of recently passed business-friendly policies. To fill this void, our regional advocates travel their states to provide a link to Washington, which is becoming more vital for small businesses.

Advocacy is pleased that our entire team is in place and already their impact is being felt. A case in point was a meeting I had with a group of small mortgage brokers in Boston. This meeting was arranged by Region I Advocate Lynn Bromley, who had been on the job for less than a month. These small business owners, who survived the brutal real estate shakeout, were concerned with recent regulations of the Federal Reserve Board.

These regulations, affectionately known as Reg Z, implement the Truth in Lending Act and the Real Estate Settlement Procedures Act. The meeting was an eye-opener for me because these business owners were unaware that the Office of Advocacy spoke for them at the federal level. They understood that regulations were needed in light of the problems uncovered in the real estate mortgage market, and wanted to comply. But they didn't know that there was a way for their voices to be heard in the rulemaking process. Advocacy was able to relay their concerns to the Federal Reserve.

I recently participated on a small business panel in New Orleans

This voice, he added, needed to have direct contact with small businesses. I couldn't have designed a better “teachable moment” to explain Advocacy's purpose. It was also a made-to-order introduction of our Region VI Advocate, Caitlin Cain, who joined the staff in March.

Advocacy is now at full strength, and each staff person plays a key role. While technology has enabled us to connect in ways never thought possible, there is still no replacement for an individual human being to share your concerns with. We are eager to engage small businesses and excited to share their concerns with the White House and Congress. Because of our regional



where small business owners and advocates were given the opportunity to share their thoughts on how the federal government could better support innovation and entrepreneurship. One panelist expressed frustration that small businesses did not have a voice at the federal level. He went on to say that there must be an office or an organization within government whose mission is to provide an unfiltered voice to policymakers.

advocates, the distance just got a little shorter and the connection to government just got a lot clearer. No more busy signals for small business owners.

To find out who your regional advocate is, visit [www.sba.gov/content/regional-advocates](http://www.sba.gov/content/regional-advocates). The regionals are here to serve you; they are available for interviews, as speakers, and above all, to hear your concerns about policies that affect small business.

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## Regulatory News

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### Federal Agencies Make Progress Complying with E.O. 13563

by Charles Maresca, Director of Interagency Affairs

The federal agencies have begun to develop their plans for complying with President Obama's Executive Order 13563, "Improving Regulation and Regulatory Review."

The executive order requires each agency to submit a plan for retrospective review of its regulations by May 15, 2011.

Agencies have until April 29 to submit preliminary draft plans to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) in response to the executive order and a memo to the heads of agencies issued by OIRA on February 2.

Concurrent with the E.O. 13563, President Obama issued a memo to the heads of agencies reminding them of their responsibilities toward small business under the Regulatory Flexibility Act. In the memo, the President told the agen-

cies that the Administration is "firmly committed to eliminating excessive and unjustified burdens on small businesses, and to ensuring that regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses."

Advocacy issued its own memo to the heads of agencies on January 31. Advocacy's memo reminded them of the President's concern for small businesses in the regulatory review process and offered the office's assistance in creating retrospective review plans.

The agencies have begun to develop their plans and to accept input on rules to be reviewed. The Department of Transportation requested the views of the public in an announcement on March 3. The Department of Commerce's Economic Development Admini-

stration also published a notice requesting the public's views on how the agency could update its regulations pursuant to the executive order. The Department of Homeland Security published a notice on March 14 announcing that the agency "is soliciting views from the public on how best to develop its preliminary plan... [and] is also seeking views from the public on specific existing significant DHS rules that the Department should consider as candidates for modification, streamlining, expansion, or repeal."

Fifteen agencies have thus far published such announcements; they can be viewed at [www.regulations.gov/exchange/topic/eo-13563](http://www.regulations.gov/exchange/topic/eo-13563). Advocacy will continue to review agencies' plans and to work with them.

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### Proposed and Final EPA Rules To Be Examined at April Roundtables

by David Rostker, Assistant Chief Counsel

The Environmental Protection Agency has issued a number of rules in the past several weeks that Advocacy expects will have major effects on small entities and the economy. These have included rules governing air emissions from coal- and oil-fired electric utilities, industrial, commercial, and institutional boilers, and solid waste incinerators, as well as rules on cooling water intake.

EPA published the final boiler and incinerator rules in the *Federal Register* on March 21. These rules will impose new emissions standards and work practice requirements on industrial, commercial, and institutional boilers, and solid waste incinerators. EPA

also published a rule that defines which fuels would make a boiler an incinerator. At the same time, EPA published a notice that they could be reconsidering some of the aspects of these final rules in the months to come.

EPA also issued two new proposed rules which could have a significant effect on the electricity market. On March 16, EPA issued proposed emission standards for coal- and oil-fired electric utilities. On March 28, it issued proposed standards for cooling water intake structures on existing facilities.

Advocacy is hosting a pair of environmental roundtables during the month of April to explore the effects of these proposed and final

rules. Those interested in learning about these rulemakings and their effects on small entities are welcome to attend in person or via teleconference. The dates and times are as follows:

- **The Boiler/Incinerator MACT Rulemakings, Including the Definition of Solid Waste**—Friday, April 8, 9:30 a.m.–12 noon.

- **Proposed Utilities Regulations: Air Toxics MACT and Cooling Water Intake**—Friday, April 15, 10 a.m.–12 noon.

To participate or to be added to our email distribution list, please email Assistant Chief Counsel David Rostker at [david.rostker@sba.gov](mailto:david.rostker@sba.gov).

## Justice Department Releases Small Business Compliance Guide on ADA Rules

by Janis Reyes, Assistant Chief Counsel

The Department of Justice's revised Americans with Disabilities Act (ADA) regulations took effect on March 15. These new regulations apply to businesses of all sizes that serve the public, and they contain many new or revamped provisions on general nondiscrimination policies.

The Department of Justice has developed a guide to help small businesses understand their obligations under the revised rules. *ADA Update: A Primer for Small Business* is an illustrated guide with easy-to-understand language that provides an overview for complying with the revised regulations.

The new nondiscrimination provisions take effect immediately; the only exception is hotel reservations, for which compliance is not required until March 15, 2012. The revised rules also include the 2010 Standards for Accessible Design, which provide new and revised technical requirements for building accessibility. Newly constructed and altered facilities must be built

### EEOC Releases Final Rule Implementing the ADA Amendments Act

On March 25, the Equal Employment Opportunity Commission (EEOC) released a final rule implementing the equal employment provisions of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). The law was enacted on September 25, 2008, and became effective on January 1, 2009. It significantly expanded the definition of "disability," thereby increasing the number of workers who will be considered disabled under the ADA and the number of employers who must make reasonable accommodations for these employees.

These regulations generally apply to all private employers with 15 or more employees. The EEOC has created a guide for help small businesses comply with these regulations entitled *Questions and Answers for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008*. The guide is located at [www.eeoc.gov/laws/regulations/adaaa\\_qa\\_small\\_business.cfm](http://www.eeoc.gov/laws/regulations/adaaa_qa_small_business.cfm).

To learn more about the employment provisions of the ADA, please visit the EEOC website at [www.eeoc.gov](http://www.eeoc.gov); in addition, the EEOC's Small Business Liaisons at [www.eeoc.gov/employers/contacts.cfm](http://www.eeoc.gov/employers/contacts.cfm) provides confidential assistance to employers. Also feel free to contact the Office of Advocacy.

—Janis Reyes, Assistant Chief Counsel

in compliance with the 2010 standards beginning March 15, 2012. Existing facilities are required to remove barriers when "readily achievable." Those facilities that

have 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 modified or altered for any reason. 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 guide is available at [www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm](http://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm).

Businesses are encouraged to call the toll-free ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TTY) with questions about the revised rules. The new ADA Title III regulations and the 2010 ADA Standards can also be found at [www.ada.gov](http://www.ada.gov). Also feel free to contact Assistant Chief Counsel Janis Reyes at (202) 205-6533 or [janis.reyes@sba.gov](mailto:janis.reyes@sba.gov).



The Small Business Jobs Act of 2010 provided greater budget independence for the Office of Advocacy. On March 31, Dr. Winslow Sargeant testified before the Senate Committee on Small Business and Entrepreneurship about the importance of this change and the upcoming FY 2012 budget.

## Research Notes

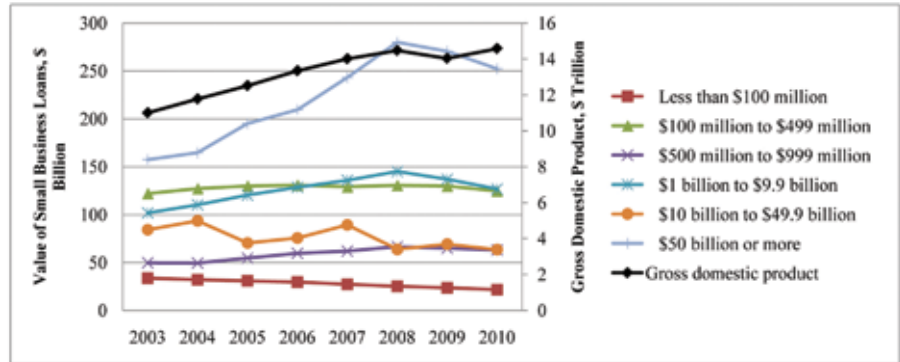
### Small Business Lending on the Edge of Recovery

by Kathryn Tobias, Senior Editor

In the context of an economy that appeared poised for recovery at the end of 2010, small business lending had yet to rebound. A new Advocacy study, *Lending by Depository Lenders to Small Businesses, 2003–2010*, looks at the lending performance of depository institutions over this eight-year term. The total supply of small business loans held by depository lenders (commercial banks and savings institutions) peaked at \$711 billion in 2008, then declined from 2008 to 2010.

The study is packed with information about small business lending over the period. For example, it shows that the largest lenders (\$10 billion or more in total assets) increased their small firm lending from 2003 to 2008 by nearly 30 percent, but decreased it by more than 8 percent from 2008 to 2010. Smaller lenders (less than \$10 billion in total assets) saw small business lending increase by more than 20 percent from 2003 to 2008, then decline by about 8 percent from 2008 to 2010. For the smallest lenders (assets of \$100 million

Total Value of Small Business Loans by Depository Lender Asset Size, 2003–2010



or less) small business lending declined more than 30 percent from 2003 to 2010.

The research also offers a regional perspective; it reviews the 2009–2010 lending by community lenders in each of the 10 SBA regions. (Community lenders are defined as depository lenders with assets of less than \$10 billion.)

For example, in Region VI, which covers Arkansas, Louisiana, New Mexico, Texas, and Oklahoma, the largest share of small business lending came from the smaller lenders (\$100 million to \$500 million in

assets). Larger lenders (\$500 million to \$1 billion in assets) managed to increase their small business lending over the 2009–2010 period after a decline in 2008–2009.

The study relies on data from Call Reports provided by lenders to their regulating agencies; they report on two types of small business lending—commercial and industrial loans and commercial real estate loans. Four loan size categories are examined: small business loans under \$1 million, micro business loans under \$100,000, loans between \$100,000 and \$250,000, and those between \$250,000 and \$1 million. It groups lenders into five size categories and studies annual changes in five performance measures: the aggregate value of small business loans, the number of these loans, average loan sizes, and ratios of small business loans to total lender assets and of small business loans to total business loans.

The research summary and full study, *Lending by Depository Lenders to Small Businesses, 2003–2010*, by George Haynes and Victoria Williams, are available on the Office of Advocacy website at [www.sba.gov/advocacy/852](http://www.sba.gov/advocacy/852).

### Office of Economic Research Launches Two New Quarterly Updates

Two of the Office of Advocacy's economists have begun new quarterly updates of data and trends.

Victoria Williams, who specializes in small business lending data, is the author of the new *Quarterly Lending Bulletin*. This brief update summarizes Call Report data on small business loans which became available on a quarterly basis starting September 2010. *The Lending Bulletin* can be accessed from the Banking Studies webpage, [www.sba.gov/advocacy/852](http://www.sba.gov/advocacy/852).

Brian Headd is the author of the *Small Business Quarterly Bulletin*, a brochure style-publication that contains commentary and analysis on current small business employment and financing trends. It also contains quarterly data updates. It is accessible from the Small Business Data webpage: [www.sba.gov/advocacy/849](http://www.sba.gov/advocacy/849).

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## Regional Update

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### Caitlin Cain Appointed Region VI Advocate

by Rebecca Krafft, Editor

Caitlin Cain is the Office of Advocacy's regional advocate for Region VI, covering the states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. She will be the chief counsel's direct link to small business owners, state and local government agencies, state legislators, trade associations, and small business organizations in these five states. Cain will be based in New Orleans, Louisiana.

"In her extensive economic development work throughout southeast Louisiana, Caitlin Cain has helped develop robust communities where businesses and residents thrive," said Chief Counsel for Advocacy Winslow Sargeant. "Caitlin's dynamic, creative, and entrepreneurial personality has yielded results in the form of economic development, business growth, and job generation."

"Entrepreneurs and small businesses often serve as catalysts in

community revitalization efforts by creating jobs and opportunities that fuel economic growth," said Cain. "As the Region VI advocate, I look forward to helping small businesses grow and reinvest in our communities."

Cain is both an urban planner and an economic development professional. Most recently, she operated her own company which specialized in strategic planning and complex project management. From 2003 to 2010 she served as the economic development director of the New Orleans Regional Planning Commission, where she attracted public and private investment in the region and guided the revitalization of infrastructure, neighborhoods, and commercial areas. Cain received a master of urban planning degree from the University of Michigan and her bachelor's from the University of Toronto.



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Chief Counsel Winslow Sargeant and Deputy Chief Counsel Claudia Rodgers participated in New Orleans Entrepreneurship Week in March. Events included Start It Up New Orleans, a panel with Senator Mary Landrieu and small business participants.

# Report Says Small Firms Are Unfair Target of Efforts to Close Tax Gap

by Kathryn Tobias, Senior Editor

Small businesses are disproportionately affected by measures to close the tax gap, according to a new Office of Advocacy study. The study, *An Examination of the 2001 IRS Tax Gap Estimates' Effect on Small Business*, was written by Quantria Strategies; it highlights flaws with the overall estimates, particularly as they relate to large corporations and international tax transactions.

The tax gap is defined as the difference between taxes owed and taxes paid. The total tax gap was \$345 billion, or \$290 billion after collection activities.

Estimates by the IRS's National Research Program (NRP) suggest that underreporting of income by small businesses accounts for between \$83 billion and \$99 billion of the total gap in individual income taxes owed for

2001. (The total tax gap is estimated at between \$150 billion and \$187 billion). However, the study finds that most underreporting on individual income tax forms is unintentional—just 1 percent of all issues examined resulted from deliberate failure to report income properly.

“The tax gap estimates have led to increased audits and information reporting requirements for small businesses, such as the new 1099 reporting requirement,” said Chief Counsel for Advocacy Winslow Sargeant. “A better strategy for the IRS to increase their compliance would be through outreach and education programs, and a more balanced approach to enforcement.”

At the same time, the tax gap attributed to large corporations is not adequately measured. The study suggests that these estimates in the

2001 NRP are based on data from the 1970s and 1980s and were not updated for the analysis published in 2006.

Methodologically, the IRS focused its tax-gap study on individual income tax returns and on returns not subject to withholding or third-party reporting, skewing them unfairly toward small businesses. For fiscal years 2005–2009, the amount of time the IRS spent auditing the tax returns of large corporations went down by 13 percent.

The research also explores alternative approaches to improving compliance without overly burdening taxpayers.

*An Examination of the 2001 IRS Tax Gap Estimates' Effects on Small Firms* is available at [www.sba.gov/advocacy/7544](http://www.sba.gov/advocacy/7544).

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