

DC Staff Travels to Colorado to Meet with Small Businesses

By John Hart, Region 8 Advocate

On a recent trip to Colorado, a team of Advocacy attorneys and economists along with Chief Counsel Darryl L. DePriest conducted roundtable discussions and toured several small businesses in Denver and Boulder to better understand the state economy and to meet small business owners. Colorado has an incredibly diverse economy, not only in ethnic and gender make-up of small business ownership, but across a wide spectrum of industries. This diversity of industries has helped insulate the state economy from national economic struggles and contributed to a unique culture of small business spirit. Boulder is a confluence of distinctive high technology operations, a nationally ranked university, and several federal research laboratories backstopped by a relaxed, creative ethos and likeminded residents.

The Advocacy team conducted several roundtables in Denver. One, with Mi Casa Development Centers, focused on describing new Department of Labor

overtime rules to a small group of business owners, intent on learning their new requirements for salaried employees. Assistant Chief Counsel Janis Reyes, joined by Assistant Chief Counsel Dillon Taylor, as well as Regulatory Economists Lindsay Scherber and Jonathan Porat, conducted separate roundtables with the Colorado Chamber of Commerce and Industry and the Colorado Small Business Development Center. They discussed the labor issues as well as new SEC crowdfunding rules and the subsequent impact they will have on small businesses.

The team traveled to Boulder to conduct several roundtables with the Boulder chapter of the Colorado Small Business Development Center on the overtime rules and new SEC crowdfunding issues with local constituents. Many of the participants were unaware of the pending changes on both fronts and

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Advocacy staff at Maria Empanadas, a local small business in Denver, CO.

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Regulatory News

Advocacy Speaks on Overtime Regulation at National Association of Counties Annual Conference

By Janis Reyes, Assistant Chief Counsel

“Have you heard about the Department of Labor’s new Overtime Regulations?” was the initial question posed to a group of county administrators and elected officials at the 2016 National Association of Counties (NACo) Annual Conference in Long Beach, Calif., in July. The Office of Advocacy is the voice for small entities to the federal government, including small businesses, small non-profit organizations and small governmental jurisdictions with a population of fewer than 50,000.

Advocacy is working with the U.S. Department of Labor (DOL) to complete outreach and to educate small entities across the country on the agency’s new final overtime regulations, which are effective Dec. 1. Under the Fair Labor Standards Act (FLSA), employees are entitled to overtime pay if they work over 40 hours a week. However, there are many exemptions under the FLSA. This final rule amends the FLSA “white collar” exemption from overtime pay for executive, administrative and professional employees.

The new rule updates the minimum salary threshold that determines which employees can use this exemption, increasing this threshold from \$23,660 to \$47,476 (or from \$455 to \$913 per week). All employees, including managers, making less than \$47,476 will be eligible for overtime pay Dec. 1. DOL will be making automatic updates to this minimum salary threshold every three years beginning Jan. 1, 2020. The final rule also allows employers to use non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of



Assistant Chief Counsel Janis Reyes (standing middle) speaking to a crowd at NACo’s Annual Conference in Long Beach, CA.

the new standard salary level.

During the presentation at the NACo conference, a Department of Labor representative provided a briefing of the final rule. DOL has made available a similar webinar version of this briefing, a small business compliance guide, and other helpful materials on its website. (<https://www.dol.gov/whd/overtime/final2016/>). DOL also has fact sheets and resource materials on the agency’s website about the application of this rule to small businesses, non-profits, state and local governments, and higher education organizations.

Janis Reyes, Assistant Chief Counsel, discussed Advocacy’s involvement with this rulemaking, such as completing five roundtables across the country and submitting a public comment letter based on this feedback. She discussed special considerations for small counties and municipalities, such as their ability to utilize other exemptions and compensatory time off (instead of overtime). Reyes also shared conversations she had with county managers that have expressed concern that this rule would have significant economic

impacts for small counties and municipalities because of their budget constraints. There are more than 2,000 small counties (over 68 percent of all counties).

Most of the attendees had heard about the final regulations, but had specific questions about how this rule might affect their own county’s situation. For more information, small entities can call the DOL’s Wage and Hour Division’s helpline, 866-4-USWAGE (866-487-9243).

Attending this four-day conference provided Advocacy with valuable feedback from elected officials and managers of small counties from all over the country on this overtime rule. The meeting of the Rural Action Caucus, who represent rural counties, was particularly informative.

Advocacy is working with DOL on getting more compliance information to small entities on this rulemaking, such as developing a webinar focused on small businesses. For more information, contact Reyes at Janis.Reyes@sba.gov.

Message From the Chief Counsel

SBREFA Panels are Great Opportunity for Small Business to Communicate with Rule Writers

By Darryl L. DePriest, Chief Counsel

One of the core duties of the Office of Advocacy is its role in panels conducted by the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Consumer Financial Protection Bureau (CFPB). Established in 1996 in the Small Business Regulatory Enforcement Fairness Act (SBREFA), these panels are an opportunity for small businesses to communicate directly with the rule writers and technical experts. These consultations have proven to be crucial to the effective consideration of small business impacts for the highly technical and detailed rules these agencies issue.

I recently had the pleasure of participating in a SBREFA panel convened by the CFPB concerning proposed revisions to debt collection regulations. The small business participants were extremely knowledgeable and shared their perspectives and concerns. I learned a lot about their shared debt collection practices and how they currently comply with existing federal regulations. Most importantly, they brought new information and a new understanding of small business impacts to the process, which CFPB can now take into account regarding proposals.

In general, it strikes me how difficult it is for the federal government to fully understand the impacts on small enterprises, particularly when the rulemakings are very technical and complex. In 2014, the federal government employed over four million people. In a workforce that

large, there is a lot of diversity and expertise. For every technical, legal, or policy question, the government has an expert. Large enterprises can afford that kind of specialization. In particular, the EPA, OSHA, and CFPB write highly technical rules, supported by teams of experts and extensive documentation. But, even with all of this scientific and technical expertise, few civil servants have experience running a business, dealing with the federal, state, and local regulatory authorities, paying taxes and making payroll. They are not always familiar with all of the industries they are regulating or the business environments in which they operate.

Small businesses know their industries and their business environment, but they do not generally have the luxury of employing teams of scientific experts or the time to review the thousands of pages of source material that support highly technical rulemakings. The vast majority of businesses in the United States have no employees, and almost all of the rest have fewer than 20 employees. Their first priority is keeping their businesses running, dealing with today's challenges and today's regulations. Rarely are they able to devote resources to thinking about how federal regulations might possibly change sometime in the future.

This gap in resources, in people and in expertise, and the gap in understanding is why the SBREFA panel process is so important to the consideration of small business impacts in EPA, OSHA, and CFPB rulemakings. These agencies have the opportunity and obligation to



Chief Counsel Darryl L. DePriest

consult directly with small businesses on how they will respond to their rules, both through face-to-face meetings and through written comments. The final report, authored by the regulating agency, Advocacy, and the Office of Management and Budget, ensures that the small business concerns are well documented and that the federal government has responded by considering alternatives that might reduce the regulatory impact.

Although there are certainly other ways to ensure that federal agencies get a better understanding of small business concerns, and most agencies comply with the purposes of the RFA without the requirements for panels, Advocacy values the panels with EPA, OSHA and CFPB, and believes the SBREFA panel process has proven its worth over its 20 year history.

Regulatory News

SBREFA Panel Submits Final Report on OSHA's Process Safety Management Standard

By Bruce E. Lundegren, Assistant Chief Counsel

The Small Business Advocacy Review Panel assessing the Occupational Safety and Health Administration's (OSHA) plan to expand its Process Safety Management (PSM) standard for chemical plant safety has completed its work and submitted its final report to Dr. David Michaels, the head of OSHA. OSHA's PSM standard is intended to prevent or minimize the consequences of catastrophic releases of highly hazardous chemicals. It requires employers to adopt comprehensive management programs that integrate technologies, procedures, and management practices to help assure a safe and healthy workplace.

OSHA's move to expand its PSM standard stems from the widely-publicized explosion of a fertilizer plant in West, Texas, in 2013 that killed 15 people and destroyed hundreds of homes. Following that catastrophic event, President Obama issued Executive Order 13560, Improving Chemical Facility Safety and Security, which required the formation of a government-wide working group to review existing chemical safety and security regulations and recommend changes to strengthen those regulations. In addition to OSHA's PSM standard that protects workers from chemical risks in the workplace, the Environmental Protection Agency has similar regulations that address chemical releases to the surrounding community and

environment, and the Department of Homeland Security has related regulations that protect chemical facilities from possible terrorist attacks.

OSHA was required to convene the small business panel by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. SBREFA gives a voice to small business by requiring OSHA to convene a small business panel for any rule that is expected to have a significant economic impact on a substantial number of small entities before it can proceed to a proposed rule. The panel consists of representatives from three governmental agencies - OSHA, the SBA Office of Advocacy, and the Office of Information and Regulatory Affairs within the Office of Management and Budget. Small entity representatives (called "SERs") from impacted industries assisted the panel by reviewing OSHA's background materials and providing their advice and recommendations to the panel. The report outlines the panel's findings based on this SER input.

OSHA's contemplated changes to its PSM standard would address a number of issues. For example, OSHA is considering changes to the scope of the PSM standard by clarifying the exemption for atmospheric storage tanks, adding oil and gas drilling and servicing operations, resuming enforcement for oil and gas production, redefining the retail exemption, and expanding

the list of highly hazardous chemical in Appendix A of the PSM standard. In addition, for PSM-covered facilities, OSHA is considering mandating employee stop work authority, requiring an evaluation of recognized and generally accepted good engineering practices (RAGAGEP), requiring safer technology and root cause analyses, requiring independent third-party audits, and mandating additional coordination with local emergency responders.

As the report outlines, many of the SERs who advised the panel were skeptical of OSHA's contemplated changes, and cautioned OSHA to retain the performance nature of the PSM standard. Under a performance-based approach, employers have discretion and are responsible for designing and operating their chemical processes in a manner that is appropriate to the nature of the risk from their operations. SERs were also concerned about OSHA inspectors second-guessing employers' decision making regarding risk. EPA received similar comments during its related small business panel on its Risk Management Program earlier this year.

A copy of the OSHA PSM SBREFA panel report is available in the [OSHA docket](#). Contact Bruce Lundegren at (202) 205-6144 or bruce.lundegren@sba.gov for additional information.

Economic News

Advocacy Presents at North America's Largest Statistics Conference

By Jonathan Porat, Regulatory Economist

At the beginning of August, some of the biggest rock stars in the world descended on Chicago for Lollapalooza— a multi-day massive world-renowned music festival. Arguably more excitingly to an economist, that same week, some of the biggest rock stars in the world of statistics and data visualization came to Chicago for the 2016 Joint Statistical Meetings (JSM)— the “Lollapalooza” of statistics and data visualization.

The JSM is a conference attended by all of the major US and international statistics organizations. It boasts having over 6,000 participants and over 600 sessions on topics ranging from new developments in statistical software programs to ways to better communicate information through graphics. Advocacy was invited to participate. Research Economist Richard Schwinn presented his contribution to Advocacy’s cutting-edge transformation of its State Economic Profiles. Data Visualization Designer Sarah Coleman, Regulatory Economist Jonathan Porat, and Research Economist Miriam Segal attended the JSM to expand their analytical capabilities and help promote some of Advocacy’s research and design work.

Advocacy presented as part of a larger session on Administrative Records and Data Disclosure that was sponsored by the Government Statistics Section of the Committee on Applied Statisticians. The session was chaired by Statistician and Mathematician Jioashen You of the U.S. Department of Transportation and included presentations from other government agencies on the role of data presentations in

government. Jessica Helfrand of the Bureau of Labor Statistics presented on the policy implications of methodological changes in its quarterly employment and wage data. Erin Tannenbaum from the National Opinion Research Center at the University of Chicago described how data visualization of the Centers for Disease Control data can promote good policy by quickly and effectively determining geographic disparities in key indicators of good health.

Schwinn presented his contributions to the 2016 State Economic Profiles by focusing on the value of reproducibility in government data and how he was able to use statistical software to improve the reproducibility of Advocacy’s publications. His presentation was greatly received by the audience and catalyzed an interesting discussion between other government practitioners and academics in the audience. The audience was particularly interested in Schwinn’s presentation of a simple statistical software template that could be applied in future research to maintain high standards in transparency and clarity.

In addition to Schwinn’s fascinating presentation, Advocacy attended many sessions to improve its research capabilities. These included:

- A course in best practices in data visualization taught by Teresa Larsen of the Foundation for Scientific Literacy. The course demonstrated ways to better communicate statistical information through shape and color.

Advocacy will apply these techniques to improve its graphics’ readability.

- A presentation from Carson Sievert, a PhD student from Iowa State University, explaining how to make interactive web graphics using statistical software packages. The presentation included a variety of basic graphing techniques



Research Economist Richard Schwinn speaks to a crowd at JSM on Advocacy’s State Profiles.

and a detailed discussion of the positives and drawbacks of each approach.

- A case study on What to Do with Messy Data? by John Emerson from Yale University. The case study discussed statistical techniques, particularly those related to pattern matching and regular expressions, which have already saved Advocacy time and resources in producing data-driven publications.

- A meeting with Yihui Xie, the pioneer who brought literate programming to the R (statistical software program) language thus making the 2016 Small Business Profiles redesign possible. His presentation on making interactive

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Advocacy News

Colorado,

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engaged with the team on numerous questions on compliance and issuing of new standards.

While in Boulder, the team had the opportunity to tour Stratom Inc., an advanced technologies and robotics manufacturer that specializes in specific high-end robotics solution development for all branches of military use as well as private enterprise. Stratom offers a distinctive small business approach to advanced robotics manufacturing, being able to tap into local engineering talent at the University of Colorado at Boulder, and utilize innovative strategies and connections from the local community and research laboratories.

Afterwards, they met with the owner of Ku Cha Tea House and participated in a traditional tea ceremony prepared by the owner,

Rong Liu. Started more than a dozen years ago, the business has grown from a small shop to a substantial storefront on the corner of the main mall. Not only has the store thrived, but she has opened another shop in Fort Collins and plans to launch several more.

The following day, after an eventful series of roundtables, the team was able to tour another small business in downtown Denver called Maria Empanadas, an Argentinian empanada restaurant owned and operated by Lorena Cantrovici. She started Maria Empanadas several years ago in a small shop and grew her business through word of mouth and excellent food. The business continues to grow by offering culinary creations and relating to diverse cultural needs and interests, and has

looked into expansion opportunities in other Denver neighborhoods.

It is important for Advocacy's Washington, D.C. staff to travel into the field and see small businesses first hand. This opportunity allows them to appreciate how they interact and operate in their respective communities and understand how particular federal regulations affect their ability to start up, grow and thrive. The connection to these small businesses around the nation is paramount for lawmakers and regulatory agencies in understanding how their new regulations and changes to existing ones could benefit or burden those they seek to help. Even more important is the connection the small business constituents have in the regulatory processes that seek to influence their existence.

Economic News

Statistics Conference

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web-based visualizations inspired countless possibilities for potential future projects.

•A talk by Andrei Sheinkman from FiveThirtyEight focusing on the role that data visualization plays in the news. He noted that his graphically advanced organization uses proprietary software and open source web tools, and uses Adobe Illustrator to edit most charts.

•A presentation by Jeffrey Leek of Johns Hopkins University on two experiments that explored the influence of wording and visual clarity on how participants interpreted data. The researchers found a small change in presentation led to participants interpreting the same data differently across a variety of dimensions. In some cases even with training these presentational changes had a

significant impact.

Advocacy was privileged to participate in and contribute to the 2016 JSM. It will be exciting to see how all the valuable information and experience from the JSM will be crystalized into future publications. Advocacy looks forward to continuing to contribute its great work and expand its research capabilities at more events in the future.

Advocacy News

Advocacy Staff Update

Michael McManus was recently promoted to Regulatory Economist from Regulatory Fellow. As a Regulatory Economist, he will conduct independent research, manage external economic research contracts and review proposed regulations for small business impacts. His current regulatory portfolio includes the Departments of Interior, Agriculture and Transportation as well as chemical regulations from EPA. McManus's research has focused on business owner demographics and business dynamism. Michael is a graduate of George Washington University, where he earned his Bachelor of Arts in Political Science with a focus on public policy and a minor in theatre in 2014, then he received his Master's in Public Policy in

2015. Before joining Advocacy, he worked as a Regulatory Studies Fellow for the Office of Information and Regulatory Affairs (OIRA). McManus can be reached at (202) 205-7541 or Michael.McManus@sba.gov.

Stepanie Fekete joins Advocacy as a Law Clerk for the Office of Interagency Affairs. She will be helping with all in-house legal research for the office. Fekete has held other positions in the office in the past, such as legal intern and regulatory fellow. Fekete graduated from the University of Portland with a B.B.A. in Marketing and Sustainability, and recently received her juris doctor from The Catholic University of America, Columbus School of Law in 2016. She also graduated

law school with a certificate in public policy. Fekete can be reached at (202) 205-6936 or Stephanie.Fekete@sba.gov.

Katie Moore joins Advocacy as a Regulatory Fellow in the Office of Interagency Affairs. Moore was Advocacy's legal intern this past summer. Moore is a third year student at Georgetown University Law Center. She is active in the Art Law Society, Women's Legal Alliance, and Christian Legal Society. She also serves as a Student Ambassador. Moore received her B.S in Philosophy from Boston College in 2013, where she graduated magna cum laude. Advocacy is happy to have Moore back this fall as a fellow.



Regulatory Economist
Michael McManus



Law Clerk
Stephanie Fekete



Regulatory Fellow
Katie Moore

Economic Research Reports Released

- [The Ascent of the Senior Entrepreneur](#)
- [Frequently Asked Questions about Small Business](#)
- [Frequently Asked Questions about Small Business Finance](#)
- [What is Alternative Finance?](#)
- [What's New with Small Business Infographic](#)
- [Minority Business Ownership: Data from the 2012 Survey of Business Owners](#)

WHAT'S NEW WITH SMALL BUSINESS?



BED, [1992-2013]

SMALL BUSINESSES COMPRISE:



SUSB, NES, ITA [2013]

To view this infographic in its entirety, please visit: https://www.sba.gov/sites/default/files/Whats_New_With_Small_Business.pdf

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The Small Business Advocate

The Small Business Advocate newsletter is published by the U.S. Small Business Administration's Office of Advocacy. It is distributed electronically to 35,000 subscribers.

The Office of Advocacy is the independent voice for small business in the federal government. The office is the watchdog of the Regulatory Flexibility Act (RFA) and the source of small business statistics. Advocacy advances the views and concerns of small business before Congress, the White House, the federal agencies, the federal courts, and state policymakers.

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