

## Advocacy Publishes Annual Report on Federal Compliance with the Regulatory Flexibility Act

by Sarah Bresolin Silver, Assistant Chief Counsel

The Office of Advocacy released its *Report on the Regulatory Flexibility Act FY 2012* on February 20. This annual congressionally mandated report summarizes federal agencies' compliance with the Regulatory Flexibility Act (RFA). The RFA requires federal agencies to review proposed regulations that would have a significant economic impact on small entities and to consider significant alternatives that would minimize their regulatory burden while achieving the purpose of the rule.

FY 2012 saw many high points. Foremost, as part of Advocacy's RFA efforts, Advocacy staff helped small entities save \$2.4 billion in first-year regulatory costs and \$1.2 billion in annual recurring costs. Small businesses that benefit from these cost savings include those with temporary employees working under H-2B visas and small businesses in the trucking industry.

In addition, in conjunction with Advocacy and the Office of Management and Budget, the Consumer Financial Protection Bureau (CFPB) successfully convened and completed its first three Small Business Regulatory Enforcement Fairness Act (SBREFA) panels. The newly created CFPB had been directed by the Dodd-Frank Act to convene SBREFA panels on regulatory topics likely to significantly affect small businesses. (This is also a requirement for both the Environmental Protection Agency and the Occupational Safety and Health Administration.)

Advocacy submitted numerous public comment letters to federal agencies on their regulatory proposals. Advocacy staff found the most common shortcomings were agencies' inadequate analyses of small entity impacts and the lack of an initial regulatory flexibility

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# Makeup of Small Business Committees in the 113th Congress

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

With nearly half of its members new to Congress or serving on the committee for the first time, there will be many new faces on the U.S. House Committee on Small Business in the 113th Congress. The committee leadership remains the same, with Chair Sam Graves (R-Mo.) and Ranking Member Nydia Velázquez (D-N.Y.).

The U.S. Senate Committee on Small Business and Entrepreneurship lost a number of longtime members, including, notably, former chairs Olympia Snowe (R-Maine) and John Kerry (D-Mass.). Chair Mary Landrieu (D-La.) remains at the committee's helm, and Sen. Jim Risch (R-Idaho) will be the ranking member. Five newly elected (or appointed) senators also joined the committee: Sens. Tim Scott (R-S.C.), Deb Fischer (R-Neb.), Ron Johnson (R-Wis.), Heidi Heitkamp (D-N.D.), and Mo Cowan (D-Mass.).

The complete makeup of each committee is shown in Table 1.

**Table 1. Small Business Committee Members, 113th Congress**

U.S. Senate Committee on Small Business and Entrepreneurship	
<p><b>DEMOCRATS</b></p> <ol style="list-style-type: none"> <li>Mary Landrieu, Chair (La.)</li> <li>Carl Levin (Mich.)</li> <li>Tom Harkin (Iowa)</li> <li>Maria Cantwell (Wash.)</li> <li>Mark Pryor (Ark.)</li> <li>Benjamin Cardin (Md.)</li> <li>Jeanne Shaheen (N.H.)</li> <li>Kay Hagan (N.C.)</li> <li>Heidi Heitkamp (N.D.)</li> <li>Mo Cowan (Mass.)</li> </ol>	<p><b>REPUBLICANS</b></p> <ol style="list-style-type: none"> <li>Jim Risch, Ranking Member (Idaho)</li> <li>David Vitter (La.)</li> <li>Marco Rubio (Fla.)</li> <li>Rand Paul (Ky.)</li> <li>Tim Scott (S.C.)</li> <li>Deb Fischer (Neb.)</li> <li>Mike Enzi (Wyo.)</li> <li>Ron Johnson (Wis.)</li> </ol>
U.S. House Committee on Small Business	
<p><b>REPUBLICANS</b></p> <ol style="list-style-type: none"> <li>Sam Graves, Chair (Mo.)</li> <li>Steve Chabot (Ohio)</li> <li>Steve King (Iowa)</li> <li>Mike Coffman (Colo.)</li> <li>Blaine Luetkemeyer (Mo.)</li> <li>Mick Mulvaney (S.C.)</li> <li>Scott Tipton (Colo.)</li> <li>Jaime Herrera Beutler (Wash.)</li> <li>Richard Hanna (N.Y.)</li> <li>Tim Huelskamp (Kan.)</li> <li>David Schweikert (Ariz.)</li> <li>Kerry Bentivolio (Mich.)</li> <li>Chris Collins (N.Y.)</li> <li>Tom Rice (S.C.)</li> </ol>	<p><b>DEMOCRATS</b></p> <ol style="list-style-type: none"> <li>Nydia Velazquez, Ranking Member (N.Y.)</li> <li>Kurt Schrader (Ore.)</li> <li>Yvette Clark (N.Y.)</li> <li>Judy Chu (Calif.)</li> <li>Janice Hahn (Calif.)</li> <li>Donald Payne Jr. (N.J.)</li> <li>Grace Meng (N.Y.)</li> <li>Brad Schneider (Ill.)</li> <li>Ron Barber (Ariz.)</li> <li>Ann McLane Kuster (N.H.)</li> <li>Patrick Murphy (Fla.)</li> </ol>

## RFA Compliance Report, from page 1.

analysis, where required. Advocacy attorneys and economists continue to train and work with their federal agency partners to facilitate a better understanding and a more robust analysis of small entity impacts.

Advocacy also found that agency compliance with the Small Business Jobs Act of 2010 and Executive Order 13272 improved in FY 2012. Under these provisions, agencies must make public written procedures on how they comply with the RFA, notify Advocacy in advance of a rulemaking, and respond to comments filed by the chief counsel for advocacy.

Notably, Advocacy continued to develop its use of stakeholder roundtables to hear small business concerns and to provide federal agencies with a means of hearing small business input. In FY 2012, Advocacy hosted 32 roundtables, attended by a record number of agency officials. Among the topics covered were the Department of Homeland Security's proposed Ammonium Nitrate Security Program Rule and the Department of Labor's Minimum Wage and Overtime for Companion Care Workers Rule.

The report is online at [www.sba.gov/advocacy/823/4798](http://www.sba.gov/advocacy/823/4798).

## The Small Business Advocate

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## Message from the Chief Counsel

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### Advocacy Report Shows Small Businesses at the Forefront of Economic Recovery

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

One of the Office of Advocacy's primary tasks is to examine the role of small business in the American economy. Advocacy's research mandate includes investigating how small businesses expand employment opportunities, stimulate innovation and entrepreneurship, and bring new products and services to the marketplace.

Since 1982, Advocacy has prepared an annual report on small businesses' role in the economy. This year's report provides a rich collection of information about small business contributions to the economy and trends over time.

*The Small Business Economy 2012* demonstrates that small businesses have been at the core of our economy's growth over the past few years. The report is based on the latest available data; the most recent full year of data for most indicators is 2011; for some it is 2010.

Thanks to hardworking small business owners across the country, 2011 represented the second full year of economic expansion since the peak of the recession in 2009, with small businesses representing half of private-sector output. We still have a lot of work to do, but this report tells an inspiring story: output, business income and profits are rising for small businesses, and bankruptcies and unemployment are declining.

Despite lingering challenges from the recession that hit the nation in 2008-2009, the economic environment is turning around for America's small businesses. For example:

- Manufacturing sales, which dropped between 2005 and 2009, were up 11.7 percent between 2010 and 2011.

- After falling from 2005 to 2009, the income of our smallest businesses (proprietorships) increased by 6.0 percent from 2010 to 2011. Corporate profits, which also declined in 2005-2009, increased by 7.9 percent in the same period.

- Small firms with fewer than 500 workers outperformed large firms in net job creation in three of the four quarters of 2011, similar to a pattern that has existed since 1992 in periods when private-sector employment rose.

- Among the self-employed, certain demographic groups saw large increases in 2010-2011, particularly Latino, Asian, black, and urban

self-employed workers and the 55+ age cohort that reflects the large baby boom generation.

- Total business lending increased in June 2012, approaching its 2008 high; the rate of decline slowed for small business loans of all size categories.

- Funds raised by venture capital firms increased, and disbursements increased to levels comparable to those in 2006.

Overall, the data reflect an improving economy—good news for business in general. The report is once available online at [www.sba.gov/advocacy/849/6282](http://www.sba.gov/advocacy/849/6282).



Dr. Winslow Sargeant, chief counsel for advocacy, presented an award of appreciation to Ginger Lew on behalf of the Office of Advocacy. Lew has been a tireless champion for small business, serving in the Obama Administration as senior advisor to the White House National Economic Council and the SBA administrator, and co-chairing the White House Interagency Group on Innovation and Entrepreneurship. Lew was deputy administrator and chief operating officer of the Small Business Administration during the Clinton Administration.

### Small Businesses Voice Specific Concerns with Proposed FSMA Regs

by Linwood Rayford, Assistant Chief Counsel

The Food Safety and Modernization Act (FSMA), signed into law on January 4, 2011, directs the Food and Drug Administration (FDA) to draft rules to better protect public health by helping ensure the safety and security of the U.S. food supply. The first four significant FSMA rules have either been published in the *Federal Register*, or will be soon. These rules include:

- Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventative Controls for Human Food (published January 16, 2013; 78 *Fed. Reg.* 3646);
- Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption (published January 16, 2013; 78 *Fed. Reg.* 3503);
- Foreign Supplier Verification Programs for Importers of Food for Humans and Animals; and
- Accreditation of Third Parties to Conduct Food Safety Audits.

The preventative control rule has two major features. First, it contains new provisions requiring each owner, operator, or agent to comply with hazard analysis and risk-based preventative controls. Second, it would revise existing Current Good Manufacturing Practice (CGMPs) requirements by clarifying that certain existing CGMP provisions would also require protection against cross-contact of food by allergens. The proposed rule provides many small business exemptions. The rule takes effect 60 days after the final rule is published in the *Federal Register*; however, small businesses (defined as having less than 500 employees) have two additional years to comply, and very small businesses have three

additional years to comply. (Three possible definitions of small businesses are proposed: entities having less than \$250,000, \$500,000, or \$1 million in total food sales).

In the produce rule, the FDA proposes to set standards associated with the identified routes of microbial contamination of produce, including:

- agricultural water;
- biological soil amendments of animal origin;
- health and hygiene;
- animals in the growing area; and
- equipment, tools and buildings.

The rule would become final 60 days after final publication in the *Federal Register*. There are numer-

*Continued on page 7.*

### Advocacy Roundtable Spotlights FSMA Issues, Impact on Seasonal Food Importers

On January 17, 2013, the Office of Advocacy held a roundtable for small business stakeholders that gave them the opportunity to talk directly with FDA officials about their concerns with the FSMA rules, as well as FDA guidance on fees associated with the re-inspection of food facilities.

A diverse group of stakeholders participated: food importers and suppliers, produce farmers, and agents and brokers who facilitate importation of foreign food products into the United States. The discussion of potential impacts associated with the FSMA rules was enlightening for Advocacy and the FDA. In one instance, agent-brokers voiced concern with the liability they face under the new rules even when they are unsure if they have been listed as a broker of record with the FDA by a foreign food producer.

In another example, an Asian food representative asked the FDA to be more sensitive to language differences and cultural holidays that drive seasonal demand for specialized goods. As an example, a small business owner noted that a delay in the release of detained mooncakes just prior to, or during, the Harvest Moon Festival could lead to substantial financial losses since the product loses most of its value once the holiday passes.

The roundtable let officials from the FDA and Advocacy understand the complexity of individual products and niche markets affected by the regulatory proposals.

— Linwood Rayford,  
Assistant Chief Counsel



Mooncakes, a seasonal treat for the Lunar Festival, are pictured.

## In a Victory for Small Businesses, EPA Vacates Stormwater Runoff Numeric Limit

by Kevin Bromberg, Assistant Chief Counsel

In December 2009, under court order, the Environmental Protection Agency (EPA) finalized Effluent Limitation Guidelines for the construction and development industry to establish the minimum technology required to control the impact of stormwater runoff. EPA established both numeric limits and best management practices, such as silt fences, for certain active construction sites.

In April 2010, the Office of Advocacy petitioned EPA to reconsider the numeric standard. The Office of Advocacy asserted that the new rule imposed a numeric standard that was costly, difficult to implement, and based on numerous factual errors. Advocacy further argued that a single national numeric standard would be unlikely to work across all geographic areas and local soil and weather conditions. As a result of Advocacy's petition and a lawsuit by three parties (the National Association of Home Builders, the Utility Water Action Group, and the Wisconsin Builders Association), EPA announced in January 2013 that

it would vacate its standard. This revision was estimated to save businesses up to \$10 billion per year. In addition, EPA agreed to issue a new

proposal that will further improve the flexibility of best management practices. EPA expects to issue this proposal within a few months.

### Final EPA Rule on Reciprocating Internal Combustion Engines Reduces Small Firm Impacts

The Office of Advocacy submitted comments in 2009 on the EPA's proposed rule, National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Reciprocating Internal Combustion Engines (RICE). This rule affects tens of thousands of small businesses that employ engines for a variety of purposes. These engines are used at such facilities as power-generating plants and chemical and manufacturing plants to generate electricity and to power pumps and compressors. They may also be used by small businesses in oil and gas production, natural gas pipelines, and agriculture (e.g., for irrigation pumps). Advocacy suggested that engines fired by natural gas or diesel fuel in areas remote from population should not be subject to expensive emission control retrofits, but instead be subject to work practice controls.

In a reconsideration of the final rule that was completed in January 2013, EPA adopted Advocacy's proposed approach for natural gas fueled engines. EPA also allowed additional flexibility for utility companies to utilize emergency generators to avoid power failures. EPA estimated that this modification would reduce the capital costs of the 2010 final rules by \$287 million and the annual costs by \$139 million, while still making substantial progress toward reducing air pollution.

—Kevin Bromberg, Assistant Chief Counsel

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## Consumer Financial Protection Bureau Makes Three Rules Final

by Jennifer Smith, Assistant Chief Counsel

In January 2013, the Consumer Financial Protection Bureau (CFPB) issued three final rules that have a significant impact on small entities—Qualified Residential Mortgages, Mortgage Servicing, and Mortgage Loan Originator Compensation. The Mortgage Servicing and Mortgage Loan Originator Compensation rules received small entity input pursuant to the requirements of the Small Business Regulatory Enforcement

Fairness Act (SBREFA) panel process. The panel process was not required for the Qualified Residential Mortgage rule because it had originally been proposed by the Federal Reserve Board.

Small entities voiced their concerns to the Office of Advocacy at the SBREFA small entity representative meetings, Advocacy roundtables and Advocacy conference calls. The office used this input to draft comment letters to the

agency, all of which can be found on Advocacy's website at [www.sba.gov/advocacy/816](http://www.sba.gov/advocacy/816).

The final rules include provisions that are helpful to small entities. For example, the Qualified Residential Mortgage rule defines "qualified mortgage" loans. Qualified mortgage loans are entitled to a presumption that the creditor making the loan satisfied the ability-to-repay requirements. The

*Continued on page 7.*

## Research Notes

### Advocacy Publishes Newest State Small Business Profiles

by Shawn Fouladi, Research Assistant

How are small businesses doing in your state? The Office of Advocacy has just published the *Small Business Profiles for the States and Territories* to help answer this question. These brief, two-page documents give policymakers, small business owners, economists, and others a detailed picture of the economic role of small businesses within their state and the nation as a whole. They are a useful tool to track changes and trends in each state's small business economy and can be found online at [www.sba.gov/advocacy/848](http://www.sba.gov/advocacy/848).

The profiles offer a glimpse of the small business health in each state, territory, and the nation. The states with the largest populations—California, Texas, New York, Florida and Illinois—also have the largest number of small employers. These five states account for roughly 38 percent of the total number of small employers in the country. However, the highest shares of small firm employment are found in the less populous states, the top five being Montana, with 68.4 percent of its jobs provided by small

business, followed by Wyoming, South Dakota, North Dakota, and Vermont. From a finance perspective, the average number of business loans under \$100,000 for the five largest states was 238,967, with a mean total value of \$4.3 million.

Each individual profile contains information pertaining to the growth and decline of that region's small business economy, comparing the most recent data available with data from prior years. The information in the state and U.S. profiles includes total number of businesses (both small and large), business owner demographics, workforce statistics, unemployment rate, lending, revenues, employment and employer firms by industry, net new jobs created, and establishment turnover rates. (Only limited data are available for the four U.S. territories.)

The Office of Advocacy releases this information with the most recent available data at the time of publication, utilizing data from the U.S. Department of Commerce, Census Bureau and Bureau of Economic Analysis; U.S.

Department of Labor, Bureau of Labor Statistics; Administrative Office of the U.S. Courts; Federal Deposit Insurance Corporation; and the Small Business Administration, Office of Advocacy. The profiles are available in PDF format, along with the raw data files, at [www.sba.gov/advocacy/848](http://www.sba.gov/advocacy/848).

Tables 2 through 5 give state rankings based on the data contained in the *Small Business Profiles*.

**Table 2**

States with the Highest Reduction in Unemployment Rate, 2010-2011 (Percent)	
Michigan	-2.4
Ohio	-1.4
Utah	-1.3
Oregon	-1.2
Indiana	-1.1
Arizona	-1.0
Wisconsin	-1.0
Wyoming	-1.0
Massachusetts	-0.9
Minnesota	-0.9
South Carolina	-0.9
United States	-0.7

**Table 3**

States with the Highest Estimated Number of Small Businesses, 2010	
California	3,499,362
Texas	2,323,601
Florida	2,082,657
New York	2,016,465
Illinois	1,152,274
Pennsylvania	989,659
Georgia	937,544
Ohio	916,879
Michigan	851,112
North Carolina	806,223
United States	27,827,930

**Table 4**

States with the Highest Share of Employment by Small Firms, 2010 (Percent)	
Montana	68.4
Wyoming	64.8
South Dakota	61.9
North Dakota	61.9
Vermont	59.7
Maine	58.7
Idaho	57.7
Oregon	55.5
Rhode Island	55.4
New Mexico	55.1
United States	49.1

**Table 5**

States with the Highest Share of Minority-Owned Firms, 2007 (Percent)	
Hawaii	56.9
District of Columbia	40.2
California	35.6
Florida	33.8
Texas	33.4
New Mexico	31.1
Maryland	31.1
Georgia	29.2
New York	27.5
New Jersey	23.3
United States	21.3

## New to Advocacy in February

by Rebecca Krafft, Editor

The Office of Advocacy welcomed two new staff members in February.

**Brad Howard**, of Van Buren, Ark., has joined the Office of Advocacy as public affairs and media manager. Howard has spent the last five years as a communications director in the U.S. House of Representatives for a House coalition and a U.S. Congressman. He has previously worked as an account executive at an Arkansas-based advertising, marketing, and public relations agency.

Howard has a Bachelor of Arts in Politics from Hendrix College in Conway, Ark., and a Master of Arts in Public Communication from American University in Washington, D.C. He serves on the board of directors for the Future Business Leaders of America–Phi Beta Lambda (FBLA-PBL). Howard’s deep-rooted affinity for small business is firsthand, as he is the son of parents who have owned a small business for more than 25 years.

He can be reached at [brad.howard@sba.gov](mailto:brad.howard@sba.gov) or (202) 205-6941.

**Emily Mantz**, of Blytheville, Ark., joins Advocacy as confidential assistant to the chief counsel for advocacy. Mantz most recently worked for a government affairs firm specializing in regulation, commodity futures, capital markets, and energy. She has served in the offices of two U.S. Congressmen, both in a district office and on Capitol Hill. She has

extensive knowledge of the House Agriculture, Armed Services, and Appropriations Committees.

Mantz is a graduate of Arkansas State University, where she earned her Bachelor of Science in Journalism and Public Relations, with a minor in marketing.

She can be reached at [emily.mantz@sba.gov](mailto:emily.mantz@sba.gov) or (202) 205-6949.



### **FSMA Rules**, from page 4.

ous small business exemptions. Small businesses (defined as entities with average annual food sales over the previous three years of no more than \$500,000) would have three years to comply; very small businesses (average annual food sales over the previous three years of no more than \$250,000) would have four years to comply.

The comment deadline for both rules is May 16, 2013. Submit electronic comments through the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov).

### **CFPB Rules**, from page 5.

final rule provides a safe harbor for loans that satisfy the definition of a qualified mortgage. The safe harbor will help small financial institutions avoid unnecessary litigation.

The Mortgage Loan Originator Compensation final rule waived a provision of section 1403 of the Dodd-Frank Act, which would have prohibited consumers from paying upfront discount points and fees to lower their interest rate. The CFPB stated that it was concerned about “consumer confusion and other negative outcomes.” Therefore, the CFPB issued an exemption to the prohibition on the payment of upfront points and fees while it

studies the matter further.

Similarly, in the Mortgage Servicing final rule, the CFPB acknowledged that small loan servicers did not cause the problems that the rule was meant to address, since they utilize a relationship-based business model. Hence, the public interest would not be served by imposing some of the rules on small servicers. The CFPB exempted mortgage servicers who serviced fewer than 5,000 loans from many of the requirements of the rule.

The exemptions and the safe harbor will allow small entities to continue to provide products and services to consumers in a competitive environment.

## Three New Publications Available

The Office of Advocacy released three publications in February, and they are all available online.

### **Small Business Profiles for the States and Territories**

Extensive small business economic statistics for the United States, 50 states, and the District of Columbia, and limited data for the four U.S. territories. Online at [www.sba.gov/advocacy/848](http://www.sba.gov/advocacy/848). Story on page 6.

### **Annual Report on the Regulatory Flexibility Act**

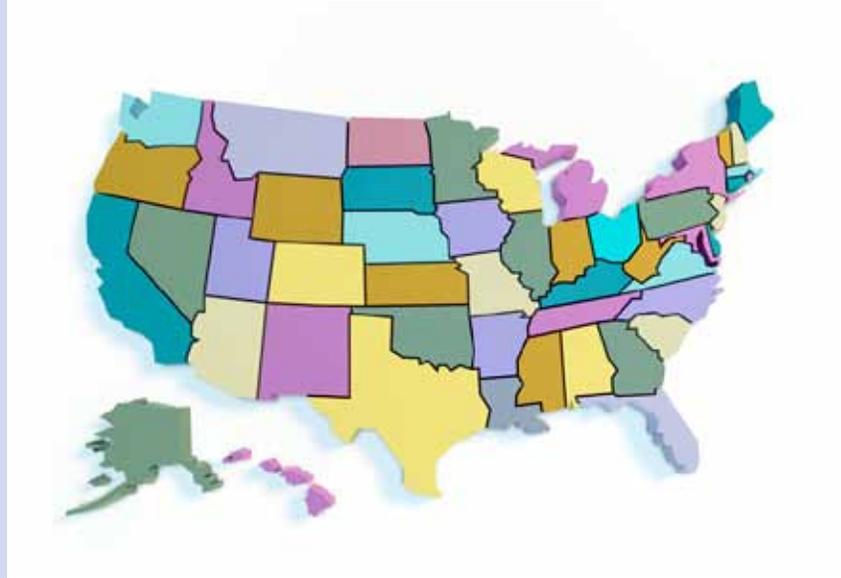
Congressionally mandated report summarizing federal agencies' compliance with the Regulatory Flexibility Act. Online at [www.sba.gov/advocacy/823/4798](http://www.sba.gov/advocacy/823/4798).

Story on page 1.

### **Small Business Economy**

Statistical profile of small business in two parts: status in the overall economy and financing data and trends. Online at [www.sba.gov/advocacy/849/6282](http://www.sba.gov/advocacy/849/6282).

Story on page 3.



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