

## Regulatory Flexibility Act Saves Small Businesses at Least \$2.5 Billion in Regulatory Costs in FY 2013

by Rebecca Krafft, Editor

The Regulatory Flexibility Act (RFA) requires federal agencies to review their proposed regulations to determine if they would have a significant economic impact on a substantial number of small entities—small businesses, small governmental jurisdictions, and small nonprofits. If they would have such an impact, the RFA requires agencies to consider significant alternatives that would minimize the regulatory burden on small business while achieving the rules' purposes.

How well did agencies do last year? The answer is in the *Report on the Regulatory Flexibility Act, FY 2013*. The report shows that most federal agencies continued their efforts to comply with the RFA in FY 2013. In addition, the report shows that Executive Order 13272, Proper Consideration

of Small Entities in Federal Rulemaking, continued to be a useful tool to encourage agencies to consider how their proposals affect small business.

Advocacy's efforts to promote RFA compliance included:

- Convening 21 roundtables to bring together agency representatives and small businesses concerned about regulatory topics and specific regulatory proposals;
- Submitting 26 public comment letters to federal agencies on regulatory proposals;
- Participating in one SBREFA panel convened by the Environmental Protection Agency (these panels give small entities a voice in rulemaking at an early stage);
- Training over 150 regulatory staff from various federal agencies

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### Advocacy Asks SEC to Add Essential Small Business Analysis to Crowdfunding Proposal

by Dillon Taylor, Assistant Chief Counsel

On January 16, the Office of Advocacy filed a public comment letter with the Securities and Exchange Commission (SEC) regarding the agency's proposed rule on crowdfunding. The proposed rule provides the framework for the practice of crowdfunding, a method of financing by which small businesses and startups may offer stocks to a wide variety of investors online through funding portals and broker dealers.

Advocacy based its comment letter on feedback from small businesses. Specifically, Advocacy hosted small business roundtables in New York City (December

16, 2013) and Washington, D.C., (January 15, 2014) to gather input from small business representatives about the proposed rule. Advocacy also hosted several conference calls on this issue.

Based on small business stakeholders' feedback, Advocacy's comment letter expresses concern that the initial regulatory flexibility analysis (IRFA) contained in the proposed rule lacks essential information required under the Regulatory Flexibility Act (RFA). Advocacy's comment letter notes that the IRFA does not adequately describe the costs of the proposed rule for small entities. In addition,

the IRFA fails to offer significant alternatives which accomplish the SEC's stated objectives and minimize the proposal's significant economic impact on small entities.

Advocacy recommended that the SEC republish a supplemental IRFA for public comment before proceeding with the rulemaking and that the agency consider small business representatives' suggested alternatives to minimize the proposed rule's potential impact.

The letter is on Advocacy's website, [www.sba.gov/advocacy/816/789271](http://www.sba.gov/advocacy/816/789271).

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### Advocacy Files Comments on OSHA's Proposed Silica Rule

by Bruce Lundegren, Assistant Chief Counsel

On February 11, Advocacy filed comments with the Occupational Safety and Health Administration (OSHA) on its Proposed Occupational Exposure to Respirable Crystalline Silica Rule. OSHA's proposed rule would establish a new permissible exposure limit (PEL) and action level for respirable crystalline silica. It would also impose a host of ancillary requirements on employers, such as exposure assessments, medical monitoring, engineering and work practice controls, personal protective equipment, respiratory protection (when engineering and work practice controls are insufficient to meet the PEL), training, and recordkeeping.

According to OSHA, the proposed rule would affect some 429,000 small firms in construction (331,000 with fewer than 20

employees) and 41,000 small firms in general industry and maritime (26,000 with fewer than 20 employees). OSHA estimates that the proposed rule would impose some \$637 million in annual costs.

During the comment period on the proposed rule, Advocacy engaged in extensive small business outreach, including hosting small business roundtables on September 9 and November 15, 2013, and January 24, 2014. Small business representatives expressed concern about the potential impacts of the proposed rule, questioning OSHA's conclusions about the exposure risk as well as the technical and economic feasibility of compliance. Small business representatives from the construction industry also expressed concerns regarding specific compliance requirements in their industry.

In its comments, Advocacy commended OSHA for making several changes to the proposed rule to reduce the small business impact and recommended that OSHA pay careful attention to the comments it receives from small businesses and their representatives. Advocacy also recommended that OSHA consider providing additional opportunities for small business participation in the rulemaking process.

Advocacy's letter to OSHA is available at [www.sba.gov/advocacy/816/795731](http://www.sba.gov/advocacy/816/795731). For further information, please contact Bruce Lundegren at (202) 205-6144 or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov).

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## Message from the Chief Counsel

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### Success Stories from the 2013 Report on the Regulatory Flexibility Act

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

Each year around this time, the Office of Advocacy issues the annual report on the Regulatory Flexibility Act. The report tells the story of Advocacy's Office of Interagency Affairs, the group of administrative attorneys who track new proposed rules and encourage federal agencies to fulfill their RFA requirements to properly evaluate the impact of their proposed rules on small businesses. Our Office of Interagency Affairs consists of just over a dozen attorneys, assisted by a handful of regulatory economists. Yet Interagency tracks the work of more than 66 regulatory agencies.

While this is a herculean effort, it has a parallel in the small business world. Small business owners are the hardest working individuals I know. For many of them, the 40-hour work week and the two-week vacation are unknowns. The federal regulatory proposals that affect them are hundreds of pages long, and the time it takes to go from proposal to final rule often stretches over many years. Few, if any, small business owners are in a position to track the proposed rules that affect them and to make their views known.

Luckily, the RFA designates the Office of Advocacy as the RFA's watchdog. Advocacy stays for the duration, monitoring rules over many years. Advocacy's Office of Interagency Affairs monitors the *Federal Register*, works with agencies before and after rules are proposed, reaches out to small businesses, and conveys small business concerns in formal comment letters to agencies as the need arises.

In FY 2013, agencies finalized 14 rules that included changes in response to small business concerns raised by Advocacy. These rules

affect millions of small businesses and they are a clear illustration of how the RFA works for small business. These changes saved small businesses at least \$2.5 billion in first-year regulatory costs, while ensuring that agencies were able to

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meet their regulatory goals.

One of these rules concerned proposed changes to the On-site Consultation Program of the Occupational Safety and Health Administration (OSHA). Complying with every OSHA requirement can be a formidable challenge for a small business. OSHA's On-site Consultation Program provides free, confidential advice to small employers looking to create safe workplaces. On-site Consultation services are separate from enforcement and do not result in penalties or citations. In 2010, OSHA proposed changes potentially opening participants to enforcement actions. Advocacy's November 2010 comment letter expressed concern that this would discourage participation in a highly effective program. In August 2013, OSHA withdrew the proposed rule, leaving this successful program intact.

While the savings due to this action have no precise price tag, the benefits are clear. One person commented on Advocacy's blog, "Small businesses often lack the funding or resources to hire an outside consultant so this program is very beneficial. It is so important to remain within OSHA compliance and it is a relief to read that OSHA is keeping the wall of separation between the consultation and enforcement departments."

A second important rule change came from the Internal Revenue Service. In January 2013, the IRS announced a simplified option for claiming the home-office deduction. Over half of America's small businesses are based at home, and they have long been subject to a great deal of paperwork if they wanted to take the business use of their home as a deduction on their taxes. Advocacy pressed this issue for decades. Most recently, in a 2009 letter to the Presidential Economic Recovery Advisory Board's Tax Reform Subcommittee, Advocacy submitted a proposal to simplify the home-office deduction. The IRS estimates that this change in the rule will reduce the paperwork burden on small businesses by 1.6 million hours annually, which Advocacy estimated as saving \$26 million. In announcing the change, the IRS called it "common sense."

A third regulatory success story concerns home mortgages. The Consumer Financial Protection Bureau (CFPB) was created in the wake of the 2008 financial crisis to guard against the practices that brought the U.S. financial system to the brink of collapse. Advocacy has been involved in several of the agency's rulemakings on home

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## Regional News

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### High Tech and Viniculture on Display During Tour of New Hampshire Women-Owned Businesses

by Lynn Bromley, Region I Advocate

On January 10, a group of intrepid New Englanders braved the weather to join U.S. Senator Jeanne Shaheen (D-N.H.) and Acting SBA Administrator Jeanne Hult for a roundtable discussion and business tour outside Manchester, N.H. The day focused on women-owned businesses. While business owners' concerns were diverse and wide-ranging, a single common theme emerged—the very limited availability of microloans.

Following the roundtable, Regional Advocate Lynn Bromley joined Senator Shaheen, Acting Administrator Hult, and other SBA officials for a tour of two small businesses owned by women.

First was LaBelle Winery, in Amherst, N.H., where the roundtable was held. Owner Amy Labelle was named New Hampshire's 2013 Woman Owned Small Business of the Year, and for good reason. She and her husband, cellarmaster Cesar Arboleda, have grown their business from an idea 10 years ago to today's ambitious enterprise, which employs 45 people.

LaBelle spent \$5.3 million dollars on the new winery, a sum she calls "terrifying." She calls her



In the lab at Ion Beam Milling, one of the company's technicians explains their manufacturing process to the tour group. The group includes (from left) Ion Beam CEO Jim Barrett, Region I Administrator Seth Goodall, Sen. Jeanne Shaheen, Region I Advocate Lynn Bromley, and Acting SBA Administrator Jeanne Hult.

effort to secure financing a "study in persistence." She and her husband pitched their plans to five banks before successfully arranging financing.

The second stop on the tour was Ion Beam Milling in Manchester, N.H. The company is a precision

manufacturer of high-tech thin film products. These include standard microwave circuits as well as custom products built for specific applications.

Gail Quagan and her husband Bob founded Ion Beam Milling in 1982. Gail and Bob grew their business from a small facility with one miller, one machine, and two employees to today's modern facility with 13 employees. CEO Jim Barrett now runs the day-to-day operations, Bob remains the chief science officer, and Gail the CFO.

As we were packing up to go, Barrett put in a plug for another local woman-owned business. Jim's wife, Claudia Barrett, is the founder of a home-based coffee roasting business, CQ Coffee Roasters in Bedford, N.H. That business is in full swing too—and fast outgrowing its space.

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#### Success Stories,

from page 3.

mortgages. In January 2013, the CFPB finalized the Mortgage Servicing rule. In issuing the final rule, CFPB recognized that small mortgage servicers were not the cause of the problem the rule was meant to address. As such, the CFPB exempted 96 percent of small servicers from certain requirements in the final rule,

resulting in savings of between \$1 billion and \$2.3 billion.

These three examples represent years of vigilance by Advocacy's Office of Interagency Affairs. Thanks to the RFA, this dedicated effort continues on rules of great importance to small businesses. Advocacy's FY 2014 efforts are in high gear. The RFA continues to be small businesses' best defense in the rulemaking process.

### Revised for 2014: Frequently Asked Questions about Small Business Finance

by Victoria Williams, Economist

Small firms—those with fewer than 500 employees—are extremely diverse. The self-employed individual is very different than a small firm with 100 or 400 employees.

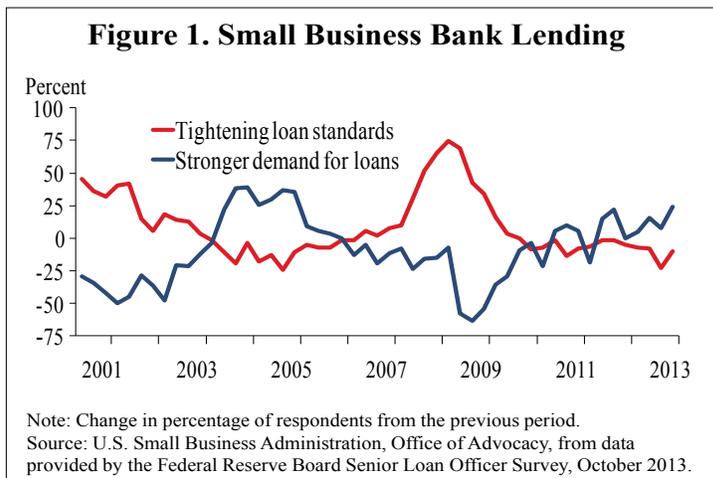
As a result, their financing needs also differ greatly.

Advocacy's updated *Small Business Finance: Frequently Asked Questions* shows that firms

may seek traditional funding methods (such as bank loans and credit cards) or nontraditional methods (finance companies, angel capital, etc.) based on the intended purpose. Additionally, many firms use no financing. But in the big picture, bank loans make up the largest share of small business financing.

The *Finance FAQ* also shows that conditions in the small business loan market continued to improve as banks eased their lending terms and loan demand increased (Figure 1).

Look for the new edition on Advocacy's website at [www.sba.gov/sites/default/files/2014\\_Finance\\_FAQ.pdf](http://www.sba.gov/sites/default/files/2014_Finance_FAQ.pdf).



### Credit Market Outcomes for Women- and Minority-Owned Small Businesses—Do Credit Scores Matter?

by Christine Kymn, Economist

The Office of Advocacy recently released a report titled *Credit Scores and Credit Market Outcomes: Evidence from the Survey of Small Business Finances and the Kauffman Firm Survey* by Rebel A. Cole. Building on previous literature, this study analyzes what factors, including business credit scores, may explain credit outcomes for small businesses. It further asks what role business credit scores might play in the credit outcomes of women- and minority-owned small businesses.

The study confirms prior findings of disparate credit market outcomes to minority-owned businesses in the form of loan denials but also further finds that

institutions do not appear to use credit scores disproportionately in making credit determinations. Results also confirm prior findings that firm-lender relationships play a significant role in credit outcomes for small firms. Further, there is no evidence that credit scores reduce the importance of firm-lender

relationships. These results may help to narrow the field of policy variables that drive disparate credit outcomes to minority-owned small businesses. The study is available on Advocacy's website, [www.sba.gov/advocacy/7540/791501](http://www.sba.gov/advocacy/7540/791501).

#### Issue Briefs Examine Small Business Demographics, Access to Capital

The Office of Advocacy published two new economic issue briefs in January:

- Demographic Characteristics of Business Owners (no. 2)
- Access to Capital for Women- and Minority-Owned Businesses: Revisiting Key Variables (no. 3)

You can find them here: [www.sba.gov/advocacy/847/757305](http://www.sba.gov/advocacy/847/757305).

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## Regional News

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### Forum Identifies Barriers, Big Ideas, and Best Practices for Maryland Small Businesses

by Shawn Fouladi, Program Assistant

In six dynamically facilitated breakout sessions, a diverse group of Maryland small business stakeholders and the Office of Advocacy brainstormed about barriers, big ideas, and best practices affecting the current innovation-entrepreneurial ecosystem. The Voice of

Small Business Forum was held on February 28 at the University of Maryland Baltimore County Research and Technology Park.

The daylong event accomplished several important things. It allowed Advocacy staff to hear firsthand accounts of how regulatory issues

are affecting both current and prospective small business owners; it provided insight into potential best practices for small business in high-growth sectors of the economy; and it let the public share their big ideas and suggestions for improving

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Dozens of discussions of innovative business ideas took place during the breakout sessions: Tom Grobicki, CEO of Avilar Technologies; Chief Counsel for Advocacy Winslow Sargeant; and Jason Kaplan, CEO of Milestone Pod.



Cynthia Pace, of the Voice of Small Business Maryland facilitation team, leads a lively discussion in the Women, Vet, and Minority Small Business breakout session.



Assistant Chief Counsel Major Clark engages in a conversation with a stakeholder during the Cyber Defense/IT breakout session.



Assistant Chief Counsel Sarah Bresolin Silver and Kevin Hedge, president of KEH Consulting, discuss small business issues during the Clean Technology breakout session.

## Small Business Forum, from page 6.

the future landscape of innovative small businesses. Participants included more than 100 small business owners and representatives of small business organizations, as well as federal, state, and county governments. The event

was planned by a cross-functional group led by Kellyann Few, director of the Howard County Base Business Initiative (BBI). Sponsors included the BBI, the state of Maryland, and the host location, [bwtech@UMBC](mailto:bwtech@UMBC). The event also featured the Maryland Center for Entrepreneurship's Additive Manufacturing Initiative and the

state's Innovative Biotechnology Incubator and Accelerator Networks. Chief Counsel for Advocacy Winslow Sargeant, Region III Advocate Ngozi Bell, and other Advocacy staff were invited to participate by the event organizers.



Event facilitators used a unique tool, graphical recording, to capture the vitality of the sessions. For each session, a graphic artist interpreted key points in the conversations combining splashy graphics and central themes.



Chief Counsel Sargeant; Jan Baum, director of 3D Maryland–Maryland Center for Entrepreneurship, and Region III Advocate Ngozi Bell.

## Senator Maria Cantwell Confirmed as Chair of the Committee on Small Business and Entrepreneurship

by Erik Gulbrandsen, Communications and Congressional Liaison

On February 12, the Senate confirmed Senator Maria Cantwell (D-Wash.) as chair of the Senate Committee on Small Business and Entrepreneurship. For the past 13 years, Senator Cantwell has served as a member of the Senate Small Business Committee, looking out for all of America's small businesses, including Washington State's 550,000 small firms. As a member of the Small Business Committee, Senator Cantwell has advocated on behalf of small business trade and export expansion and championed efforts to improve small business access to capital.

Her focus on trade and exporting goes beyond being a strong proponent of the President's goal of

doubling exports in five years. Her work on the Small Business Jobs Act of 2010 solidified her stature as an advocate for small business trade. With her support, the Small Business Jobs Act provided small businesses with important tools to increase exports. One of these tools is the State Trade and Export Promotion (STEP) Program, which has helped small business owners discover and reach new customers around the world. Moreover, Senator Cantwell's home state of Washington is one of America's leading exporters, setting new export records in 2013.

Along with expanding our economy abroad, Senator Cantwell also focuses on how to help our nation's

small businesses here at home. For more than a decade, she has championed legislation to stimulate the small business economy. Among these efforts was the Small Business Lending Fund, another initiative of the Small Business Jobs Act. The fund has helped increase institutional lending to small businesses by over 52 percent.

Senator Cantwell's commitment to our nation's entrepreneurs spans all sectors of the small business economy. Senator Cantwell was instrumental in pushing for a modernized Small Business Innovation Research (SBIR) program and extending it for six years. SBIR grants give small innovators the

*Continued on page 8.*

## Small Business Committee, from page 6.

opportunity to take risks that pave the way for future commercial success and keep the United States at the forefront of innovation.

Small businesses are the driving force to America's economic success. The Office of Advocacy looks forward to working with Senator Cantwell, a dedicated small business champion.



Senator Maria Cantwell on a visit to the Manhasset Specialty Company in Yakima, Washington. Manhasset manufactures concert-style music stands and exports them worldwide.

## RFA Compliance Report, from page 1.

in RFA implementation; and

- Reviewing hundreds of regulations to assess RFA compliance.

As a result of Advocacy's efforts, more than a dozen rules that were made final in FY 2013 contained important changes reducing their impact from what was originally proposed. The combined cost savings from these final rules saved small businesses at least \$2.5 billion in first-year regulatory costs, while ensuring that agencies were able to meet their regulatory goals.

The full report and summary are available on the Office of Advocacy website at [www.sba.gov/advocacy/823/4798](http://www.sba.gov/advocacy/823/4798). Small business success stories from this year's report can be found on page 3 of *The Small Business Advocate*.

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