

Public-Private Effort Focuses on Improving Device to Protect Sea Turtles

By Brooke Nelson, Writer/Editor

Through a public-private partnership, the Office of Advocacy was instrumental in the award of a \$200,000 grant to improve a device used by shrimpers to protect sea turtles. This was made possible by Advocacy's efforts to identify an issue affecting small fishing businesses, alerting concerned stakeholders and bringing them together to collaborate on finding an effective solution.

The grant was recently awarded to the University of New Orleans (UNO) by the National Fish and Wildlife Foundation to study and improve the turtle excluder device (known as TED), and increase its utilization by shrimp fisherman.

Advocacy partnered with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service, Coastal Communities Consulting and the Louisiana commercial shrimp industry in the joint effort to obtain the award.

Advocacy's role in helping UNO to obtain the grant was essentially

as a connector and collaborator. Advocacy has previously worked on behalf of small fisheries concerning proposed NOAA regulations to mandate the use of the TED, but wanted to do more to address the non-regulatory issues.

"This collaboration shows how the SBA Office of Advocacy can work with other federal agencies and communities to not only improve regulations for small businesses, but also solve problems for the local small business community," said Dr. Winslow Sargeant, chief counsel for Advocacy.

The shrimping industry along the coast of Louisiana has faced many challenges, and shrimpers have complained that TEDs reduce their catch and impose a financial burden. The UNO project to refine and improve the TED will benefit shrimpers as well as satisfy conservationists, who say the device is necessary to protect threatened and endangered sea turtles. The project will also provide outreach to local

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A loggerhead turtle escapes a shrimping net equipped with a turtle excluder device. Credit: NOAA.

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Research News

Office of Advocacy Releases Small Business Profiles

The Office of Advocacy released its annual report entitled *Small Business Profiles for the States and Territories*. In a new and improved format, the profiles feature information on small business employment, industry composition, small business borrowing, exporting, and survival rates, as well as business owner demographics. This annual publication provides information for each of the 50 states, the District of Columbia, the U.S. territories and the United States.

Some key statistics from the report include:

- The U.S. is home to 28 million small businesses.
- Small businesses represent 99.7 percent of all businesses with employees and employ about 55 million of the nation's private-sector workforce.
- Small businesses with fewer than 100 employees have the largest share of small business employment.
- The top three small business industries with the most jobs

include health care and social assistance, accommodation and food services, and retail trade.

- Most small businesses are sole proprietors. Annual income from sole proprietorships increased 7.1 percent in the 3rd quarter of 2013 and totaled \$1.2 trillion.

Notably, North Dakota, South Dakota and Nebraska top the list of states with the highest number of new small businesses surviving

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Table 1	
States with the Highest Small Business Employment, 2011	
California	6,331,900
Texas	4,119,800
New York	3,760,600
Florida	2,878,700
Pennsylvania	2,430,200
Illinois	2,381,700
Ohio	2,074,600
Michigan	1,724,400
New Jersey	1,689,000
North Carolina	1,531,300
United States	54,998,300

Table 2	
States with the Highest Share of Employment by Small Firms, 2011 (Percent)	
Montana	67.4
Wyoming	62.7
South Dakota	60.5
North Dakota	59.6
Vermont	59.3
Maine	58.5
Idaho	56.4
Oregon	55.9
New Mexico	54.8
Rhode Island	54.7
United States	48.5

Table 3	
States with the Highest Number of Self-Employed Individuals, 2012	
California	2,048,700
Texas	1,197,400
Florida	987,800
New York	771,100
Illinois	534,000
Pennsylvania	512,000
Ohio	509,600
North Carolina	471,600
Georgia	452,900
Michigan	417,900
United States	14,826,400

Table 4	
States with the Highest Reduction in Unemployment Rate, 2012-2013 (Percent)	
New Jersey	-2.3
North Carolina	-2.3
South Carolina	-1.8
Florida	-1.8
West Virginia	-1.6
California	-1.5
Oregon	-1.4
Colorado	-1.4
Nevada	-1.4
Indiana	-1.3
United States	-1.2

Table 5	
States with the Highest Number of Small Businesses Opened, 2013 2Q	
California	73,900
Florida	33,000
New York	27,900
Texas	22,000
Illinois	13,900
Pennsylvania	13,500
Georgia	12,800
Massachusetts	10,400
North Carolina	10,100
New Jersey	10,000
United States	386,000

Table 6	
States with the Highest Survival Rates from 2007-2012 (Percent)	
North Dakota	56.2
South Dakota	55.0
Nebraska	52.3
Iowa	51.8
Pennsylvania	51.8
Wisconsin	51.4
Hawaii	50.2
Massachusetts	50.2
Alaska	49.7
New York	49.5
United States	45.5

Message from the Chief Counsel

Our Small Business Economic Landscape: Advocacy Improves State Small Business Profiles

By Dr. Winslow Sargeant, Chief Counsel for Advocacy

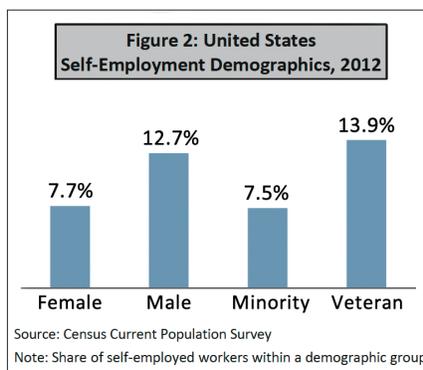
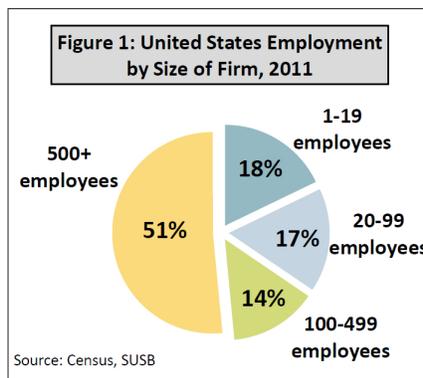
Nearly 25 years ago, the Office of Advocacy started publishing our *Small Business Profiles for the States and Territories*.

The process for developing our state profiles is not easy, and the project takes a lot of time and dedication. For starters, our economic team begins collecting publically available data from multiple

“This year we have improved our profiles to make them more reader-friendly not only for the nation’s economists, but also for the everyday American searching to learn more about small business in their state.”

sources. After combing through large amounts of data in numerous spreadsheets, our economists decide what the most important trends are and what are the top questions we are receiving about the small business landscape in different regions of the country. By prioritizing the information, the profiles change from year to year due to the varying economic climate in the nation. However, each and every year, our number one goal for this publication is to give each state a detailed picture of its small business economic landscape.

I am pleased to report that this year we have improved our profiles to make them more reader-friendly not only for the nation’s economists, but also for the everyday American searching to learn more about small business in their state. Our objective this year was to present all the information in a clear format without crowding the profiles with too much data, and we are confident that the shorter version with better diagrams is an improvement for our readers.



With more explanatory text, many of our readers of previous profiles may be concerned that our streamlined version removed vital information. However, this is not the case; we gave you a clean product to read and kept all the nitty-gritty data as well. Today, on our website, anyone can easily access all the extended data tables on small business in the U.S. economy. Simply visit <http://go.usa.gov/Xmtd> to access the profiles. The webpage includes small business profile data and the expanded state data. On the first spreadsheet, you have easy access to all the different state by state breakdowns for number of small businesses, GDP, establishment births and deaths, and many other categories. The second spreadsheet includes establishment and employment changes by industry as well as county breakdowns which will be helpful for Congressional staff.

I hope people across the nation will use this great publication to stay informed on the small business economy, and I encourage anyone with questions or areas they would like addressed in the next edition of the state profiles to contact my office.

State Profiles, from page 2

from 2007 to 2012 (Table 6). North Dakota had 56.2 percent of new small businesses surviving for the last six years, South Dakota had 55 percent, and Nebraska had

52.3 percent.

The top states with the highest share of employment by small firms are Montana, with 67.4 percent of the state’s population employed by small businesses, followed by Wyoming at 62.7 percent

and South Dakota at 60.5 percent (Table 2).

The full report, as well as each individual state’s profile, can be accessed on the Office of Advocacy’s web site at <http://go.usa.gov/Xmtd>.

Advocacy Roundtable Examines Proposed Minimum Wage Rules

By Brooke Nelson, Writer/Editor

The Office of Advocacy hosted a roundtable discussion on July 9 to gather input regarding a proposed Department of Labor (DOL) rule. The proposed rule implements Executive Order 13658, signed by President Barack Obama in February, which would raise the minimum wage to \$10.10 for all federal contractors, subcontractors and their workers starting January 1, 2015. Advocacy held an earlier listening session on the executive order in April.

Advocacy held the roundtable to receive comments and feedback from small businesses which may be significantly affected by the new minimum wage requirements. DOL has stated that there are over 300,000 small federal contractors who may be impacted by this rule.

Overwhelmingly, participants at the roundtable commented that the proposed rule is confusing and extremely financially burdensome. Participants included contractors from the services, food and hospitality, outdoor recreation, and construction industries. DOL repre-

sentatives were also in attendance to give a presentation about the proposed rule.

As explained by the DOL representatives, the proposed rule would affect four major categories of contractual agreements: Procurement contracts for construction covered by the Davis-Bacon Act (DBA); service contracts covered by the Service Contract Act (SCA); concessions contracts, including any concessions contract excluded from the SCA by DOL regulations; and contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

Several participants were owners of small fast food franchises on military bases. They related that they would not only have to pay an increased minimum wage for entry-level workers, they would have to also increase the wages of the rest of their workforce as well. This would cause a severe financial impact on their businesses and force them to fire workers,

eliminate positions and reduce hours. One restaurant owner said based on his calculations, the wage increase would certainly put him out of business. They also said that it would also place them at a competitive disadvantage with similar businesses located just outside the bases, which would not have to pay these higher wages. And, these franchisees noted that their contracts do not allow them to raise their prices. Owners of a hotel and dining facilities on military bases echoed these concerns.

In addition, participants said the proposed rules were not clear regarding what type of workers and contracts would be covered. Participants said they need clarity on whether workers such as apprentices and seasonal workers would be covered.

Originally, DOL had set a comment due date of July 17, 2014. However, the Office of Advocacy recently sent a letter to DOL requesting an extension of the comment period, and it was subsequently extended to July 28, 2014.

More information, including the text of the executive order and the proposed rule, can be found on Advocacy's web site at <http://go.usa.gov/XU3T>. You may also contact Janis.Reyes@sba.gov.



Advocacy hosted a roundtable discussion on July 9 addressing proposed rules to raise the minimum wage for federal contractors to \$10.10. Pictured at left are Assistant Chief Counsel Janis Reyes, Chief Counsel for Advocacy Dr. Winslow Sargeant, and Director of Interagency Affairs Charles Maresca.

Small Business Representatives Discuss Overtime Regulations in Listening Session

By Brooke Nelson, Writer/Editor

The Office of Advocacy held a small business roundtable on July 11 to discuss the potential impact of a presidential memorandum directing the Department of Labor (DOL) to “update and modernize” existing overtime regulations. The roundtable was designed as a listening session and included two DOL officials, Dr. David Weil, administrator of the Wage and Hour Division, and Laura Fortman, deputy administrator of the Wage and Hour Division. Advocacy also held another small business roundtable on this issue on July 18.

The presidential memorandum was issued on March 13, 2014, and it requires DOL to revise regulations governing overtime pay under the Fair Labor Standards Act (FLSA). Currently, under the FLSA, most workers receive overtime pay (1.5 times their regular rate of pay) for any time worked in excess of 40 hours a week.

However, there are exemptions to this requirement which exempt “white collar” employees who are classified as executive, administrative or professional employees and who make at least \$23,660 a year (or \$455 per week). Under the presidential memorandum, many of these employees may be reclassified as hourly, eligible for overtime pay.

At the session, small business owners and representatives shared their feedback on the potential impact of the presidential memorandum and the future DOL rules implementing this memorandum. DOL has not yet issued proposed rules, so it is unknown exactly what they will encompass. Furthermore, the memorandum provides few details about how DOL is to implement its recommendations.

DOL representatives told the audience that in preparation for drafting proposed rules, it is con-



Advocacy held a listening session on July 11 to discuss overtime regulations. Officials from the Department of Labor were in attendance. Pictured, from right, is Dr. David Weil, administrator of the Wage and Hour Division, and Laura Fortman, deputy administrator of the Wage and Hour Division.

ducting outreach to the business community to solicit their views. They said that they wanted to gather feedback on three general areas: two features of the existing rules—the salary threshold and the duties test—and how to simplify the rules and make them more clear. Although DOL did not provide information on what the new minimum salary threshold would be, outside groups have recommended a threshold of up to \$50,000.

Under current rules, to qualify under the executive exemption, an employee’s primary duty must be to manage the company and supervise at least two full-time employees. New rules may require that these managers primarily engage in a certain percentage of their work as exempt work to qualify. For example, California has a 50 percent rule, which means that to qualify for this exemption, this manager must spend half of their time engaged in exempt or managerial work. This would mean that managers would have to keep track of their daily activities.

The participants at the session included representatives from a variety of industries, such as restaurants, grocery stores, retail, health care,

construction and human resources. Overall, the participants expressed concern that the future rulemaking could increase labor costs and require them to reduce employees’ hours or eliminate positions.

Several representatives of the restaurant industry, and one from the supermarket industry, discussed how a change in the duties test would especially affect them since their managers usually multitask and perform a variety of duties as needed, including some menial tasks, which may redefine them as hourly. They said this would be a financial burden since they already have very low profit margins.

Several participants stressed that rule changes could result in many unintended consequences, such as businesses reducing their workforce or customers having to pay higher prices. Another major concern of participants was that the rules are confusing and that many small businesses do not have human resources staff to interpret and implement changes.

The presidential memorandum can be found at <http://go.usa.gov/Xwgz>. For more information, contact Janis.Reyes@sba.gov.

Advocacy's Chief Counsel Speaks on National Journal Panel

By Emily Mantz, Confidential Assistant

On June 24, Advocacy's Chief Counsel Dr. Winslow Sargeant spoke at a policy summit hosted by the magazine National Journal. Entitled "Next America: Making America Work," the summit sought to convene some of the nation's key opinion leaders to discuss entrepreneurship, workforce development and financial empowerment in the minority communities.

Dr. Sargeant participated in the summit by speaking on a panel entitled "Diversifying Small Business Ownership." Dr. Sargeant was joined on the panel by Chancee Lundy, co-founder of Nspiregreen; Susan Au Allen, president and CEO of the U.S. Pan Asian American Chamber of Commerce; and Consuella McCain, director of the National Community Reinvestment Coalition's Washington D.C.-based Women's Business Center.

The panel was a very informative conversation between the moderators, panelists and the audience. Dr. Sargeant pointed out that

American small businesses are helping to grow the economy and that small businesses make up 99.7 percent of all employers nationally. One of the questions from the audience concerned where people can go for funding when beginning

a start-up business. Dr. Sargeant took the question and informed the audience there are many different places to find capital, some of those include banks, angel investors, friends, family, payday lenders and crowdfunding platforms.



Chief Counsel for Advocacy Dr. Winslow Sargeant, second from right, participates in a panel discussion hosted by National Journal. Also pictured are Susan Au Allen, Chancee Lundy, Consuella McCain and moderator Amy Sullivan.

Sea Turtles, from page 1

shrimpers to encourage them to use the device as well as to educate them to properly install and operate it.

Region VI Advocate Caitlin Cain, whose region includes Louisiana, was active in informing stakeholders about the issues involved and bringing them together to create a solution. "This public-private collaborative effort serves the dual function of strengthening both existing technology and key relationships impacting a critical industry sector for southeast Louisiana," Cain said.

Shrimpers use the specialized device on their skimmer trawls along coastal waters to allow captured sea turtles to escape when caught in a shrimp net. Otherwise, the trapped turtles would drown.

All species of sea turtles that inhabit the coastal waters of the United States are listed as threatened or endangered under the Endangered Species Act (ESA) and studies have shown that the primary cause of sea turtle death is accidental capture by fishermen.

Advocacy has previously been involved with regulations concerning the TED. In 2012, NOAA proposed rules that would have mandated the use of TEDs by all commercial shrimping vessels. The rule could have affected an estimated 6,500 shrimp fisherman and by NOAA's estimate, could have caused a 5 percent loss of harvest.

Extensive outreach to small shrimping businesses in the Southeast was conducted, and Advocacy learned there was great concern that the rule would cause

significant economic harm to the already struggling industry. In Louisiana, skimmer trawl fishermen have been resistant to TED use because of perceived ineffectiveness of the technology and its restrictiveness in limiting overall catch.

Advocacy submitted a comment letter to NOAA urging them to consider the negative effects of the rules on these small businesses, and eventually NOAA withdrew the rule. However, future rulemakings may emerge that require TED use. Through this project, issues with the TED, including improving the design and technology and shrimpers' willingness to use them, will prepare the industry for any future regulations.

Research News

Study Examines Small Business Procurement Goals

The Office of Advocacy recently released a report examining small business procurement goals. Entitled Evaluation of the Small Business Procurement Goals Established in Section 15(g) of the Small Business Act, the study, authored by Henry B.R. Beale, is an independent assessment of the small business procurement goals as ordered in the National Defense Authorization Act (NDAA) for FY 2013.

Congress has established national goals for small business

procurement, which now stand at 23 percent. The NDAA for FY 2013 contained modifications to the Small Business Act which called for the report to examine how the goals are being met.

The legislation required an investigation of the characteristics of companies seeking federal contracts; the process of establishing procurement goals; the quality and availability of data on contracting; and barriers within procurement practices that inhibit small business entry.

“I constantly hear from our nation’s small businesses about their desire to enter into the government marketplace. This study demonstrates how our nation’s entrepreneurs are playing in the procurement field. It is interesting to note that this report illustrates specific sectors where small businesses are having success,” said Dr. Winslow Sargeant, chief counsel for advocacy.

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Legal Interns Join Advocacy for the Summer

Kenneth Chapman joins the Office of Advocacy as a legal intern. Chapman was born and raised in Austin, TX. He is a former college baseball player, and previously worked as a cost analyst and contracts manager with a government contractor where he has four years of experience in government procurement. Chapman currently attends Appalachian School of Law where he is working towards his Litigation and Natural Resources certificates. At the end of 2012, he and his wife relocated to his wife’s home town of Maryville, TN. With some background in government procurement, he has just recently discovered his interest in renewable energy and the loan guarantee programs and tax credits that go along with them. Chapman hopes to utilize his internship with the Office of Advocacy to expand his knowledge of regulatory reform, particularly exports and foreign trade, and administrative law.

Stephanie Fekete comes to the Office of Advocacy from the Columbus School of Law at the Catholic University of America, where she is a juris doctor candidate and certificate candidate in law and public policy. Fekete earned a

bachelor’s of business administration in marketing and sustainability and a minor in music, cum laude, at the University of Portland in May 2013. During her college career, she was actively involved on campus and consulted with various local businesses to improve their marketing strategies, including a social media consulting business and a local bar and restaurant. She

also has many years of experience in retail and interned for a congressional campaign. In her current research, she is examining medical device exports – the foreign certification barriers and how the Food and Drug Administration’s approval process affects businesses’ export decisions.



New Advocacy interns Stephanie Fekete and Kenneth Chapman.

Procurement, from page 7

One finding of the report is that there is not any industry data available on small (and subclass) business subcontractors. The report concludes that for analysis to take place on these subcontractors, more industry data must be collected, which may require legislation.

The report found that inadequate market research is a major barrier to small business procurement and that good research is essential to determine whether and where small business capabilities match procurement requirements.

Other highlights of the study include:

- Procurement is highly concentrated in four main industries: manufacturing; professional, scientific and technical services; administrative and support, waste management and remediation services; and construction.

- Of the four industries with the highest level of procurement, construction has the most small business contracts, with 44.8 percent going to small business, which is twice the national goal.

- Manufacturing, however, has a procurement rate of 11.7 percent, which is half the national goal.

The full report can be accessed on Advocacy's web site at <http://go.usa.gov/XmqQ>.

Regulatory Comment Letters

The Office of Advocacy has released several comment letters recently which can be found on Advocacy's regulatory comment letter page at <http://go.usa.gov/XQhP>.

They include:

- **May 20, 2014** – Comments to the Environmental Protection Agency concerning the proposed rule on Formaldehyde Emissions Standards for Composite Wood Products. This letter can be accessed at <http://go.usa.gov/Xy9w>.
- **June 11, 2014** – Comments to the U.S. Food and Drug Administration concerning the proposed rule on Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act. This letter can be accessed at <http://go.usa.gov/XyXj>.

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