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Advocacy Drafts Model State Legislation for Small Business-Friendly Laws

Small businesses will save billions in foregone regulatory compliance costs should states enact model legislation recently unveiled by the Office of Advocacy. The legislative initiative was announced at the American Legislative Exchange Council's States and Nation Policy Summit in December. It is modeled after the federal Regulatory Flexibility Act (RFA), which encourages entrepreneurial success by requiring federal agencies to consider their impact on small business before they issue final regulations.

"The Office of Advocacy saved small business owners over \$4 billion in foregone regulatory compliance costs last year alone," said Sullivan. "We did that by bringing

the voice of small business to federal agencies early in the regulatory process. The same thing can happen in the states if they adopt this model legislation," he said.

By listening to small business, federal agencies can ensure that funds that would have been spent on overly burdensome new regulations are instead available for hiring new employees, purchasing new equipment, and making other investments. At the same time, agencies still meet their regulatory goals such as higher environmental quality, greater travel safety, better workplace conditions, and increased family financial security.

Currently states offer a patchwork of laws that protect small

Continued on page 6



Office of Advocacy Press Secretary John McDowell helps Yosef Patel, deputy director of the Department of Energy's Office of Economic Impact and Diversity, subscribe to Advocacy's Listservs. Electronic subscribers to *The Small Business Advocate* topped 10,000 in December. ([See story, page 8.](#))

Regional News

Pat Gartland Named As Region 4 Advocate

Pat Gartland is the new regional advocate for region 4, covering Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. Gartland, a University of Alabama graduate and former major in the U.S. Army, has over 20 years experience coalition building across the South. Most recently, he was southeastern regional director for congressional and public affairs of the U.S. Chamber of Commerce. He has also served as the national director of the Center for Reclaiming America, where he developed a 50-state network of a half million members, and as Georgia state chairman of the Christian Coalition.

"I am pleased to be part of President Bush's team at the Office of Advocacy," said Gartland. "I look forward to working closely with small businesses in Region 4 and bringing their concerns to Washington, D.C."

Regional advocates help identify new issues and concerns of small business owners. They also monitor the impact of federal and state policies on small business at the local level. They work closely with local government officials, state officials



and legislators, and the chief counsel for advocacy to develop programs and policies that encourage entrepreneurial success.

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OMB Asks Advocacy To Identify Regs That Pose Unjustified Burdens

In its latest report to Congress on federal regulations, the Office of Management and Budget (OMB) has shown a renewed commitment to tearing down regulatory barriers to entrepreneurial success, a major part of President Bush's Small Business Agenda. OMB received recommendations for reform on 316 federal regulations and guidance documents. The recommendations are based on comments that

were specifically solicited from small businesses. The Office of Advocacy was also asked for its input.

OMB's Office of Information and Regulatory Affairs (OIRA) has asked Advocacy to review the recommendations and identify those that have the potential to reduce unjustified regulatory burdens on small businesses. OIRA has asked the Small Business Administration

to help develop a process for addressing these issues. This is great news for small business! It highlights OMB's commitment to tearing down regulatory barriers to entrepreneurial success.

The 2002 Report to Congress on the Costs and Benefits of Federal Regulations can be viewed at www.whitehouse.gov/omb/inforeg/2002_report_to_congress.pdf

Message from the Chief Counsel

Model Bill Offers New Tool to Reduce State Regulatory Burdens on Small Business

by Thomas M. Sullivan, Chief Counsel for Advocacy

The role of the Office of Advocacy has always been to reduce the excessive regulatory burden that falls on small business. According to a 2001 study funded by the Office of Advocacy, *The Impact of Regulatory Costs on Small Firms*, small businesses spend nearly \$7,000 each year per employee just to comply with federal regulations and mandates. That's 60 percent more than large firms.

The federal Regulatory Flexibility Act (RFA) is the key tool the office uses to fight excessive regulation. Through the RFA, Advocacy has shown time and again that regulation can be reduced and the economy improved without sacrificing such important regulatory goals as environmental quality, travel safety, workplace safety, and family financial security. By working with federal agencies to implement the RFA, the Office of Advocacy in 2001 saved small businesses over \$4 billion in foregone regulatory costs that now can be used to create jobs, buy equipment, and expand access to health care for millions of Americans.

Advocacy has always recognized that states can impose as great, or greater, burdens on small business than the federal government does. To help address this, Advocacy has drafted model legislation for consideration by states. The model bill mirrors the RFA. Its intent is to foster a climate for entrepreneurial success in the states, so that small businesses will continue to create jobs, produce innovative new products and services, bring more Americans into the economic mainstream, and broaden the tax base.

Many states have small business offices or other measures to pro-

mote regulatory flexibility. One example of a highly effective small business ombudsman's office is in Puerto Rico. The office was just set up in August 2002. Yet under the direction of Ana Rivera-Valcarcel, this two-person office has begun training the staff of Puerto Rico's regulatory agencies in how to adapt regulation to avoid causing small businesses undue harm.

As the Puerto Rico example makes clear, bringing about effective regulatory flexibility requires more than simply a well-crafted piece of legislation. It needs a three-part structure within state government to have a significant impact.

- **Executive Leadership.**

Recognizing the relationship between small business, economic growth, and regulatory flexibility in the governor's office is essential to setting state priorities and direction. Without this recognition, the state government machinery will set its priorities elsewhere.

- **Educated Government.** The state government writes the rules that implement the laws. State workers need to be trained to conduct economic impact analyses and to understand the variety of measures that can be used to achieve the goals of regulations without distributing the regulatory burden among businesses unfairly. State workers in every agency need training to implement a reg flex law effectively.

- **Small Business Involvement.**

An involved small business community is the third critical piece. Small business leaders let the state government know when a law or rule harms or helps them. Without continuous feedback, government may proceed unaware of the negative impact of its actions and will

fail to take steps to alleviate them. Small business can't simply expect government to do the right thing on its own.

Many states have some form of regulatory flexibility law on the books. However, many of these laws do not contain the five critical elements included in the model bill. States with less effective regulatory flexibility laws would benefit as much as the states with no such laws if they adopted this model legislation. Successful state-level regulatory flexibility laws, as in the model legislation, should address the following areas: (1) a small business definition that includes most small businesses, (2) a requirement that state agencies perform an economic impact analysis before they regulate, (3) a requirement that state agencies consider less burdensome alternatives that still meet the regulatory goals, (4) judicial review so that the law has teeth, and (5) a provision that forces state government to periodically review all its regulations.

In his Small Business Agenda and Executive Order 13272, President Bush recognized the key role small business plays in America's economic vitality and the RFA's importance in protecting this. An expanded recognition of this at the state level will lead to enhanced economic growth and greater regulatory savings without compromising the social and environmental benefits that regulations are meant to safeguard. To learn more about how the model bill might be used in your state, please contact your regional advocate. Visit www.sba.gov/advo/region.html for complete contact information.

Regulatory Update

Economic Regulation

Fisheries Management. The New England fishing industry is in a dire situation. For many years, regulations have limited fishing in order to rebuild the groundfish stock. This past summer, a federal court judge ordered the National Marine Fisheries Service (NMFS) to amend its groundfish management plan by August 2003. NMFS's draft plan would have set higher stock rebuilding goals and imposed harsh measures to reach them, including reducing days at sea by one-half to two-thirds, closing or restricting additional fishing areas, and gear modifications.

In September, however, NMFS admitted that the survey it used to determine the viability of the stock may have been flawed because of faulty equipment. In a letter to the New England Fishery Management Council, Advocacy urged delaying consideration of a groundfish management plan until new, credible surveys of the groundfish stock were completed.

NMFS and other interested parties petitioned the judge to postpone the implementation date of the fishing restrictions until May 2004, and the court granted this request. New federal data on fish counts off New England's coast show an increase in stocks of cod, haddock, and pollock. This has reignited debate over whether NMFS uses the best available science in crafting its regulations.

Americans with Disabilities Act

New Rules on Access to Public Accommodations. In June, the Architectural and Transportation Barriers Compliance Board issued a draft of its final Americans with Disabilities Act Accessibility Guidelines. The guidelines set minimum standards of accessibility for new construction, alterations, and

retrofitting of public accommodations such as hotels, banks, movie theaters, and other businesses that regularly serve the public.

In September, Advocacy wrote a letter urging the board to postpone final approval of the draft final guidelines until it more fully considered their impact on new construction and the burdens on existing small business owners. Advocacy will continue its effort to voice small business concerns regarding the guidelines' impacts and to encourage the board to consider less burdensome alternatives. The Department of Justice will rely on the guidelines when it initiates rulemaking on retrofitting existing facilities, and consequently, their potential application is a huge concern for small businesses.

Taxation

Mobile Machinery Tax. For several decades, the Internal Revenue Service (IRS) has exempted mobile machines (huge cranes, drilling apparatus, and the like) from excise and use taxes related to highway use. This summer, the IRS proposed a regulation that would eliminate the exemption. The change would subject thousands of small owners of heavy machinery to dramatically higher taxes as well as increased accounting costs, since determining whether a business still qualified for the exemption would be expensive and time consuming. The additional tax liability and administrative costs associated with the rule would amount to more than \$100 million. The Office of Advocacy and hundreds of other businesses and trade associations filed comments on the proposed changes urging the IRS to comply with the Regulatory Flexibility Act and consider the impact of its proposed rule on small businesses. As some businesses pointed out, the proposed regulation overturns

decades of established practice that has been supported by the courts and the IRS, and it shows little understanding of the history behind the exemption or the impact of the change. A hearing on the rule is scheduled for Feb. 27, 2003.

Telecommunications

Triennial Review of Unbundled Network Elements. The Federal Communications Commission (FCC) is considering a proposed rule that would lessen the requirements currently imposed on incumbent local exchange carriers (such as the regional Bell companies). Of notable importance is the possibility that incumbent local carriers might no longer be required to sell unbundled network elements (UNEs) to competitors at regulated prices. (Examples of UNEs are local loop leasing, transport, and switching.) The availability of UNEs and UNE platforms made competition at the local level possible. This rulemaking has the potential to restrict competitive carriers' ability to compete (or end it altogether). This could endanger the emerging competitive environment that has started to take hold as a result of the 1996 Telecommunications Act.

Media Concentration. The FCC will begin public hearings on media ownership issues in February 2003. The first hearing takes place in Richmond, Va. The hearings are intended to provide another opportunity to solicit public opinion on media ownership issues in mid-sized markets and will supplement the record that has already been accumulated on this topic.

Occupational Safety

Ergonomics Guidelines. The Occupational Safety and Health Administration (OSHA) is developing industry- and task-specific ergonomic guidelines to provide employers with information on how

to deal with problem tasks. Draft guidelines for the nursing home industry were issued in late August. In a comment letter, Advocacy expressed concern that the guidelines, as drafted, were too broad. Advocacy also suggested that the guidelines could be interpreted as an industry standard for enforcement purposes under the general duty clause of the Occupational Safety and Health Act. Advocacy encouraged OSHA to review its protocol for developing the guidelines to recognize that all employers do not have extensive safety and health programs. To be applicable for small businesses, the guidelines should be more task specific and not require implementation of an ergonomics program.

Regulatory Agenda. In the coming year, OSHA plans to convene three panels under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to review and comment on draft regulatory

proposals affecting small entities. The topics are (1) construction and maintenance of electric power transmission lines, (2) controlling exposures to crystalline silica and (3) confined spaces in construction. The agency has dropped plans to develop a regulation requiring injury and illness prevention programs. Small businesses in manufacturing, construction and foundries will be affected by the silica rule. The confined space rule applies to instances when construction workers are working in areas where only limited movement is possible.

Environment

Storm Water Runoff

Guidelines. The Environmental Protection Agency's (EPA) rule-making on storm water runoff requirements resulted in the adoption of regulatory alternatives to reduce burdens on small business and lower housing costs while protecting lakes and streams. The EPA's initial proposal to reduce sediment runoff from construction sites of one acre or more was expected to cost the construction industry \$4 billion annually. Advocacy argued that the proposal could substantially raise the cost of new homes. As a result, EPA proposed three alternate approaches to control runoff, and even the most expensive of the three proposed alternatives is estimated to cost less than \$1 billion per year.

Toxic Release Inventory

Reporting. In January, EPA issued a final rule reducing the reporting threshold for lead and lead compounds from 10,000 pounds to 10 pounds. The change greatly increases the number of manufacturing facilities required to report the use of lead. EPA justified the change because it considers lead to belong to a class of chemical deemed to be a "persistent bioaccu-

mulative toxic" (PBT). The Office of Advocacy and others pointed out that the scientific basis for this rule has not been established and that the agency failed to follow the required peer review procedures before adopting the rule. EPA is now subjecting the rule to peer review. In October, EPA's Science Advisory Board issued its first report, calling into question two parts of EPA's PBT metals methodology. The board's review will continue in 2003, and EPA is expected to bring the rule into conformance with its recommendations.

Procurement

Government Printing. The Government Printing Office (GPO) has historically been the official printer for the federal government. The Federal Acquisition Regulation (FAR) Council is proposing to end this longstanding practice. On November 13, Advocacy commented on a proposed revision to the FAR that would free agencies to contract for printing and duplicating services with sources other than GPO. Advocacy's comments focused on the FAR Council's compliance with the Regulatory Flexibility Act in proposing the rule. The FAR Council is now in the process of reviewing the comments it received.

For More Information

Advocacy's assistant chief counsels can answer questions about these regulatory issues:

ADA. Michael See, (202) 619-0312 or michael.see@sba.gov

Economic Regulation. Jennifer Smith, (202) 205-6943 or jennifer.smith@sba.gov

Environment. Kevin Bromberg, (202) 205-6964 or kevin.bromberg@sba.gov

Occupational Safety. Charles Maresca, (202) 205-6978 or charles.maresca@sba.gov

Procurement. Major Clark, (202) 205-7150 or major.clark@sba.gov

Taxes. Russ Orban, (202) 205-6946 or russell.orban@sba.gov

Telecommunications. Eric Menge, (202) 205-6949 or eric.menge@sba.gov

Coming Soon! A Wrap-up of Agency Compliance with the RFA

Advocacy's annual Reg Flex report, the report card on agency compliance with the RFA, is due out in February 2003. Sign up at <http://web.sba.gov/list> to get the first copy.

International Focus

Advocacy Seen as a Model by Other Countries

Advocacy's role as a voice for small business is seen as a model for nations wishing to increase the prominence of small business in their respective economies.

Two senior researchers from the Industrial Bank of Korea, the largest small business lender in Seoul, recently spent seven days at the Office of Advocacy. The researchers, Kim Yi-Kon and Ha Dong-Hyun, conducted research on topics related to small business databases, policies, and loan programs, especially micro-loans. Advocacy's senior economist, Dr. Charles Ou, hosted them and accompanied them on a visit to one of the most successful micro-loan institutions in Baltimore. The visitors also gave a presentation titled "Understanding Korean SMEs and

the Industrial Bank of Korea" to Advocacy staff. In addition, they traveled to New York City and Los

Angeles, where they visited the Small Business Administration district office.



Dr. Chad Moutray, Advocacy's chief economist, addressed the 2002 U.S.-China Conference on Business and Technology in December. Dr. Moutray discussed Advocacy's economic research, with particular emphasis on Chinese-American entrepreneurship and minority ownership of small businesses.

State Legislation, from page 1

business owners and their employees from excessive regulatory mandates. Some states offer protections similar to the RFA and enforcement mechanisms that mirror the role of the Office of Advocacy. Other states offer little or no protection from the one-size-fits-all approach to regulation.

"This model legislation will be a top priority for our regional advocates because they are in touch

with state policy officials every day," said Sullivan. "These state legislators are well aware that small businesses employ more than half of the work force. If they want to decrease unemployment, grow their economies, and increase state revenues, it makes sense that they will want to level the playing field for small business," he said.

For More Information

The complete text of the model bill, a compilation of existing state measures, and contact information for our regional advocates can be found in the publication, *Small Business Friendly Regulation: Model Legislation for States*. This can be found on Advocacy's website, www.sba.gov/advo.

Five Steps to a Reg Flex Law

Many states have some form of regulatory flexibility law on the books. Most, however, do not contain the five critical elements included in the model bill. States with less effective regulatory flexibility laws would benefit as much as the states with no such law if they adopted this model legislation. Successful state-level regulatory flexibility laws should include the following:

- 1) a small business definition that includes most small businesses,
- 2) a requirement that state agencies perform an economic impact analysis before they regulate,
- 3) a requirement that state agencies consider less burdensome alternatives that still meet the regulatory goals,
- 4) judicial review so that the law has teeth, and
- 5) few weakening exemptions.

Research Notes

Predictability is Good for Small Business

The current fiscal climate revolves around the notion that revisions to the tax code are forthcoming every four years, with each presidential election cycle. While the depth of the adjustments is usually unknown, the probability that adjustments will happen is very high. Yet the depth and the direction of the adjustments are what have real effects. Businesses, large and small, face a burden; but as has been documented by previous research, small businesses bear a disproportionate share of the burden imposed by all federal regulations, including tax regulations. Small business associations consistently identify taxes as the single most important issue facing small businesses. Unpredictable shifts in the tax rate and structure exacerbate the challenging circumstances every small business faces.

So, in addition to the uncertainties inherent in operating a small business, business owners must make allowances for unknown changes in the tax code while making plans that extend beyond the next presidential election cycle. There is an inherent problem here that, when explicitly stated, can be quite worrisome, namely, the time horizon that a small business adopts when making plans is longer than the certainty period afforded by the election cycle. Therefore, every possible outcome would be less than optimal.

In a working paper titled *Rules Versus Discretion in Tax Policy*, Advocacy's regulatory economist, Dr. Radwan Saade, argues that a system based on predictability would lend a helping hand to those who most need it: small businesses. Why would small businesses benefit more than larger firms when it comes to reducing the uncertainty

in the fiscal structure? Because of their smaller scale and scope, small businesses are less insulated from shocks in their environment than large businesses are. Large businesses can afford legal and accounting resources that specialize in extracting every possible combination of regulatory advantage and tax loophole available. Smaller businesses usually rely on the accounting skills of the owner or the corner accountant. The cost of specialized legal and accounting advice is prohibitive for small businesses, and far fewer loopholes apply to them in any case. It becomes easy to see why added predictability would be more beneficial to small businesses.

Dr. Saade's working paper investigates three possible outcomes: cheating, rules, and discretion. The author finds that in the most theoretical sense, the rules equilibrium dominates the other two. Upon introducing discount rates to the analysis (to represent the time-value of money), the sustainability of the rules equilibrium crumbles. Rules would be the preferred outcome if and only if the tax authority's discount rate were zero. Other means need to be investigated to ensure that fiscal policy is set in a stable and predictable environment—one with less uncertainty.

Binding constraints would be needed to steer policymakers to such an outcome. The challenges are monumental. For instance, the virtues of balanced budgets have been extolled since the early ages of economic theory, but they rarely prove feasible in light of the political circumstances each administration faces. Binding constraints would be easier to implement in an environment already exhibiting a certain degree of fiscal discipline.

For More Information

Rules Versus Discretion in Tax Policy was presented at the 95th annual meeting of the National Tax Association in Orlando, Fla., in November 2002. Copies are available at www.sba.gov/advo/stats/wkpaper.html. For information, contact Dr. Radwan Saade, regulatory economist, at (202) 205-6878 or radwan.saade@sba.gov.

In an environment where none exists, binding constraints would consist of steps making it less convenient to introduce changes to the tax code.

Such a scenario might resemble the following example. The tax authority decides that all businesses will face tax structure *x*. The tax authority defines a range of variation within which the tax structure can move. The key feature is that businesses, large and small, know the range of possible change. For the structure to change beyond this specified range, this scenario would require a two-thirds majority.

Though simple by design, such a scenario has profound conclusions. A degree of rate stability is clearly needed, yet policymakers shy away from steps in this direction. The positive externality for small business is that such a system would allow them to figure out the tax structure, now and in the future, and make plans that are based on that knowledge.

Electronic Subscribers Number a Cool Ten Grand

In early December, the number of people subscribing to the electronic version of *The Small Business Advocate* broke the 10,000 barrier. While Advocacy greatly appreci-

ates this demonstration of interest in the office's work, it is even more gratifying to see so many people availing themselves of electronic government. The e-version arrives faster and costs less to print and distribute. Please help us spread the word. Get friends, family, and colleagues to sign up so we can reach more people.

It's been a little over a year and a half since *The Small Business Advocate* Listserv was launched. It's a credit to our readers' resourcefulness that you've helped the e-subscription list reach 10 grand in such a brief time span.

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- To send feedback about *The Small Business Advocate*, contact the editor, Rebecca Krafft, at rebecca.krafft@sba.gov or (202) 205-6224.

White House Releases *The State of Small Business, 1999-2000*

In the period covered by this report, prepared by the Office of Advocacy for White House release, the number of small businesses continued to increase. Proprietorship income grew 7.9 percent and outpaced the growth of corporate income, which rose 5 percent. The report examines small business's role in the economy, including trends in the number of businesses owned by women and minorities, the share of federal government

procurement going to small firms, the availability of financing to small businesses, and progress in efforts to mitigate regulatory burdens on small firms as a result of the implementation of the Regulatory Flexibility Act.

The complete report is available on the Office of Advocacy's website, www.sba.gov/advo and from the Superintendent of Documents at (202) 512-1800.

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