

“Small Businesses are Stifled by Regulations”
SMC Members’ Stories Illustrate the Need for Regulatory Reform

By Eileen Anderson, SMC Government Relations manager

Drawing the line between what’s sufficient regulation and what’s excessive will always be a challenge. The following SMC members’ stories emphatically illustrate the burden of excessive regulations on their ability to plan and the cost they represent in terms of manpower and loss of income-producing activities. Our solution: small business should be at the table to help clear the books of old regulations and give input when new regulations are being drafted. Their stories inform the policy making process.

President Obama has emphasized the need to reduce the regulatory burden on small business. He issued an Executive Order on Jan. 18, 2011, which requires federal agencies to review and remove outdated regulations and “where consistent with law, consider the costs and benefits of a regulation and choose the least burdensome path.”

The president also issued a memorandum specifically addressing small business stating that the administration is “firmly committed to eliminating excessive and unjustified burdens on small businesses, it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation.”

In his Feb. 7 speech to the U. S. Chamber of Commerce, Obama stressed regulatory relief again making a special note of small business. “The last barriers we're trying to remove are outdated and unnecessary regulations ... I've also ordered agencies to find ways to make regulations more flexible for small businesses.”

For many years agencies have been given a free rein to interpret and enforce the laws passed by Congress resulting in harm to small business. In another positive signal to the business community, Congress recently provided the Small Business Office of Advocacy with the power to actively seek regulatory fairness and ensure small business concerns are taken into consideration by agencies.

Just how large is the burden? A recent report from the Small Business Administration found that small businesses employing fewer than 20 employees bear the largest burden of federal regulations. They averaged annual regulatory costs of \$10,585 per employee, 36% higher than the compliance cost of larger firms (500 or more employees) with federal regulations.

SMC government relations discovered how much of a problem excessive regulations posed on Feb. 10 when Rep. Jason Altmire's office called at 1:30 pm and requested examples illustrating the consequences of excessive regulations on business hiring, expansion and investing. Altmire is ranking member of the House Small Business Committee’s Subcommittee on Investigations, Oversight and Regulations. He was preparing for a 3 p.m. testimony on a House resolution that pertained to rules and

regulations and their impact on job creation. Within 90 minutes members' examples of excessive regulation were passed on to his Washington, D.C. office.

Bill Schaffner, President, Schaffner Manufacturing Co., which produces custom finishing products and employs more than 100 people across several locations, cited several examples of troublesome regulations pertaining to employees. He voiced frustration because he's always responding to the "need of the moment because many of the provisions are temporary."

He cited the "Making Work Pay" provision of the American Recovery and Reinvestment Act, which provided a refundable tax credit of up to \$400 for working individuals. For Schaffner's employees that meant on average an additional \$8.00 per pay. The program and paperwork ended Dec. 31, 2010, and was immediately followed by a new program starting Jan. 1, 2011. The tax package that extended the Bush tax cuts provided for a temporary 2% reduction in the Social Security tax for employees. Implementation of that change required additional paperwork and the net advantage in the employees pay was negligible. They had been expecting an increase but they saw virtually no difference because one temporary program stopped and another of equal value started. To Mr. Schaffner it was a lot of wasted work.

The HIRE (Hiring Incentives to Restore Employment) Act caused similar problems and "may end up being more work than it was worth," he said. Businesses were able to hire the unemployed in exchange for a maximum general business \$1,000 tax credit for each qualified employee retained for at least 52 consecutive weeks. The program raised many questions for his staff: the paperwork was impossible to find in the beginning, there was no one to answer their questions about the Family and Medical Leave Act, and there was no reporting mechanism in place.

The regulations pertaining to the employer's tax credit for COBRA were by far the most vexing. Under the American Recovery and Reinvestment Act of 2009, individuals eligible for COBRA were required to pay 35% of the premium and received a subsidy for the remaining 65%. The employer recovered his payment by taking the subsidy amount as a credit on the quarterly employment tax return after receiving the 35% premium payment from the individual.

Implementation again was the problem. It was so cumbersome that his small in-house staff could not do it efficiently because the regulations were hard to understand, required training, new spreadsheets, and changes to software. He finally had to pay a third-party administrator's to do the paperwork.

Bill Schaffner's request is simple.

"Please don't change the rules on a whim," he says. "Temporary provisions like the Social Security tax holiday require a lot of work to implement. The changes to the system require so much effort and time." He suggested that lawmakers "think things through and give more time for compliance and get small business input. Lack of predictability in

regulations really hurts. We find ourselves always adapting and adjusting to new things. What we really need from the government is better predictability and consistency so we can spend time making our operations better -- not on managing new government programs.”

Tom Forster, vice president of Beaver Valley Alloy Foundry, a specialty steel foundry producing castings said, “I'm getting killed by the Family and Medical Leave Act (FMLA). I have a self-imposed ceiling and won't employ more than 49 people because at 50 I would be subject to all the regulations of the FMLA. It destroys work rules. I won't be able to write anyone up for missing work. I have an absentee problem is it is.”

Foster now employs 32 workers, so with the nations' unemployed rate over 9% it was really sad to hear him say he could use 20 more workers. Foster says he has an “attrition problem, an absentee problem, a retention problem, and an FMLA problem. It's crippling.”

“If one worker is out it affects production for the day,” he said. “Some days 10 workers call off out of a work force of 32 and that has a major factor on my ability to deliver to my customers on time. I will lose business and I will go out of business.”

Forster noted companies and unions are being offered waivers to the new health care law. “If they are really interested in creating jobs why not offer waivers to small companies for the FMLA,” he asked. “If they raised the ceiling to 100, the small companies would hire. That's what they would do.” If he hired the 20 full-time employees he needs that would represent \$1 million in pay and benefits.

“That's what we're losing. A good portion is taxable income,” Forster said.

“The issue hits hardest on the small guys. Larger companies have a professional human resources (HR) staff and economies of scale but with my business and 32 workers we don't have a dedicated HR person,” Forster said. “The paperwork is horrible. It's wasted revenue to have to comply with all facets of law. If you don't want the burden eventually you walk away.”

He noted new paperwork comes in every day. He just got a 30-page survey from the Department of Commerce. He estimates it will take his staff a week to complete. “It doesn't help me process or sell my castings. It adds to my overhead and it affects our ability to ship castings and that develops into a customer problem,” he said.

“Change is the biggest detriment and UNCERTAINTY, in capital letters. I don't want to be blindsided. I must be proactive. I need a plan and it's hard if not next to impossible to plan. I don't get reimbursed for doing all of these reports and surveys. It all takes time. It's insidious. It's like a tax,” Forster said.

Small businesses lack the resources of larger companies and they are disproportionately impacted by regulations. If President Obama and Congress want to create an

environment that reduces the regulatory burden on small businesses to retain and attract jobs then they must gather the input of small businesses when it comes to crafting federal regulations. Our stories will inform the policy making process and make change happen.

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