



NSBA Victories: A Progress Report

January 4, 2011

Foreword

Dear Small Business Owner,

The last two years has brought unprecedented challenges for America's small businesses. As the nation's oldest small-business advocacy group, NSBA knows how important it is for you to have a voice in Washington, D.C. For the last 73 years, NSBA has served as that voice and today, as we look forward to what we hope will be a year of growth and prosperity, we urge you to join us in reflecting on the past two years which have ushered in some key small-business successes, in spite of the myriad challenges we've all faced.

Regardless of party affiliation, there are many key priorities all small-business owners share. Top among those is the responsibility of our government to ensure entrepreneurship continues to be a viable and desirable opportunity in the U.S. To that end, NSBA has spent countless hours ensuring our elected officials know and understand how their actions impact the small-business community.

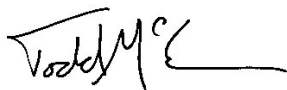
NSBA has been instrumental in many key pieces of legislation over the past two years which take important steps forward in promoting a thriving small-business community for the months and years to come. Among the various successes NSBA has achieved:

- The recently-passed tax deal which extends the 2001 and 2003 income tax cuts for two years, enacts a two-year estate tax compromise, and extends various other tax credits for small businesses;
- The sweeping *Small Business Jobs and Credit Act* which allowed self-employed individuals to fully deduct the cost of their health insurance, establishes the Small Business Lending Fund, creates independence for the SBA Office of Advocacy, and many other pro-small-business provisions;
- Credit-card reform that prohibits or severely limits many of the most unfair and deceptive practices of the credit-card industry;
- Reform of the interchange system, or so-called "swipe fees" which sets limits on what credit card companies can charge small businesses for processing credit card payments;
- Enactment of the Plain Writing Act of 2009 which mandates the use of plain language in all federally-written letters, forms, notices, or instructions; and
- Enhanced SBA lending to make loan programs more affordable.


Although many of these wins were long standing priorities upon which NSBA has lobbied, there are various other initiatives which NSBA was successful in preventing action on, including card-check legislation, and mandated wages and benefits initiatives.

Our work is far from done. Whether through efforts to fully repeal the expanded 1099 reporting provision, working to make health care affordable, or ensuring deficit reduction is fair and not solely at the expense of small businesses, NSBA is committed to tackling the critical small-business issues in the coming year.

Sincerely,



Todd McCracken, President



Larry Nannis, Chair

Introduction

As the nation's oldest small-business advocacy group, NSBA has made some significant headway in pushing Congress to act on important pieces of legislation that will help small businesses today and for years to come. Despite the downturned economy, these key wins were ushered in by NSBA as must-do legislation for America's small-business community.

These key small-business victories range from sweeping changes ala the credit-card reform bill to seemingly minor changes such as the line-item budget for the U.S. Small Business Administration (SBA) Office of Advocacy, both of which stand to greatly help America's small businesses. The following report details some of the most important forward-moving steps taken by Congress and the administration at the urging of NSBA in the past two years.

Tax Deal

Despite great political wrangling, Congress at the last minute approved the tax deal brokered by President Barack Obama and Congressional Republicans to extend various tax cuts and incentives on a temporary basis. Although NSBA is a strong proponent for both tax simplicity—which is stymied by ongoing temporary tax provisions—and deficit reduction, the tax deal represents a pro-growth policy at just the right time for the struggling small-business community.

NSBA urged for some time many of the tax updates included in the bill, namely: an extension to all current tax rates for two years; a reform of the estate tax; a fix for the AMT; and extending various other tax credits such as expensing and the R&D credit. All of these are very helpful to small businesses and will help them keep more cash in-hand now when they need it most.

Small Business Jobs and Credit Act

This recently-passed legislation is one of the most sweeping pieces of legislation for small business in the last decade. The earliest and most outspoken proponent of this legislation, this new law is a major legislative victory for NSBA and the small businesses it represents. The bill includes a broad array of small-business initiatives which include several long-time priorities for NSBA.

Full Deduction on Health Insurance Allowed for Self-Employed

A long-standing priority for NSBA, the new law allows self-employed individuals to fully deduct the cost of their health insurance from their self-employment taxes for 2010. Currently, self-employed individuals are prohibited from fully deducting the cost of their health insurance from their self-employment taxes, resulting in an additional 15.3 percent tax that no other worker or business owner is forced to pay.

NSBA has been leading the charge on ending this unfair penalty on the self-employed for nearly 10 years, and was integral in its inclusion in the broader bill. Despite this being only a temporary fix, it is a critically important first step and signal that lawmakers understand the egregious nature of this tax penalty.

Small Business Lending Fund

The law creates a \$30 billion lending fund for small- and medium-sized banks with strong incentives for them to increase their small-business lending. Back in early 2009, NSBA began talking about the need to create some sort of mechanism to get capital in the hands of small businesses through community banks. Since that time, NSBA met repeatedly with Congress and the administration as they crafted this proposal, and was one of the only leading small-business groups to embrace the lending fund.

According to the 2010 NSBA Mid-Year Economic Report, more small businesses (41 percent) than at any time in the last two years are unable to garner adequate financing for their company. . This Small Business Lending Fund will take important steps in helping small businesses get that financing they need.

Tax Incentives

The Small Business Jobs and Credit Act included myriad tax incentives for small businesses, many extending or expanding previously-passed, and NSBA-supported tax incentives under ARRA. These tax incentives include: the elimination of capital gains taxes on investments in small businesses for the remainder of 2010; increased section 179 expensing up to \$500,000—doubling the current—for 2010 and 2011; a restoration through 2010 of the 50 percent allowable depreciation on capital investments; an increase in 2010 for allowable start-up costs from \$5,000 to \$10,000; and a permanent change to the limits on small-business tax penalties from a fixed dollar amount to a percentage of the tax benefits from the transaction.

NSBA has supported increased and expanded section 179 expensing and enhanced bonus depreciation as an important tool to help small businesses better manage their cash flow during the economic downturn.

Greater Independence for the SBA Office of Advocacy

The bill codifies that the U.S. federal spending budget will include a line-item for the Office of Advocacy which serves as the regulatory watch-dog for small business within the federal government. For many years, NSBA led the coalition responsible for building Congressional support for this very important change in the federal budget.

Although a relatively obscure piece of the bill, this NSBA-backed initiative will help untold millions of small businesses for years to come as it offers enhanced independence and transparency for the Office of Advocacy which has incurred budget and staffing cuts over the last 10 years.

Enhanced Exporting Resources

Another key piece of the legislation will enhance exporting opportunities for small firms through: funding for the U.S. Trade Representative's (USTR) market access and trade enforcement activities; enhanced stature for the Office of International Trade within the U.S. Small Business Administration (SBA); more Export Finance Specialists to the SBA's trade counseling programs; establishment of the State Export Promotion Grant Program; improved coordination between federal and state agencies and SBA resource partners; and more than \$1 billion in export capital leveraged for small businesses.

NSBA and SBEA have been the leading advocates for enhanced export trade assistance and improve coordination of all federal exporting resources.

Improved Federal Marketplace for Small Contractors

The Small Business Jobs and Credit Act also included several procurement policy updates, including: a requirement on procurement officers to consider the timely payment of subcontractors by a prime contractor when evaluating that contractor's performance; the requirement on federal agencies to publish their policy on contract bundling and consolidation, as well as a rationale for any bundled contract; and the required development of a government-wide policy on the prosecution of small business size and status fraud.

NSBA has been urging Congress and those in the federal procurement arena to address more strongly the need to ensure timely payment of subcontractors—a role many small businesses fill—as well as put an end to contract bundling and fraudulent large companies being awarded small-business set-asides.

Credit-Card Reform

In mid-2009, Congress approved the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 (H.R. 627/S. 414) which took effect early-2010. NSBA was the first national small-business group calling for credit-card reform back in 2007, and is responsible for alerting Congress that there were significant small-business concerns with the issue. The Credit CARD Act prohibits or severely circumscribes several of the most egregiously unfair and deceptive practices of the credit-card industry. Although Congress failed to include additional language urged by NSBA, which would have explicitly protected the credit cards used by small-business owners for business purposes, the legislation was a landmark achievement.

Due to NSBA's efforts, separate bills explicitly protecting the credit cards used by small-business owners for business purposes were introduced in both the House and Senate, as was an amendment, offered by Sens. Mary Landrieu (D-La.) and Olympia Snowe (R-Maine), chair and ranking member of the Senate Committee on Small Business and Entrepreneurship, to the Credit CARD Act. Although this amendment ultimately failed, the effort continues to be an NSBA priority.

The National Export Initiative

President Barack Obama announced early-2010 his National Export Initiative (NEI) which is a positive step toward growing exporting opportunities for small business. The express goal of Obama's NEI is to double U.S. exports over the next five years with an emphasis on small- and mid-sized exporters. Additionally, the U.S. Trade Representative (USTR), Ambassador Kirk designated a new position within his office to focus on small-business interests.

NSBA and its' international trade arm, the Small Business Exporters Association (SBEA)—the only exporting organization dedicated to small- and mid-sized exporters—have led the charge in calling for greater attention to the potential of small- and mid-sized exporters. SBEA was very involved in crafting policies and initiatives that led to the the small-business-specific position within the USTR Office..

Wall Street Reform and Consumer Protection Act

Included in this new law are several key NSBA-supported provisions which make banking and credit-card purchases more affordable, and ensure proper considerations of small-business regulatory burdens with the new regulatory body created under the law.

Swipe-Fee Reform

NSBA was outspoken group calling for the inclusion of swipe-fee—the rates at which businesses are charged for processing customers' credit-card payments—reform in the Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173.) While the financial regulatory reform legislation approved in the House did not address swipe-fee reform, the Senate version did, thanks to Sen. Dick Durbin (D-Ill.)—and Senate were able to ensure that some version of the amendment was included in the final bill.

Consumer Financial Protection Bureau Regulations

Provisions requiring the Consumer Financial Protection Bureau (CFBP) to consider how proposed rulemakings would impact small business were included in the *Wall Street Reform and Consumer Protection Act* at the urging of NSBA. The provisions originated in an NSBA-supported amendment introduced in the Senate but were not included in the original version passed in the House.

NSBA—fearing unfair regulatory burdens on small business without these provisions—called upon the Senate to ensure the inclusion of language that requires CFBP to conduct a Regulatory Flexibility Analysis in conjunction with any rulemaking as well as consult with a Small Business Advocacy Review Panel prior to the publication of any proposed rule.

Senate conferees—led by Sen. Snowe and supported by the House Democratic Blue Dog Coalition—were successful in getting this NSBA-supported language included in the final package.

Interest-Bearing Business Checking Accounts

Another often unmentioned win for NSBA and small business in the *Wall Street Reform and Consumer Protection Act* is a provision that will allow institutions to pay interest on business checking accounts. NSBA has lobbied for years to end this unfair treatment of business checking accounts which has been in effect since 1933. Although not a requisite for financial institutions, this NSBA-urged language will give them the option to do so—making checking accounts more affordable for small business.

The Plain Writing Act of 2009

In late-September 2010, Congress approved the NSBA-supported Plain Writing Act of 2009 which mandates the use of plain language in all federally-written letters, forms, notices, or instructions, especially those that provide facts about federal benefits or services, information on how to obtain those benefits or services, and explanations on how to comply with federal requirements, including taxes. Essentially, this legislation dictates that these specific federal documents use clear, concise, well-organized writing that follows other best practices appropriate to the subject or field and intended audience.

NSBA for years has been an outspoken proponent for the need to use plain language in federal documents. This legislation takes an important first step toward reducing the inordinate amount of time it takes for many small-business owners to simply read through cumbersome federal documents.

American Recovery and Reinvestment Act (ARRA)

Although the overwhelming majority of funding approved under ARRA went toward large companies and infrastructure spending, there were a handful of pro-small business provisions included which were supported by NSBA.

Small-Business Lending

Approved in early-2009, ARRA included NSBA-urged funding to the tune \$375 million to enhance the accessibility and affordability of SBA-backed loans. Specifically, the law extended to 90 percent the government guarantee on 7(a) loans and eliminated the up-front borrower fees on both 7(a) and 504 loans. These highly-successful provisions resulted in significant increases in lending to small business which otherwise would likely have been unable to garner any financing whatsoever.

NSBA has been the only national small-business membership group to make access to capital a cornerstone of our advocacy efforts. Our members continually report that the credit crunch is a major concern, in fact, 41 percent in July 2010 reported being unable to access adequate financing for their business.

As a direct result of NSBA's urging, the ARRA-approved SBA funds, from Feb. 17, 2009 through Sept. 24, 2010, supported more than \$29.6 billion in small-business recovery loans. NSBA has lobbied time and again throughout the past two years for continued funding of this program (including language in the Small Business Jobs and Credit Act) which has filled a critical lending gap for small business.

Tax Incentives

Also included in ARRA were three NSBA-supported tax provisions which provided assistance to certain small businesses. Those three provisions provided: a temporary increase of the exclusion on capital gains to 75 percent; a one-year extension on enhanced Section 179 expensing of up to \$250,000; and an extension allowing for accelerated bonus depreciation through 2010.

NSBA Holding the Line

It is often the case in Washington, D.C., that preventing something from being approved can be as much a success as actually passing legislation. Furthermore, there have been a few key issues where NSBA has held strong against very formidable opponents, or cultivated key Congressional support, laying the groundwork for future wins. The following instances are among such kind of successes.

Inaction on Card-Check Legislation

Upon Democrats' broad wins in the 2008 elections, Big Labor began agitating for Congress to pass the Employee Free Choice Act, or so-called "card-check legislation." In the ensuing two years there has been no viable action on this overreaching legislation.

NSBA was strongly opposed to card-check legislation, and developed myriad resources to explain exactly what it would do to small businesses. These efforts, coupled with coordinated efforts with myriad other business groups have staved off Big Labor in an overwhelmingly-Democratic Congress.

Efforts to Expand FMLA and Mandate Wages and Benefits Stalled

Several proposals to mandate wages and benefits, as well as efforts to broaden the Family Medical Leave Act (FMLA) failed to pass muster in the 111th Congress, despite broad Democratic majorities. Legislation such as *the Paycheck Fairness Act*, *the Fair Pay Act*, *the Healthy Families Act* and *the Family Leave Insurance Act* would add significant burdens on small businesses.

Even though some of these issues were raised during the lame-duck session of Congress, none of them were approved due to NSBA's strong opposition and dedicated work to oppose these kinds of measures.

A Hold on VC Takeover of the Small Business Innovation Research (SBIR) Program

Despite the venture capital (VC) community's well-funded campaign and the House's ongoing and unacceptable refusal to compromise on a long-term reauthorization, the SBIR program today is intact. NSBA and the Small Business Technology Council (SBTC)—NSBA's technology council—have worked with the Senate to promote reasonable compromise language supported by a broad, bipartisan group of legislators. Even leaders in the House and Senate Armed Services Committee saw fit to circumvent the House Small Business Committee's refusal to move forward, and reauthorized the highly-successful program for the Department of Defense.

Although the nine temporary extensions an ongoing uncertainty to the program have been unfortunate byproducts of the VC campaign, the fact that NSBA and SBTC have, without much external support or funding, held off a wholesale takeover of the program by the VCs is a positive.

Bipartisan Support for Repealing the Expanded 1099 Reporting Provision

Although this terribly egregious pay-for in the *Patient Protection and Affordable Care Act* still has yet to be repealed, serious headway has been made in garnering broad bipartisan support for repeal. NSBA data shows the number of average number of firms for which small-businesses must file a 1099 report will skyrocket from 10 to 86. Furthermore, it will hamper business-to-business transactions as firms look to ease the new requirement by consolidating business purchases, giving big-box companies an inherent advantage over small businesses. Sadly, politics in both the House and Senate prior to the August recess prevented any repeal language from being enacted.

However, an important precedent was set in terms of bipartisan support for full repeal. In the Senate, seven Democrats and 39 Republicans supported full repeal. In the House, 239 Democrats and 178 Republicans supported full repeal—either through a formal vote on legislation or through cosponsoring similar legislation. Repeal of the expanded 1099 reporting provision has been a major priority of NSBA, and the

fact that so many Democrats and Republicans have been on the record as supporting repeal is a positive step in the right direction.

Conclusion

Small employers comprise 99.7 percent of all employer firms, and one in two workers in the private workforce run or work for a small business. Despite our sheer numbers, small-business issues often are left on the sidelines while other, more powerful and well-funded interests are moved down the field. However in the last two years, there has been unprecedented attention to the plight of small business due to the difficult economic situation.

Although more still must be done to ensure small businesses historic role of economic revival and job creation continues in this recession, the end of this session of Congress is an appropriate time to reflect on the successes we have seen. Not one to rest on our laurels, NSBA freely asserts these successes could have been more, yet they represent important progress. In the coming months and years under the new 112th Congress, NSBA will continue to push for this kind of progress.

**Please visit www.nsba.biz for all the latest updates on the issues that matter most to your small business, and be sure to sign up for our weekly eNewsletter, the Weekly NSBA Advocate.*