



# NSBA 2011 Progress Report

## Foreword

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Dear NSBA Member:

The last several years have 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 75 years, NSBA has served as that voice and today, as we look forward to what we hope will be year of growth and prosperity, we are pleased to share with you our 2011 Progress Report. In the last year, NSBA has been extremely active on the Hill, in the media and with you, our members.

In 2011, four of our top ten priority issues were either completely or partially addressed and NSBA leadership appeared before Congress 11 times. In addition to our advocacy efforts, NSBA was mentioned more than 3,000 times in the media, sponsored numerous high-profile events and our leadership was appointed to several high-level administration councils.

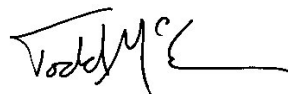
NSBA is particularly proud of our staunchly nonpartisan stance and as such, has worked with lawmakers and staff from all political persuasions with one goal: to ensure entrepreneurship continues to be a viable and desirable opportunity in the U.S. Among NSBA's key successes in 2011:

- After nearly a decade of political gridlock, NSBA was instrumental in Congress finally approving a long-term reauthorization for the Small Business Innovation Research (SBIR) program, which had been a top ten priority for NSBA for years;
- Congress repealed the expanded 1099 reporting requirement passed as a pay-for in the *Patient Protection and Affordable Care Act*, which was one of the most potentially burdensome requirements to come down the pike in years and one of NSBA's top ten priorities;
- Congress also saw fit to repeal the burdensome three percent withholding tax mandate, which was another key priority for NSBA;
- NSBA provided a member for a CBS Evening News report on the small-business credit crunch which resulted in that member's previously cut line of credit being fully restored as a direct result of that report;
- NSBA and its members were tapped 11 times by Congressional offices to testify and participate in high-level briefings on critical small-business issues;
- NSBA submitted more than a dozen regulatory comments and two amicus briefs on proposed regulation or small business focused lawsuits.

Many of these wins were long-standing priorities upon which NSBA has lobbied. Under the leadership of Immediate Past Chair Larry Nannis, 2011 was a banner year for NSBA. That said, we know our work is far from done. As we always do, NSBA will continue to push for policies that help America's small-business community and work to stop those that do not.

We have not—and will not—do it alone. It is you, the membership of NSBA that has made our success possible. We thank you for your continued support of NSBA.

Sincerely,



Todd McCracken, President



Chris Holman, Chair

## Executive Summary

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As the nation's longest running small-business organization, NSBA continues to grow and prosper in its mission to serve as America's small business advocate. 2011 was a busy year for NSBA leadership, staff and members, during which we achieved significant gains on many of our priorities. This executive summary will provide you with a quick snapshot of the many efforts NSBA has put forth in the past year.

### NSBA Legislative and Regulatory Victories

- Repeal of the expanded 1099 reporting requirement, an NSBA top ten [priority](#)
- A long-term reauthorization for the SBIR/STTR programs, an NSBA top ten [priority](#)
- Repeal of the three percent withholding tax, a long-time [priority](#) for NSBA
- Swipe-fee [reform](#) goes into effect despite efforts to derail the provision
- Dr. Winslow Sargent [confirmed](#) by the Senate as Chief Counsel for the SBA Office of Advocacy
- Language to create a federal pilot program for on-bill financing was [enacted](#)
- Approval of three major free trade [agreements](#) with Colombia, Korea and Panama
- A temporary [delay](#) to the NLRB posting requirement to give small businesses ample time to understand and comply with the new rule
- No action on a proposed [rule](#) from DOL that would require increased reporting;
- Flawed E-Verify legislation [fails](#) to move forward
- Two small business lending initiatives increase [capital](#) availability for small businesses

### NSBA In The News

- NSBA was [mentioned](#) in the media more than 3,000 times in 2011
- NSBA board, staff and small-business members were [featured](#) in CBS Evening News, NBC Nightly News, CNBC, Fox News, Fox Business News, Bloomberg, the Wall Street Journal, Forbes, the Washington Post, BusinessWeek, NY Times, Entrepreneur Magazine, CNNMoney, NPR, ABC and CBS Radio, USA Today, National Journal, Portfolio, Reuters, Politico, The Hill, countless daily newspapers from across the country and all 41 Business Journals
- NSBA's work on a CBS Evening News [story](#) led to an NSBA member's previously cut line of credit being fully restored
- Two highly-cited economic reports were released along with several other targeted [survey reports](#) on taxes and energy efficiency

### NSBA Sponsored Events

- NSBA hosted four Issue Briefing [Teleconferences](#) for NSBA members and our affiliates;
- The biennial Small Business [Congress](#) was held in Washington, D.C. where members voted on NSBA's top ten priorities for the 112<sup>th</sup> Congress
- The annual [lobbying](#) days for NSBA, Washington Presentation, was held in September
- NSBA cosponsored a high-level [event](#) on patent reform
- For the second year, NSBA was a [cosponsor](#) of Small Business Saturday, encouraging consumers to shop at local small businesses on the Saturday after Thanksgiving
- NSBA again [sponsored](#) National Small Business Week which was held in conjunction with one of NSBA's quarterly board meetings

## **NSBA On The Hill**

- March 10 - NSBA leadership [testifies](#) before House Financial Services Committee
- March 10 - NSBA president [attends](#) Senate press event in support of swipe fee reform
- April 12 - NSBA member [testifies](#) before the House Committee on Small Business
- May 19 - NSBA chair [interviews](#) IRS deputy commissioner
- May 19 - NSBA leadership [meets](#) with National Economic Council Director Gene Sperling at the White House
- June 30 - NSBA leadership [testifies](#) before Senate Banking, Housing and Urban Affairs Committee
- Sept. 13 - NSBA member [testifies](#) before the House Committee on Small Business
- Sept. 15 - NSBA leadership meets with Senate Finance Committee
- Oct. 6 - NSBA president [briefs](#) the Joint Economic Committee
- Oct. 24 - NSBA general counsel briefs Hill staff on E-Verify bill
- Oct. 12 - NSBA staff [testifies](#) before Senate Committee on Environment and Public Works
- Nov. 2 - NSBA president [briefs](#) Senators on tax reform
- Nov. 14 - NSBA president [testifies](#) before House Ways and Means Committee

## **NSBA Trustees Serve on Administration Councils**

- President Barack Obama appoints NSBA President Todd McCracken to the President's Advisory Committee on Trade Policy
- NSBA Trustee Les Bowen appointed to President's Export Council Subcommittee
- NSBA Past Chair Marilyn Landis continues on Small Business Regulatory Fairness Board

## **NSBA On The Record**

- January - NSBA submits [comments](#) on proposed ADA Web site proposal
- March - NSBA submits [amicus brief](#) to Supreme Court on patent infringement case
- April - NSBA files [amicus brief](#) with NLRB on confidentiality in witness statements
- May - NSBA submits [comments](#) on essential health benefits package
- June - NSBA submits [comments](#) on "free-rider" penalty under Affordable Care Act
- August - NSBA submits [comments](#) on NLRB proposed elections changes
- September - NSBA submits [comments](#) on DOL proposed "persuader" rules
- October - NSBA submits [comments](#) to the deficit reduction super committee
- October - NSBA submits [comments](#) on SEC retrospective regulations review
- October - NSBA submits [comments](#) on proposed health exchange regulations
- November - NSBA prepares Congressional [Briefing Book](#) outlining myriad ways lawmakers can help small businesses
- November - NSBA submits [comments](#) on proposed gift rule
- November - NSBA submits [comments](#) on international tax reform

While this abbreviated list gives you an idea of what NSBA has been up to in the last year, the full report will provide you critical details on these events and the influential role NSBA took. From our efforts on Capitol Hill to providing data and education on the small-business community in the media, NSBA has, and will continue to strive for excellence.

## Introduction

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As the nation's oldest small-business advocacy group, 2011 was a very busy year for NSBA with four of our top ten priority issues being either completely or partially addressed, NSBA leadership appearing before Congress 11 times, more than 3,000 mentions of NSBA in the media, and much more. Despite the downturned economy, these milestones were achieved by the dedication of NSBA's leadership and its active small-business members. The following report details NSBA's progress for 2011.

## NSBA Legislative and Regulatory Victories

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### 1099 Repeal

Following many months of intense efforts, the U.S. Senate and House of Representatives approved language to repeal the expanded 1099 reporting provision that was included as a pay-for in the *Patient Protection and Affordable Care Act* (PPACA). This egregious provision would have drastically expanded the number of companies on which small firms must file a 1099 report from 10 to 86 on average.

From the beginning, NSBA and its members were outspoken in their opposition to the expanded 1099 reporting requirement. Set to go into effect Jan. 1, 2012, the mandate would have required a 1099 form for all business transactions in excess of \$600 for goods and services with all vendors, regardless of size. This misguided proposal, in addition to dramatically increasing the paperwork required also would have seriously stifled business-to-business transactions, giving big-box retailers an inherent advantage as businesses would have looked to streamline, thus easing the burden of this reporting requirement.

Repeal of this potentially disastrous requirement eventually was supported by a diverse group of lawmakers and the administration. In fact, 1099 repeal came into the national spotlight in the 2011 State of the Union Address when President Barack Obama highlighted this provision as an “unnecessary bookkeeping burden” that needed to be corrected. [Click here](#) for more details.

### SBIR reauthorized

In December, Congress finally passed a long-term reauthorization for the Small Business Innovation Research (SBIR) program and the Small Business Technology Transfer (STTR) programs. One of NSBA's top ten priorities for the many years, passage of this compromise, although not perfect, ends a years-long quagmire over efforts to dramatically reshape the SBIR program and will infuse a much-needed level of stability for both the federal government and small business.

Passed as part of the *National Defense Authorization Act*, the SBIR/STTR compromise will: reauthorize the programs for six years; increase award sizes for SBIR; increase the total percentage of federal R&D dollars allocated to the SBIR program from 2.5 percent to 3.2 percent and the STTR program from .3 percent to .45 percent; and allow firms with majority venture capital backing to compete for up to 25 percent of SBIR funds at the National Institute of Health, the Department of Energy, and the National Science Foundation, and 15 percent for the other participating federal agencies.

Passage of the SBIR/STTR reauthorization was due to the diligence and perseverance of a handful of lawmakers and their staffs, and the ongoing efforts of NSBA, the Small Business Technology Council (SBTC)—the hi-tech arm of NSBA—and both organizations' very active members, along with various other small-business groups.

One of the most successful federal small-business programs, the SBIR program has provided more than 60,000 patents and now generates new patents at an astonishing pace—far more than all U.S. universities combined, at less than one-twelfth their level of federal R&D funding. For the past decade, about one-fourth of the most important technological innovations in the nation have come from the SBIR program. [Click here](#) for more details.

### **Three percent withholding repeal**

In November, Congress enacted legislation to repeal the NSBA-opposed three percent withholding mandate enacted as a pay-for in the *Tax Increase Prevention and Reconciliation Act of 2005*. Repeal of this unfair mandate had been a key priority for NSBA for some time and is something NSBA members worked hard to achieve. The three percent mandate exemplifies the problem posed by a lack of understanding of all ramifications—both direct and indirect—of a law or regulation before it is put into place.

The three percent withholding mandate would have required federal, state and local governments with expenditures of more than \$100 million to withhold three percent of payments for products and services—essentially forcing companies to provide the federal government with an interest-free loan. Because the three-percent withholding was based on the total cost of the contract, and not merely the profit of the contractor, small firms that do business with any level of government would have faced serious cash flow problems.

Following several delays to the original law, the repeal measure was passed with broad bipartisan support from Congress and the administration. [Click here](#) for more details.

### **Swipe Fee Reform Goes Into Effect**

Approved in 2010, swipe fee reform was enacted as part of the *2010 Restoring American Financial Stability Act*, directing the U.S. Federal Reserve to propose rules addressing the instability and lack of transparency and fairness surrounding swipe fees—the fees banks charge businesses every time a debit card is used by a customer. Those rules then were introduced in late 2010 and were set to go into effect July 21, 1011.

However, under great pressure from the banking community, legislation was introduced in the Senate to delay for one year the NSBA-supported swipe fee reform. NSBA and its members led the successful charge from the small-business community to ensure this rule was not delayed. The swipe fee reform rules went into effect as planned in July which now require that the charges assessed to small businesses for debit-card transactions are “reasonable and proportional” to the actual costs incurred by the issuer in processing the transaction. [Click here](#) for more details.

### **Dr. Winslow Sargeant Confirmed as Chief Counsel for Advocacy**

After more than a year of having his nomination stalled, Dr. Winslow Sargeant finally was confirmed in November by the U.S. Senate as Chief Counsel for the U.S. Small Business Administration (SBA) Office of Advocacy. Dr. Sargeant initially was nominated for the position in May of 2009, but his nomination stalled in the Senate. Then in August 2010, President Barack Obama made a recess appointment of Dr. Sargeant as Chief Counsel.

NSBA has been an ardent supporter of Dr. Sargeant as Chief Counsel and numerous times urged the Senate to approve the nomination. In addition, Dr. Sargeant’s nomination was supported by every living former chief counsel, including Jere Glover, who served for eight years in the position under former President Bill Clinton; Tom Sullivan, who served for the full tenure of former President George W. Bush; Thomas Kerester, who served from 1992-1993; and Frank Swain, who held the position during the administration of former President Ronald Regan.

Dr. Sargeant has been very engaged with NSBA and its members, attending several NSBA meetings and events. One of NSBA’s top ten priorities in the 112<sup>th</sup> Congress is to strengthen the Office of Advocacy, and Dr. Sargeant’s confirmation will do just that. [Click here](#) for more details.

### **On Bill Financing Pilot Program**

In early-November, Congress approved an appropriations “minibus” bill for FY 2012 that included language—the so-called Sanders Amendment—to set aside \$1,000,000 of non-disaster funds to the Economic Development Administration for an on-bill financing pilot program. On-bill financing (OBF) is a utility-based method for financing energy-efficiency improvements that requires no upfront capital from the small business.

OBF programs currently are only available in a handful of states. However, thanks to passage of the Sanders amendment, OBF programs could grow and begin offering affordable energy efficiency upgrades for small businesses across the country. The amendment was offered following a hearing during which NSBA provided testimony in support of OBF programs. [Click here](#) for more details.

### **Free Trade Agreements Approved**

On Oct. 21, President Barack Obama signed three Free Trade Agreements (FTAs) with Colombia, Korea and Panama after years of delays on the agreements which initially were negotiated by the administration of George W. Bush. One of the key hurdles has been reaching an agreement on renewing the Trade Adjustment Assistance (TAA) program, which was finally achieved earlier this year, prompting lawmakers to approve all three FTAs.

The Small Business Exporters Association (SBEA)—the international trade arm of NSBA—had been an outspoken proponent of passing the FTAs because enacting such trade agreements will make it easier for small- and mid-sized exporters to sell their products and services overseas. U.S. exporting has remained one of the few areas throughout the downturned economy that has maintained growth, and holds unlimited growth potential for America’s small businesses. [Click here](#) for more details.

### **NLRB Posting Requirement Delayed**

In late August, the National Labor Relations Board (NLRB) announced a delay to the implementation deadline for their new rule requiring employers to hang posters notifying employees of their right to unionize. The rule was set to take effect Nov. 14, but has been pushed back to Jan. 31, 2012 following an outcry from groups like NSBA and myriad small-business owners.

While not repealed in its entirety, NLRB recognized the need to give small-business owners additional time to become compliant. This new rule requires employees be notified of their right to unionize via an 11 by 17-inch poster posted in the workplace. Any company that falls under the National Labor Relations Act (NLRA), which is nearly every private company in the U.S. will be subject to this new requirement.

NSBA has continued to monitor overreaching labor policies and counts this small delay as a positive in finally getting some recognition from the NLRB of their burdensome requirements on small business. Although not a broad regulatory reform, as NSBA calls for in its top ten priorities, this recognition of the small-business burden is at least a step in the right direction. [Click here](#) for more details.

### **Failure of DOL Persuader Rule to Move Forward**

Another small, but potentially temporary, win for NSBA is the Department of Labor’s (DOL) lack of progress on their proposed “Persuader” Rules. Initially offered in July, DOL has proposed a rule that would require employers to disclose arrangements with consultants whether or not those consultants communicate directly with employees. Currently, there is an exemption that allows an employer to hire a consultant without reporting it if he/she is only giving “advice” to the employer, and not reaching out directly to employees. This rule narrows that exemption for employers.

Because small businesses rarely have attorneys or labor specialists on staff, they are most likely to seek outside consultants, forcing additional reporting uniquely on small businesses. NSBA submitted comments to DOL and urged them to withdraw the proposed rule entirely. Although that doesn’t seem to be the case, the fact that there has been no forward movement on the rule is a positive—if only temporary. [Click here](#) for more details.

### **Failure of E-Verify Legislation to Move Ahead**

Legislation was introduced in June that would require all U.S. businesses to verify the immigration status of all new hires using the E-verify system. That bill, the *Legal Workforce Act (H.R. 2885)*, is fatally flawed and would constitute a significant burden on small employers. The Government Accountability Office reports that the E-verify system is highly inaccurate with 0.7 percent of authorized workers initially being deemed unauthorized. That amounts to 28,000 to 35,000 workers every month who would be denied employment. Furthermore, businesses would be subject to civil fines up to \$25,000 and criminal penalties up to 10 years in prison and fines of \$15,000 per illegal immigrant for non-compliance.

NSBA has strongly opposed this legislation and continues to lobby aggressively against it. NSBA General Counsel David Burton participated in a briefing for Capitol Hill staffers and made significant strides in educating others about the problems with this bill. Despite it being approved by the House Judiciary Committee, NSBA was successful in holding off a floor vote in the House, and stalling any action whatsoever in the Senate on this legislation. [Click here](#) for more details.

### **Small Business Lending Initiatives**

NSBA has been one of the leading small-business groups calling for greater access to capital for America's small-business owners, and voted it an NSBA top ten priority for the 112<sup>th</sup> Congress. In addition to supporting lending programs such as the SBA 7(a) loan guarantee program, NSBA has called for eased lending regulations on small-business loans as well as temporary stopgap measures to try and assist small business as the U.S. economy slowly bounces back. Two such programs, the Small Business Lending Fund (SBLF) and the State Small Business Credit Initiative (SSBCI) both were approved in 2010 as part of the *Small Business Jobs Act*, however they went into effect and began funneling more capital toward America's small businesses in 2011.

#### *Small Business Lending Fund*

The SBLF distributed, in total, slightly more than \$4 billion to 332 community banks nationwide. Although a good deal lower than the \$30 billion authorized, it did drive more capital to banks that lend to small businesses which otherwise wouldn't have had that capital available.

#### *State Small Biz Credit Initiative*

In August, the U.S. Department of the Treasury (Treasury) announced funding disbursements under the SSBCI program to 11 states and the District of Columbia. In total, Treasury provided \$360 million in SSBCI funds, which was expected to support more than \$3.6 billion in new private lending. [Click here](#) for more details.

## **NSBA In The News**

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In 2011, NSBA was [mentioned](#) in the media more than 3,000 times on issues ranging from health care to taxes, and capital access to regulatory reform. Members of the NSBA board, staff and small-business members have been featured in a variety of stories on CBS Evening News, NBC Nightly News, CNBC, Fox News, Fox Business News, Bloomberg, the Wall Street Journal, Forbes, the Washington Post, BusinessWeek, the New York Times, Entrepreneur Magazine, CNNMoney, NPR, ABC and CBS Radio, USA Today, National Journal, Portfolio, Reuters, Politico, The Hill, all 41 Business Journals, and many more.

Responding to a spate of opinion pieces printed in various publications which were critical of the role small business plays in the U.S. economy, NSBA developed a commentary responding to those claims and refuting them with widely-accepted data. NSBA then was able to get the five other major, national small-business organizations to sign on and was successful in getting the [commentary](#) placed in the Washington Post.

Beyond the importance of getting NSBA's name out there, one media mention in 2011 held particular importance for America's small-business owners. NSBA Past Chair Marilyn Landis and NSBA member Kimberly Martinez were featured on [CBS Evening News](#) discussing the credit crunch. Martinez's line of credit had been dramatically reduced, putting her business in serious jeopardy. Following the CBS inquires of the bank in question and the ensuing report, that bank fully restored the line of credit, exemplifying the important role NSBA's communications can play.

NSBA conducts various [surveys](#) throughout the year, including our biannual Economic Reports which provide both a snapshot of how small-business is faring at a given time and trending data from as far back as 1993. These reports have garnered a great deal of [press](#) and also have been cited myriad times by lawmakers on Capitol Hill. NSBA conducted two focused surveys on: taxes and how the IRS impacts America's small businesses and energy use and efficiency. Finally, NSBA crafted a detailed report on clean energy entrepreneurs, "Profiling Energy Industry Entrepreneurs: What Can Be Done to Foster Clean Energy Entrepreneurship in a Time of Fiscal Restraint?"

## **NSBA Sponsored Events**

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NSBA has sponsored various events throughout 2011, from NSBA-hosted events to a series of Issue Briefings held on-line to broad, national events such as Small Business Saturday.

### **Issue Briefings**

In 2011, NSBA hosted four [Issue Briefing Teleconferences](#) where NSBA members and invited guests heard from experts on a number of critical issues. The first of these Issue Briefings was co-hosted with SBEA and focused on export controls. The guest speaker was Kevin Kurland, Director of the Office of Technology Evaluation (OTE) at the Department of Commerce Bureau of Industry and Security (BIS) who outlined efforts to reform the U.S. export controls systems to make it easier on small- and mid-sized exporters. The next Issue Briefing was held the day immediately following the 2011 State of the Union Address during which NSBA staff and leadership provided detailed analysis on the Address and highlighted the key portions pertaining to small business.

The third Issue Briefing focused on taxes and deficit reduction featuring guest speaker Marc Goldwein, the policy director and senior policy analyst at the Committee for a Responsible Federal Budget and the New America Foundation. Additionally, participants heard from leadership on NSBA's so-called "10 Commandments of Tax Reform." Finally, NSBA co-hosted an Issue Briefing with SBEA called "Exporting 101" where seasoned exporters provided expert advice and recommendations to nearly 100 people dialing-in to the call.

### **Small Business Congress**

Every two years, NSBA hosts the [Small Business Congress](#) which brings together small businesses from across the country at the beginning of each new Congress. In 2011, the Small Business Congress was held in Washington, D.C. in late-February. At this three day event, attendees networked with one another, discussed key small-business issues and heard from policy insiders. At the end of the event, following much discussion and debate, attendees voted on which issues would be the organization's Top Ten Priorities for the 112<sup>th</sup> Congress.

Among the guest speakers at the 2011 Small Business Congress: Dr. Len Nichols, Center for Health Policy and Ethics at George Mason University; Mr. Edmund Haislmaier, Heritage Foundation; Professor Jeremy Wiesen, New York University Stern School of Business; John Tozzi, Bloomberg BusinessWeek; Jon Traub, House Ways and Means Committee Majority Staff Director; John O'Neill, Legislative Aide to Sen. Ron Wyden (D-Ore.); Ginger Lew, Senior Advisor to the White House National Economic Council; and Former Chief Counsel for Advocacy Tom Sullivan.

### **Washington Presentation**

Each year, NSBA hosts its annual [lobbying days](#) in Washington, D.C. during which entrepreneurs from across the country heard from policy experts such as Jennifer Duffy of The Cook Political Report, elected officials and members of the administration on the key small-business issues. The opening event was the Advocate of the Year Luncheon during which Grafton H. "Cap" Willey of CBIZ Tofias in Providence, R.I. was named the 2011 Lewis Shattuck Small Business Advocate of the Year. Attendees then attended a high-level White House briefing.

During the second day, attendees headed to Capitol Hill for the annual Congressional Breakfast where various Members of Congress joined the group, including: Rep. Joe Walsh (R-Ill.), Rep. Rob Woodall (R-Ga.), Rep. Niki Tsongas (D-Mass.) and Rep. Steve King (R-Iowa). Afterward, the attendees met with their elected officials to urge their support of NSBA priorities.

### **Patent Forum**

In late-August, NSBA helped sponsor the [Forum](#) on the Overhaul of U.S. Patent Law in Washington, D.C. Attendees heard from experts in the patent system including Paul Michel, former Chief Judge of the U.S. Court of Appeals for the Federal Circuit, Dr. Pinchus Laufer from the U.S. Patent & Trademark Office and other high-level speakers. Although the NSBA-opposed patent reform law eventually was passed, this forum provided small-business owners useful insight into the new law and addressed regulatory changes, the prospects of U.S. Patent Office access to its user fees, and its ability to handle the increasing workload.

### **Small Business Saturday**

Now in its second year, NSBA signed on again as a sponsor of 2011 [Small Business Saturday](#), the Saturday after Thanksgiving where consumers are encouraged to shop at their local small businesses. The event was a huge success, according American Express, who launched the promotion last year. More than 2.7 million Facebook users "liked" the Small Business Saturday page, doubling the 1.2 million "likes" in 2010, bringing public awareness of Small Business Saturday to 65 percent from 37 percent in 2010. Fifteen-thousand small businesses signed up and received free Facebook advertising to promote their products and services in the run up to Small Business Saturday, and more than 500,000 small-business owners leveraged an online tool or promotional materials for Small Business Saturday.

### **National Small Business Week**

NSBA again served as a cosponsor of [National Small Business Week](#) this year in late-May. This year's events provided various educational and networking opportunities, and took time to recognize small-business leaders from across the country. NSBA held one of its' quarterly board meetings in conjunction with National Small Business Week, and as such our board members attended various events of National Small Business Week.

## **NSBA On The Hill**

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### **NSBA Leadership Testifies Before House Financial Services Committee**

On March 10, NSBA Treasurer David Ickert, of Air Tractor, Inc. in Olney, Texas and a former chair of SBEA [testified](#) before the House Financial Services Subcommittee on International Monetary Policy and Trade. The hearing highlighted how various companies of differing sizes have benefited from Ex-Im Bank's programs. The only small business represented on the panel, Ickert described how his company has benefitted from lending and insurance programs through Ex-Im Bank. He went on to emphasize the need for Congress to institutionalize Ex-Im Bank's current focus on small business to ensure it is always a focal point at Ex-Im Bank, regardless of who is at the helm.

### **NSBA President Attends Senate Press Event in Support of Swipe Fee Reform**

On March 10, NSBA President Todd McCracken [joined](#) Sen. Richard Durbin (D-Ill.) at the Capitol in support of swipe fee reform. McCracken and Durbin were joined by nearly 100 small-business owners as they urged Congress and the Federal Reserve to protect commonsense swipe fee reform enacted last year. The event was in support of previously-enacted legislation to rein-in the grossly unfair swipe fees charged by large, credit and debit card-issuing banks to firms that accept credit and debit cards as payment. McCracken stated that small businesses just want a level playing field. Small businesses have been at the mercy of large banks for years, and the swipe fee reforms merely inject fairness and transparency back into a market that has been dictated by a handful of companies for years.

### **NSBA Member Testifies Before the House Committee on Small Business**

On April 12, NSBA member Steven J. Strobel, Executive Vice President & Chief Financial Officer at BlueStar Energy Solutions, located in Chicago, [testified](#) on fundamental tax reform and the need to include small business as part of the debate. Strobel discussed the severe complexity of the tax code and underscored that small businesses are spending valuable time and financial resources on record-keeping and outside help to ensure compliance instead of using these resources to do what they do best: grow their business, create jobs, and stimulate the economy.

### **NSBA Chair Interviews IRS Deputy Commissioner**

On May 19, NSBA Chair Larry Nannis had the opportunity to [interview](#) Ruth Perez, the Internal Revenue Service (IRS) Deputy Commissioner for the Small Business Self-Employed Division about small-business taxes. Nannis posed questions about the role of her division, resources and information, and the time between when a new credit or deduction is enacted when IRS has information available.

### **NSBA Leadership Attends White House Meeting**

Also on May 19, a small group of NSBA leadership [met](#) with National Economic Council Director Gene Sperling at the White House. NSBA Chair Larry Nannis, Vice Chair Chris Holman, Vice Chair for Advocacy Jeff Van Winkle, past Chair Marilyn Landis, and President Todd McCracken met with Mr. Sperling and other Administration officials including NEC Chief of Staff Christine Koronides, and Jason Tepperman, Director of the Small Business Lending Fund at the Department of Treasury. The group discussed a range of key small-business issues including small-business credit and lending, tax reform, SBIR re-authorization and a White House Conference on Small Business.

### **NSBA Leadership Testifies Before Senate Banking, Housing and Urban Affairs Committee**

In June, David Ickert, NSBA treasurer and past chair of the SBEA [testified](#) before the Senate Banking, Housing and Urban Affairs Subcommittee on Security and International Trade and Finance. Ickert testified to the importance of Ex-Im Bank to small- and mid-sized exporters. He went on to praise Ex-Im Bank Chairman Fred P. Hochberg for his efforts to maintain focus on, and craft a long-term commitment to small business, but urged Congress to institutionalize the Ex-Im small-business commitment.

### **NSBA Member Testifies Before the House Committee on Small Business**

On Sept. 13, NSBA member Michael Frisbey, owner of Government Suppliers & Associates, of Knoxville, Tennessee, and Government Sewing & Apparel LLC, [testified](#) before the U.S. House Committee on Small Business, cautioning against proposed legislation that would create a contracting pilot program for medium-sized businesses. In his testimony, Frisbey noted that the small-business community would be better served by agencies concentrated on finding ways to expand contracting opportunities for small firms, than by the creation of a pilot program aimed at medium-sized firms.

### **NSBA Leadership Meets with Senate Finance Committee**

On September 15, a group of NSBA leadership were invited by the Senate Finance Committee to participate in a small roundtable along with handful of other small-business owners. The meeting was held exclusively for small-business owners to discuss tax reform, tax code barriers and tax-related challenges facing America's small-business community. Representing NSBA was: NSBA Chair Larry Nannis, NSBA Past Chair Raymond Arth, NSBA Treasurer David Ickert, NSBA Vice Chair for Communications Tim Reynolds, NSBA Past Chair Cap Willey, NSBA Trustee ML Mackey and NSBA Trustee Doyle Hayes.

### **NSBA President Briefs the Joint Economic Committee**

On Oct. 6, NSBA President Todd McCracken briefed the U.S. Congress Joint Economic Committee on the various tax proposals that will help America's small businesses. The briefing was led by JEC Chairman Sen. Bob Casey (D-Pa.) and focused on some of the various tax proposals aimed at spurring job creation and economic growth, specifically the payroll tax provisions included in the *American Jobs Act*. Throughout the briefing, McCracken reiterated that, while a payroll tax holiday will put cash back in the hands of struggling small-business owners and employees, Congress must seek bold, bipartisan actions to stem the driver of the lagging economy: uncertainty. McCracken went on to urge lawmakers to set their eyes on [comprehensive tax reform](#) as a long-term economic growth driver.

### **NSBA General Counsel Briefs Hill Staff on E-verify Bill**

In late-October, NSBA General Counsel David Burton participated in a briefing on Capitol Hill about immigration and various E-verify proposals. During the briefing Burton criticized the bill in question, the *Legal Workforce Act (H.R. 2885)*, as a nonstarter for small-business owners given the massive burden it would place upon them. Burton spoke candidly about the failures of the existing E-verify system and urged the other organizations and hill staffers in attendance to fully recognize the significant quagmire this bill would create when it comes to hiring.

### **NSBA Staff Testifies Before Senate Committee on Environment and Public Works**

On Oct. 12, NSBA Senior Director of Government Affairs Kyle W. Kempf [testified](#) before the U.S. Senate Committee on Environment and Public Works Subcommittee on Green Jobs and the New Economy. The hearing focused on on-bill financing where Kempf noted that most small-business owners lack the necessary money, time, and reliable information to invest in energy-efficiency upgrades and alternative-energy production, and that on-bill financing resolves each of these impediments. He also provided several real-world examples of small-business owners from around the U.S. who improved their energy efficiency, thereby improving their bottom line.

### **NSBA President Briefs Senators on Tax Reform**

On Nov. 2, NSBA President Todd McCracken joined Sens. Ron Wyden (D-Ore.) and Dan Coats (R-Ind.) at a briefing on tax reform. In his [remarks](#), McCracken urged lawmakers to embrace broad, bipartisan tax reform as a means to spur small-business growth. He stated that lawmakers would miss a huge opportunity if they move on corporate tax reform alone, as reforming the corporate tax structure does nothing for the overwhelming majority of small-businesses owners, 83 percent of whom pay taxes for their business at the personal income level. McCracken went on to highlight the more than 10,000 pages of laws and regulations that currently comprise the U.S. tax code which is becoming nearly impossible for the average small-business owner to navigate.

### **NSBA President Testifies Before House Ways and Means Committee**

On Nov. 14, NSBA President Todd McCracken [testified](#) before the House Ways and Means Subcommittee on Oversight on the small-business tax credit as passed under the PPACA. In his testimony, McCracken pointed to various problems with the tax credit, including its complexity, the fact that it is a temporary, nonrefundable credit and its exclusion of self-employed individuals. McCracken went on to underscore that this tax credit is neither the cure-all for small businesses' health insurance woes nor a replacement for good policies on cost-containment that can make health care more affordable in the long run.

## **NSBA Trustees Serve on Administration Councils**

### **NSBA President Appointed to President's Advisory Committee on Trade Policy**

In February, NSBA President Todd McCracken was appointed by President Barack Obama to the President's Advisory Committee on Trade Policy and Negotiations, which is tasked with providing policy advice on trade matters to the U.S. Trade Representative. McCracken has, and will continue to serve as NSBA President throughout his tenure on the Committee, and has worked to place greater priority on making exporting a more viable opportunity for the nation's millions of small businesses.

### **NSBA Trustee Appointed to President's Export Council Subcommittee**

In March, then-Commerce Secretary Gary Locke announced the appointment of NSBA board member Dr. Leslie "Les" Bowen to the President's Export Council Subcommittee on Export Administration. This committee will advise the Commerce Department on the administration's export control reform initiative. Bowen has been active on export issues with NSBA and the Smaller Business Association of New England—one of NSBA's regional affiliates—for many years, and has served as the Chair for the NSBA Economic Development Committee.

### **NSBA Past Chair Continues on Small Business Regulatory Fairness Board**

NSBA Past Chair Marilyn Landis is now serving her second of a three-year appointment to the U.S. Small Business Administration's (SBA) Region III Small Business Regulatory Fairness Board. The SBA boards provide independent advice and recommendations regarding issues of unfair and/or excessive regulatory enforcement on the small-business community. Landis was first appointed in June 2010.

## **NSBA On The Record**

In 2011, NSBA took a very proactive role in regulatory issues, proffering more than 12 formal comments and/or legal briefs on key issues facing small business. Consistently ranked among small-business owners' top concerns, NSBA made a concerted effort to push back against burdensome regulation wherever possible—another of NSBA's top ten priority issues.

### **NSBA Comments on Proposed ADA Web Site Proposal**

In late-January, NSBA [submitted comments](#) on a proposed rule from the U.S. Department of Justice in regard to the *Americans with Disabilities Act*. The proposal would require businesses to make their Web sites accessible to disabled people and identified a number of "barriers to accessibility" such as Web sites' ability to utilize: speech recognition software; font and size adjustments for visually impaired; screen readers; and excess time for timed responses. NSBA, while supportive of the intent of the of the proposal, raised concern in its comments that the proposal could result in an overwhelming mandate and impair existing Internet commerce.

### **NSBA Submits Amicus Brief to Supreme Court**

In March, NSBA submitted an [amicus brief](#) to the U.S. Supreme Court on the *i4i v. Microsoft* case involving patent infringement. The brief, prepared by Past Chair Keith Ashmus and his partners at his firm Frantz Ward, LLP in Cleveland, focused on the fact that the small company, *i4i* had created the technology in question prior to Microsoft implementing it in its Microsoft Word documents. Because *i4i* holds the patent, they took Microsoft to court and through the appeals process it ended up on the Supreme Court's docket. In June, the Supreme Court ruled in favor of *i4i*, marking a major win for all entrepreneurs, innovators and small businesses. Despite Microsoft's attorneys' argument that the standard of proof should be lower than what was applied by the lower court, the Supreme Court ultimately rejected Microsoft's argument and ruled in favor of *i4i*.

### **NSBA Files Amicus Brief with NLRB**

In early-April, NSBA filed an [amicus brief](#) with the National Labor Relations Board (NLRB) on the proper scope of an employer's duty to provide unions with "witness statements" obtained during an employer's own internal investigations into possible employee misconduct. The brief was developed by the NSBA Immediate Past Chair Keith Ashmus and his partners at Frantz Ward LLP, in Cleveland. In the brief, NSBA advocated that confidentiality is implicated in all witness statements, interview notes, and summaries, which should all be protected from disclosure.

### **NSBA Comments on Essential Health Benefits Package**

On May 18, NSBA [submitted comments](#) to the Institute of Medicine of the National Academies with regards to the essential health benefits package required by PPACA. In those comments, NSBA highlighted concerns from the small-business community with respect to the impact essential health benefits could have on the affordability of health insurance.

### **NSBA Comments on "Free-Rider" Penalty of PPACA**

On June 17, NSBA [filed comments](#) with the Internal Revenue Service regarding the so-called "free-rider" provision which would penalize businesses with more than 50 employees if their employees receive public subsidies for the cost of their health insurance. In the comments, NSBA highlighted the complexity of the mandate which would require smaller businesses to continuously monitor and calculate whether or not they are considered a large business under the new law and thus subject to the free-rider provision. It also could have the negative affect of stifling job growth for those businesses near the 50-employee threshold. NSBA urged regulators to include some kind of "good faith effort" clause for those employers who inadvertently miscalculated employee size under the complex guidelines.

### **NSBA Comments on NLRB Proposed Elections Changes**

On Aug. 22, NSBA [submitted comments](#) in opposition to the National Labor Relations Board (NLRB) proposed rule that would dramatically change the elections process and dramatically tilt the elections process against small-business owners in favor of large, organized labor. In its comments, NSBA highlighted concerns with the limited timing provided to small businesses within which they had to comment on the rule as well as their failure to conduct an Initial Regulatory Flexibility Analysis. NSBA raised concern with rule's effort to expedite the elections process from a median time of 38 days to as little as 10 days in certain cases and the required disclosure of business and personal e-mail addresses and phone numbers of employees, as well as the optional deferrals of pre-election hearings.

### **NSBA Comments on DOL Proposed Persuader Rules**

In late-September, NSBA [submitted comments](#) to DOL on a proposed rule that would dramatically narrow the "advice" exemption to the employer reporting obligations under the *Labor-Management Reporting and Disclosure Act of 1959 (LMRDA)*. The underlying reporting obligations often are referred to as the "persuader" rule or the persuader reporting obligations. In its comments, NSBA focused on the fact that the new law upends a half century of settled law, imposes substantially higher costs than the DOL claims, harms employers' right to secure advice, violates attorney-client privilege and lacks an adequate evidentiary basis.

### **NSBA Submits Comments on SEC Retrospective Regulations Review**

On Oct. 6, NSBA [submitted comments](#) to the Securities and Exchange Commission (SEC) which requested comments on existing regulations to determine which should be modified, streamlined, expanded or repealed. NSBA recommended factors to be used for determining which regulations should be reviewed, and suggested the SEC survey all public companies, particularly small capitalization companies to address the astonishing lack of data regarding the securities law's regulatory burden on small businesses and the basic economic structure of small capitalization public firms.

### **NSBA Submits a Statement in Support of Dynamic Scoring**

Oct. 7, NSBA filed a [statement](#) with the U.S. House of Representatives Ways and Means Committee in support of using dynamic scoring—the most economically accurate method of scoring of tax bills. In its statement, NSBA stated that the use of dynamic scoring will make it easier to achieve fundamental tax reform and enables policy-makers to adopt better, more informed policies.

### **NSBA Submits Comments to the Deficit Reduction Super Committee**

On Oct. 25, NSBA sent detailed [comments](#) to the Joint Select Committee on Deficit Reduction outlining the key elements critical to the growth and survival of America's small businesses. In its comments, NSBA highlighted the following key issues as critical to small business: reduce federal spending substantially; Reform entitlement programs (especially Medicare and Medicaid); reform the tax system to promote economic growth; do not raise marginal tax rates or the cost of capital; reduce the regulatory burden and cap the regulatory costs imposed on businesses; contain health care costs by introducing proper incentives and by tort reform; improve small-business access to capital; make smart investments in infrastructure, and reduce restrictions on domestic energy development.

### **NSBA Submits Comments on Proposed Health Exchange Regulations**

In late-October, NSBA [submitted comments](#) to the Centers for Medicare and Medicaid Services (CMS) on their proposal for the establishment of health exchanges under PPACA. In the CMS proposal, which NSBA by-and-large found acceptable, there were a few issues of concern, namely concern over the immigration status check methodology that will be employed by the exchanges, and the need for clarification that employers who offer coverage to their employees through the exchanges will be responsible for choosing which plans they offer.

### **NSBA Prepares Congressional Briefing Book**

In November, NSBA compiled a detailed [briefing book](#) for Members of Congress and Republican presidential candidates, highlighting the key issues facing small business and making recommendations to address those issues. The briefing book consists of detailed issue papers, recent and trending data on the small-business community and a variety of supplemental documents on small business. In total, the briefing book offers 48 specific recommendations to policymakers on how they can better foster small-business growth, and thus greater job creation and economic recovery.

### **NSBA Submits Comments on Proposed Gift Rule**

In mid-November, NSBA filed [comments](#) regarding an Office of Government Ethics proposed rule limiting gifts from registered lobbyists and lobbying organizations. Of particular concern is a proposal that will make it highly unlikely that government officials will attend meetings with ordinary business people to exchange views because it would force them to pay for conference fees and meals in order to be able to attend. The rule exempts some of the biggest lobbying organizations in America simply because they are set up as a 501 (c)3 vs. NSBA which is a 501(c) 6.

### **NSBA Submits Comments on International Tax Reform**

On Nov. 15, NSBA [submitted comments](#) to the House Ways and Means Committee on the International Tax Reform Discussion Draft released on Oct. 26, 2011. In its comments, NSBA noted that most small businesses are pass-through entities and the corporate tax rate is not a major concern. NSBA cautioned that financing the corporate tax rate reduction and the move to a territorial tax system should not be financed by repealing adequate capital cost recovery allowances, small-business expensing and LIFO inventory accounting. Repealing these provisions would dramatically raise taxes on small businesses yet they would not generally benefit from the corporate tax rate reduction. NSBA also highlighted much simpler ways to move to a territorial system such as the Fair Tax.

## **Conclusion**

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Small employers comprise 99.7 percent of all employer firms and one in two people 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 year, there has been unprecedented attention to the plight of small business due to the difficult economic situation, and we have achieved some very notable wins.

Still, more must be done to help foster small businesses historic role of job creation and economic recovery as the economy slowly gains traction. 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 as Congress prepares for the 2012 elections, NSBA will continue to push for this kind of progress.

*If you would like to help support NSBA's efforts, please [click here](#) to get involved*