

SBA News and Views is a monthly publication of the SBA Wisconsin District Office. Its purpose is to provide Wisconsin lenders and small business leaders with up-to-date information on SBA programs and small business issues. It is distributed at no cost, and the reprinting of articles is encouraged

Serving America's Small Businesses

U.S. Small Business
Administration
Wisconsin District Office

Eric Ness, District Director
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A Valentine to Wisconsin's Small Businesses

Wisconsin loves small business. The Office of Advocacy of the U.S. Small Business Administration is sending them this Valentine with the reasons why.

1. The latest figures show that small businesses create 60 to 80% of America's net new jobs.
2. There are approximately 18,100 minority-owned businesses and 104,200 women-owned businesses in Wisconsin, and almost all of them are small businesses.
3. Wisconsin saw an estimated 13,371 new small employers start up in the last year measured.
4. Small businesses are 97% of America's exporters and produce 28.6% of all export value.
5. Home-based businesses account for 52% of all small businesses.
6. Small businesses employ 53.9% of Wisconsin's non-farm private sector workers.
7. The 447,200 small businesses in Wisconsin are located in every community and neighborhood.
8. Small patenting firms produce thirteen times more patents per employee than large patenting firms do.
9. Small businesses create more than 50% of America's private non-farm gross domestic product (GDP).
10. Small businesses make up 98.0% of all Wisconsin employers.

Issues with Franchise, Dealer, License, Jobber or related Agreements- Gas Stations & Minimarts

SBA has determined that an increasing number of franchise, dealer, license, jobber, and related agreements (including grantor deeds and deeds of trust) between major oil companies or jobbers and applicant businesses for the operation of gas stations and mini-marts contain provisions that do not comply with SBA eligibility and/or credit requirements.

Size/Affiliation Issues with Gas Stations and Mini-marts

When an applicant business operates a gas station and/or mini-mart under a franchise, dealer, license, jobber or related agreement with a major oil company or jobber, and the major oil company or jobber that issued the agreement is not listed on the *Franchise Registry* (www.franchiseregistry.com), SBA employees, Lenders and CDCs must review the agreement in order to determine if it contains any conditions that would create affiliation between the two parties. (Currently, there are no major oil companies or jobbers listed on the *Franchise Registry*.)

13 CFR §121.103(i) of SBA's Size Standard Regulations outlines how an applicant business operating under a franchise, dealer, license, jobber or related agreement from another business may be affiliated with that business and may be ineligible.

This regulation says:

(i) Affiliation based on franchise and license agreements - - - *The restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however, through other means, such as common ownership, common management, or excessive restrictions upon the sale of the franchise interest.*

Appendix 3(e) of SOP 70 50 (3), the SOP covering *Legal Responsibilities*, gives guidance on the types of conditions which may be found in a franchise, dealer, license, jobber, or related agreements that are not acceptable to SBA and which, if present, should be reviewed for a determination of eligibility. (Found at www.sba.gov/aboutsba/sbaprogram/s/elending, and then click on "Regulations and SOPs" that will take you to a listing of SOPs).

Past SBA reviews of certain franchise, dealer, license, jobber, and related agreements between major oil companies or jobbers and applicant businesses operating gas stations and/or mini-marts have identified certain covenants that have resulted in a finding of ineligibility due to size/affiliation issues. The following are examples (though not a complete listing) of unacceptable conditions appearing in these agreements:

- A condition that gives the franchisor the absolute discretion to approve a transfer of the agreement.
- A condition where the franchisee could not transfer its interest in the franchise without the prior written consent of the franchisor, which could be withheld by the franchisor for any reason in the franchisor's sole subjective judgment.

- A condition where the franchisor had the ability to choose counsel for the franchisee's defense of legal disputes.
- A condition prohibiting the franchisee from transferring or assigning its rights under the agreement.

Lenders and CDCs can inquire about the availability of information regarding eligibility concerns surrounding a particular franchise, dealer, license, jobber or related agreement by sending an e-mail to franchise@sba.gov.

Credit Issues with Gas Stations and Mini-marts

As a reminder, SBA previously issued Information Notice 5000-987 entitled *Deed Restrictions Pertaining to Gas Stations*. (Available at www.sba.gov/aboutsba/sbaprogram/s/elending, then click on "Notices," then click on FY 2006). In the Notice, SBA stated that deed restrictions imposed by major oil companies regarding the brand of service station that may be operated on the real estate being sold to, or owned by, the applicant business are not acceptable to SBA because they severely compromise the marketability of the business real estate collateral that would be securing the SBA-guaranteed loan.

Similarly, other provisions found in agreements with or deeds from major oil companies or jobbers have been found by SBA to be unacceptable as they have a significant impact on the value and marketability of the business real estate collateral, specifically:

- "Repurchase Options" which allow a major oil company or jobber to repurchase the applicant's primary business asset (e.g., real estate) due to a violation of any condition, covenant or restriction in any agreement between the oil company or jobber and the applicant business. (Please note that "Rights of First Refusal," which allow an oil company or jobber to match future third party offers for the purchase of the gas station, are generally acceptable to SBA.)

- Covenants running with the land that require current and future owners to indemnify a major oil company for environmental contamination. In the event participant lenders, CDCs or the SBA were to foreclose upon the real estate or accept a deed in lieu, they could be required to indemnify a major oil company for environmental contamination.

Subordination of these unacceptable provisions is insufficient to overcome the credit concerns.

Any questions regarding this Notice should be referred to Steve Olear at stephen.olear@sba.gov in the Office of General Counsel.

SBA Participates in Military TAP Session



On February 5, 2008, SBA's Lead BDS Jim Simelton and BDS Joseph Rosner (Wisconsin's SBA Veteran liaison) participated in a Transition Assistance Program (TAP) session at Ft. McCoy.

TAP is a nationally coordinated federal effort to assist military men and women to ease the transition to civilian life through employment and job training assistance.

Jim and Joe presented SBA's programs and services for Veterans at the session.

On February 7, Joe also staffed a booth at a Veteran's Job Fair/Benefits Event at the VFW Burns Post 388 in Wausau explaining SBA's programs and services available to Veterans.

Proposed SBA '09 Budget

On February 4, President Bush announced a proposed FY 2009 budget for the U.S. Small Business Administration that increases small business lending capacity by 37%, increases funding for SBA's ongoing operational reforms and supports a steady staff of more than 2,100 full-time employees.

The President proposes \$657 million in new budget authority for SBA in FY 2009, a 15.5% increase over the FY 2008 enacted level and a 6% increase in core operating budget over FY 2008. Including anticipated carryover funds for disaster lending and other revenues, the total spending package for the year would be \$819 million.

That budget level provides funding for more than \$1 billion in loans in the agency's improved disaster assistance program, which underwent major changes since the 2005 Gulf Coast hurricanes. As a result, SBA eliminated a backlog of more than 100,000 Katrina loan applications and put more than \$6 billion into the hands of disaster victims rebuilding their lives and communities along the Gulf.

"This is a fiscally responsible budget proposal which supports SBA's mission to foster small business growth and assist home and business owners affected by a major disaster," said SBA Administrator Steve Preston. "The increased lending capacity will also allow us to provide more capital to small business, enhancing our ability to boost the economy.

"In addition, this proposal enables us to build on initiatives to improve operational efficiency, further strengthen our disaster assistance program and increase outreach to underserved markets in inner cities and rural communities. We also

have several initiatives planned to improve federal contract opportunities, and training and counseling to women, veteran, and minority entrepreneurs, which advances this budget proposal.

"We are enthusiastic about the year ahead and look forward to working with our congressional oversight committees throughout the budget process to ensure America's small businesses have SBA resources to enable their success."

The budget would authorize more than \$28 billion in its primary small business financing programs, including a level of \$17.5 billion for the 7(a) Guaranteed Loan program, \$7.5 billion for the Certified Development Company, or 504, loan program, and \$3 billion for venture capital support under the Small Business Investment Company program.

The agency also proposes a zero-subsidy Microloan program, allowing the agency to greatly expand its support to Microlenders across the country. In FY 2007, it cost the government more than 85 cents for each dollar loaned to a Microloan intermediary. This high cost limits the number of intermediaries that can be supported under the program, ultimately limiting the impact of the program itself. By raising the very preferential rate at which intermediaries borrow from as low as 2% below the five-year Treasury rate to 1.3% above the FY 2009 five-year Treasury rate, the agency can eliminate the subsidy cost of this program and greatly expand funding for Microloan intermediaries.

SBA would also discontinue technical assistance funding for Microlenders, and work with existing technical assistance providers, including the agency's Small Business Development

Centers, SCORE counselors, and Women's Business Centers, to arrange technical help for Microloan clients.

On the technical assistance side, the budget requests more than \$87 million for Small Business Development Centers, almost \$12 million for grants to Women's Business Centers and nearly \$5 million for SCORE.

The proposed FY 2009 Budget also supports:

- Continued investment in employees through the successful "SBA University" training program, mentoring programs, succession planning, and proactive recruitment of highly qualified staff.
- Continued modernization of the loan management and accounting system.
- Assisting federal agencies as they target a total of \$85 billion in prime federal contracting dollars to be awarded to small businesses in FY 2009;
- \$250,000 for a competitive grant program to support innovative entrepreneurial development in inner-city and rural geographies;
- Management of *Business Gateway* to provide a single site resource connecting government to small businesses and entrepreneurs, and;
- Strengthening and upgrading the agency's information technology infrastructure to provide an effective, secure, and highly available information system.

[Link to WI SBA January 2008 Loan Approvals](#)

**SBA January
2008 Micro-Loan Approvals**

WWBIC - 8 Loans for \$164,393

FREE 2008 IRS Tax Calendar



The 2008 IRS Tax Calendar for Small Businesses and the Self-Employed (Pub 1518 and Pub 1518SP, Catalog 12350Z) is a ready resource to help small business owners meet their tax obligations. The 36 page, 12-month wall calendar, available in English (www.irs.gov/pub/irs-pdf/p1518.pdf) and Spanish (www.irs.gov/pub/irs-pdf/p1518sp.pdf), is chock full of useful information on general business taxes, electronic filing and paying options, retirement plans, business publications and forms, common tax filing dates, and much more.

Each page highlights different tax issues and tips that may be relevant to small business owners, with room on each month to add notes, state tax dates, or business appointments. As an added feature for 2008, you can now import the tax calendar into Microsoft Outlook and iCal.

For an online version of the tax calendar, visit www.IRS.gov, key-word: tax calendar or go to www.irs.gov/businesses/small/article/0,,id=176080,00.html. Copies of the tax calendar can also be ordered online at www.irs.gov/businesses/small/article/0,,id=101169,00.html or by calling the National Distribution Center at (800) 829-3676.

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SBA Partners with Minority Business Roundtable

The U.S. Small Business Administration moved to broaden its outreach to minority entrepreneurs by signing a partnership with the Minority Business RoundTable (MBRT).

The strategic alliance is part of SBA Administrator Steve Preston's ongoing effort to support small business development initiatives in underserved communities. It will allow the organizations to share resources and educate minority entrepreneurs on how to use SBA products and services to establish and grow their businesses.

"Minority businesses are one of the fastest growing sectors in the small business community, so it is imperative we reach out and educate them on SBA's products and services," SBA Administrator Steve Preston said. "MBRT is a national membership organization for minority CEOs that serves as a unified voice for minority businesses. By working together, we can help more of these businesses succeed and stimulate economic growth in their communities and the nation's economy."

"There are over 5 million minority businesses employing millions of Americans that create businesses and jobs in the U.S. economy," said Roger A. Campos, MBRT President & CEO. "MBRT is pleased to partner with SBA to deliver valuable services and products to help build the capacity of this rapidly expanding economic force."

The SBA and MBRT alliance is intended to strengthen and expand small business development across the nation for minority entrepreneurs. SBA will provide MBRT with timely information on the agencies programs, services and resource partners, and advise them on events that will impact their mission.

As part of the resource pooling, MBRT will cooperate with SBA and its resource partners to provide information to members about its business development programs and services, and share current SBA news and information.

The two-year agreement is a renewal of the partnership between the SBA and MBRT and was implemented on February 2, 2008.

Editor's Notes

LENDER INFO

One of SBA's goals is to increase the number of loans in the Underserved Markets. The Underserved Markets are those that are in a HUBZone or LMI (low to moderate-income) area.

HUBZone, Historically Underutilized Business zone, is any census tract in the United States or territories where the average income of the persons living in that census tract is less than 80% of the state or territory's average wage, or the personnel in that census tract have an average unemployment rate of 140% or greater than the unemployment rate of the state or territory.

To determine if a location (residence or business) is in a HUBZone, the SBA web site has a feature to make this determination. You can find it at <http://map.sba.gov/hubzone/init.asp#address>.

For this reason, it is very important that every approved loan has a physical address entered on the application or placed in the on-line application. If the address used is not correct, the SBA will have to contact the lender to correct the problem. Please help us by entering the complete physical address initially.

Thank you in advance for your cooperation in this matter.

TRAINING CALENDAR

Be sure to visit <http://web.sba.gov/calendar/public/index.cfm?op=group&grp=73> for business training opportunities offered by SBA, SCORE, Small Business Development Centers, Women Business Centers, WWBIC, MATC Procurement Center, and Wisconsin Procurement Institute.