



# *SBLC WEEKLY*

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## ***CHIEF COUNSEL FOR ADVOCACY***

In the mid-1970's, at the behest of the small business community, Congress created a government funded "lobbyist" for small business – the Chief Counsel for Advocacy. The first Chief Counsel, whose appointment requires Senate confirmation, was Milton D. Stewart. The Office of Advocacy, which is housed within the Small Business Administration, conducts research, administers the Regulatory Flexibility Act and its offspring, and generally advocates on behalf of the small business community before Congress and federal agencies.

President Obama has announced his intention to nominate Winslow Sargeant as the next Chief Counsel. Mr. Sargeant has been a Managing Director in the technology practice at Venture Investors since 2006. From 2001 to 2005, he was the program manager for the Small Business Innovations Research (SBIR) Program in Electronics, a new office in the National Science Foundation's (NSF) Engineering Directorate. Previously, Sargeant co-founded Aanetcom, a fabless semiconductor chip startup company with seed funding from Cisco systems which was acquired

by PMC-Sierra. Prior to Aanetcom, he held senior engineering positions at Lucent, AT&T Bell Labs and IBM. He is a member of the Advisory Board of NSF's Industrial Innovation and Partnership Division (NSF/SBIR).

I do not know the nominee. I look forward to meeting him and working with him on behalf of small business. The Chief Counsel is an important partner for SBLC. SBLC has enjoyed a close working relationship with all of the Chief Counsels from Milt Stewart (who was instrumental in founding SBLC in the mid 1970's and my own 31 year career as a small business advocate) to the most recent one, Tom Sullivan, who attended every SBLC annual meeting during his tenure.

## ***HEALTH CARE MONTH(S)***

They didn't pass a resolution calling June "National Health Care Reform Month," but Congress might as well have as at least some of them will spend a lot of time on the topic in June. SBLC, along with some of our colleagues, met with House Majority Leader Steny Hoyer (D-MD), before Memorial Day as a prelude to the House efforts.

A lot of eyes will be on the Senate Finance Committee's efforts to mark up a bill this month. While there are hundreds of issues, the three marquee issues are whether the government will offer a "public option" for obtaining health care benefits, whether there will be mandates for individuals and/or employers to participate and some determination of the fate of the current exclusion from income of employees for the value of health care benefits received through their employers.

My bet is we will see a public option, or more accurately some mechanism that will allow a public option to kick in if a system that remains based on obtaining coverage through private insurers does not work. The argument in opposition to a public option is that it will eventually crowd out the private plans and lead us to a single government brand of health care.

On the subject of mandates, I think they are coming. It probably will be something like Massachusetts that requires individual participation (subsidization for those who cannot afford it) and play or pay participation for employers above a certain size. I have no sense of what "certain size" would be.

On the employee exclusion issue the talk is a cap on the amount of the exclusion. Is it a good deal for small business? On one hand it amounts to cost control and a benefit leveler. On the other hand, it still leaves small business in the health care administration business, still competing to provide benefits against bigger companies who can still get more for their buck (even with pooling opportunities to be provided for small businesses under the likely proposals, small business will never level the playing field) and it leaves unions still in the health care benefit negotiating business. Would we be better off eliminating the exclusion? In such scenarios, some sort of deduction would be provided to individuals so the self-employed would still have some assistance (and we could boost those), and small business gets out of the co-pay and deductibles decision business. If wages go up a bit, they are still deductible to the company just like the health care benefit is and would wages rise to the level of the cost of providing health care now? At the end of day why do small businesses want to provide health care benefits to employees? It is an attractive benefit for the employee - excluded from income tax and FICA taxes. The employer gets a break from its share of FICA that it would not get if it paid a comparable amount in wages, but is 7.15 percent worth the hassles? Otherwise, whether the employer pays more in wages or provides health care benefits should not make a difference. Would small businesses still say they want to provide health care benefits, if the big businesses' employees didn't get the exclusion either? The debate is probably a moot point, since it is highly unlikely the exclusion will be eliminated; unions will never let it go.

### ***SHORT TERM LOANS***

On June 15, 2009, the Small Business Administration (SBA) will open up a new temporary loan program. America's Recovery Capital (ARC) loans of up to \$35,000 can be used to make payments of principal and interest, in full or in part, on one or more existing, qualifying small business loans for up to six months. According to the SBA, "These loans allow borrowers to redirect cash flow from making loan payments to investing in their businesses, to help sustain the business and retain jobs. For example, making loan payments on existing loans with proceeds from an ARC loan can allow a business to focus more funds on core operations, such as buying inventory or making payroll."

Your small business must be an established business, have financial statements demonstrating it was profitable in one of the past three years, and be able to project sufficient cash flow to meet current and future loan payments over a two-year period from loan approval. Examples of qualifying existing loans for which the ARC loans can be used to provide some short-term relief include credit card obligations for your business, capital leases, notes payable to vendors/suppliers, Development Company Loan Program (504) first lien loans, other loans to small businesses made without an SBA guaranty, and loans made by or with an SBA guaranty on or after February 17, 2009.

ARC loans are interest-free to the borrower, carry a 100 percent guaranty from the SBA to the lender, and require no fees paid to SBA. Loan proceeds are provided over a six-month period, and repayment of the ARC loan

principal is deferred for 12 months after the last disbursement of the proceeds. Repayment can extend up to five years.

The first step is for you to contact your current lender. ARC loans are made by commercial lenders who are SBA program participants. Non-SBA lenders can become SBA participants by working with their nearest SBA district office. For more information go to <http://www.sba.gov/recovery/arcloanprogram/index.html>.

### ***GIFT CARDS, GIFT CERTIFICATES AND GENERAL USE PRE-PAID CARDS***

Last month, I wrote about the pending credit card legislation. It has since gone on to become law (May 22, 2009, Public Law 111-24, the Credit Card Accountability, Responsibility, and Disclosure Act). I found out it has one interesting section for the retailers among us.

The new law prohibits the imposition a dormancy fee, an inactivity charge or fee, or a service fee with respect to a gift certificate, store gift card, or general-use prepaid card unless certain disclosures are made. The new law also makes it "unlawful" for any person to sell or issue a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date. However, a gift certificate, store gift card, or general-use prepaid card may contain an expiration date if the expiration date is not earlier than 5 years after the date on which the gift certificate was issued, or the date on which card funds were last loaded to a store gift card or general-use prepaid card; and the terms of expiration are clearly and conspicuously stated.