The Truth Behind the Small Business Jobs Act

President Barack Obama signs the Small Business Jobs Act on Sept. 27.

By Melissa Sayer

On Sept. 27, President Barack Obama signed the Small Business Jobs Act of 2010. Many had high hopes that the Act would result in dramatic changes to the increasingly bleak landscape for small businesses. According to the president, "[This Act] is important because small businesses produce most of the new jobs in this country.... They are part of the promise of America — the idea that if you've got a dream and you're willing to work hard, you can succeed." According to Congress, the Act is intended to promote job growth, provide access to capital, encourage investment, promote entrepreneurship and provide tax relief for small businesses. In looking at select provisions of the Act, it is apparent that it does increase access to capital and provide badly needed tax relief, but several of the provisions are so short-lived that many businesses will be unable to take advantage of the benefits.

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For example, the capital gains rules regarding sales of qualified small business stock were amended to exclude 100 percent of the gain from the sale of certain small business stock, provided the stock was acquired after Sept. 27, 2010, *but before Jan. 1, 2011* and held for at least five years. In order to receive this benefit, you need to have purchased the qualifying stock between Sep. 27 and Dec. 31. The holding period for avoiding built-in capital gains tax following conversion of a C corporation to an S corporation is temporarily reduced from 10 years to five years under certain circumstances, provided the fifth year in the holding period *is before the 2011 tax year.* Because the timeframe for application is so limited, the provision does not allow for advance tax planning. But it does provide a benefit for corporations wanting to sell assets in 2011 if such assets were held for more than five years after the S election was effective.

In 2008 and 2009, Congress temporarily allowed businesses to accelerate depreciation of certain "qualified property" placed in service to allow for a first year deduction equal to 50 percent of the adjusted basis of the property. The Act preserved the 50 percent accelerated depreciation for property placed in service during 2010 (with some exceptions). In an effort to provide more deductions to small businesses, business owners are now permitted to deduct health insurance costs when calculating self-employment tax for 2010. However, this provision only applies for the first taxable year after Dec. 31, 2009. In addition to deductions for health care, the Act increases the allowable Section 179 expense write-off for certain "qualified property" used in the business to $500,000 for the 2010 and 2011 tax years and now expands the definition of "qualified property" to include certain real property up to $250,000.

The Act also provides increased access to capital. Lending limits on Small Business Administration (SBA) loans have been extended to $5 million for 7(a) loans, $5.5 million for 504 loans and $50,000 for microloans. The Act also creates the State Small Business Credit Initiative, which provides for $1.5 billion in state grants to support small business lending programs. In addition, the Act authorizes the creation of a $30 billion small business lending fund to provide the Treasury with the ability to purchase certain equity and debt instruments from eligible financial institutions with assets of less than $10 billion. The lending fund contains performance based incentives designed to ensure that benefited banks lend to small businesses.

Other provisions provide tax benefits with fewer restrictions. For the taxable year beginning in 2010, allowable deductions for start-up expenditures are increased from $5,000 to $10,000. Eligible businesses are now permitted to carryback general business credits for five years (instead of one year) and all types of general business credits can be used to offset Alternative Minimum Tax. Certain penalties and reporting requirements were changed in an effort to promote small business fairness. An amendment to Section 6707A of the Internal Revenue Code (IRC) changes the penalty for failure to properly disclose certain reportable transactions on a tax return to be proportionate to underlying tax savings such that the penalty is now equal to 75 percent of the tax benefit received. The penalty is subject to minimum and maximum amounts. Cell phones were removed from the definition of "listed property," greatly simplifying deduction requirements for cell phone costs. In an effort to create parity among various government contracting programs, all contracting programs are now considered equal and one contracting program can no longer be given priority over another. Various programs such as Disabled Veterans, Women-Owned Businesses, or HUBZone 8(a) are now given equal priority when competing for federal contracts.

There are also provisions in the Act intended to "reduce the tax gap" for small businesses but are essentially revenue generating provisions. For example, the Act increases penalties for failure to timely file information returns that are required under IRC Section 6721. The minimum penalty for corporations is $10,000 and $5,000 for individuals. The Act also revises the penalties under Section 6722 of the IRC for failure to provide correct payee statements to taxpayers. In addition, select rules regarding the right to issue levies for federal tax liabilities owed by certain federal contractors have been revised. The Internal Revenue Service is no longer required to give a collection due process hearing to a federal contractor before it can issue a levy on certain "specified payments," such as government payments, to a federal contractor who owes taxes.

While the Act was intended to provide badly needed relief to small businesses, many of the provisions are short-lived while others are actually designed to generate revenue rather than benefit small businesses. And the unfortunate truth is that many businesses will not have the opportunity to take advantage of the Act's benefits before they expire.

Setting the Pace for the Future

By Sarah Bennington, Jessica Glynn, Colin McGrath, Emmanuelle Soichet, Jeffrey Wachs, and Christina Zabat-Fran

Well before the UC Irvine School of Law opened its doors last fall, the founding faculty's mantra was that the school must be "traditional enough to be credible, but innovative enough to justify our existence." Following their lead, the inaugural class has applied this ideology to its undertakings, from founding student organizations to actively pursuing pro bono work as 1Ls. Establishing the "UC Irvine Law Review" has been no different.

While eager to develop a credible academic journal, the first class was also enthusiastic about the opportunity to build a law review from the ground up and to consider — and reconsider — the standard assumptions about law review success. Between the hurdles often required for admission to membership and their byzantine procedures, law reviews are steeped in tradition. But tradition for the sake of tradition was not good enough. At every step, we have asked ourselves "why?" and forced each other to justify our decisions in creating an editorial process and making stylistic and content choices.

The inaugural issue is the product of an evolving process, "organic" and "democratic" became the recurring themes of the first year. Nearly the entire inaugural class of 60 students expressed interest in founding a law review. Although still adjusting to the demands of law school, we laid the foundation for the journal in the second semester of our first year with the goal of publishing during our second year. We benefited from the foresight of our faculty, who committed to create a series of symposia that would generate the content for the first volume. Within a matter of weeks, nearly a dozen preliminary committees (design, editorial, governance, training, and so on) were formed to gather research, present options to the group, and make decisions regarding the inaugural issue.

Seeking to create leadership roles for all committed members, while recognizing that we were new to the editing process, we created a system where nearly every member would oversee an article in the first volume. We settled on an unconventional and egalitarian structure, creating small, fixed editing teams with leadership duties rotating within the team for each article in the first volume. The membership also elected a six-member governing board free of individual titles or other hierarchy to oversee the initial set-up and administration.

With democracy comes debate, big and small. One of our first decisions was which citation manual to adopt — the venerated *"Bluebook"* or the upstart *"ALWD"* (Association of Legal Writing Directors). Surprisingly, this issue sparked ardent debate. An exploratory committee was formed and presented its findings. Comments and dissents were voiced and votes were taken. Although the stodgy *Bluebook* won the day, none present could claim that the process that took us there was unconsidered.

Dean Erwin Chemerinsky suggested that our inaugural issue focus on innovations in legal education in general and the UC Irvine School of Law in particular, with faculty and students contributing non-traditional essays and perspectives. The issue would be a reflection on both the founding of the school and the reality of putting innovative doctrinal principles into practice; it would also be an ideal opportunity for the law review membership to learn the inner workings of a scholarly journal within the safe space of our own faculty. Our authors exhibited remarkable commitment, and at times patience, by allowing us to learn by doing and using their work to hone our skills in editing, source collecting, and the many fine points of *Bluebook*-ing.

With one issue almost finished, several structural challenges still remain unresolved: When accountability is based solely on mutual dependence, what happens when that's not enough to motivate less committed staff members? When everyone is equal, how do you elevate or acknowledge those who go above and beyond? At what point does inclusivity and democracy get in the way of efficiency and decision-making?

So, then — which way did we go? Trail-blazing or conventional? It's too soon to tell. One single issue and its individual voices can hardly be taken as proof of institutional identity, and the membership and structure is still in a state of development. But it's clear that the dedication and entrepreneurial spirit of the founding members has set the pace for the future. We have the rare opportunity to build a law review from scratch, and as we define and refine our processes and procedures over the months and years to come, we hope to continue to be traditional enough to be credible, but innovative enough to justify our existence.

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The editors of the UC Irvine Law Review confer, from left, Colin McGrath, Christina Zabat-Fran, Jessica Glynn, Jeffrey Wachs, Sarah Bennington, Emmanuelle Soichet.