

Briefing Report

**Civil Rights Issues
Regarding Barriers to
Entrepreneurship in Ohio**

A Report of the
Ohio State Advisory Committee to the
U.S. Commission on Civil Rights

January 2015

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State Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission on civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing on any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

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**Ohio Advisory Committee to the
U.S. Commission on Civil Rights**

The Ohio Advisory Committee to the U.S. Commission on Civil Rights submits this report on the civil rights issues regarding barriers to entrepreneurship in Ohio as part of its responsibility to study and report on civil rights issues in Ohio. This report of the Ohio Advisory Committee derived out of the economic recession that impacted Ohio and the nation in 2007. The Committee drafted the report as a committee and voted to approve the report on August 27, 2013.

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TABLE OF CONTENTS

Introduction.....	1
Education	3
Entrepreneurial Education	3
General Education.....	4
Set-Aside Programs	7
Set Aside Programs as a Means to Overcome Barriers	9
Lack of Notice and Access to Business Opportunities	10
Challenges Arising Post-Contract Creation	12
Lack of Financial Capital, Education, and Experience.....	13
Continued Support for Set-Aside Programming.....	14
Access to Capital.....	17
Regulation Barriers to Entrepreneurship in Ohio	21
Discrimination as a Barrier to Minority Entrepreneurship in Ohio	25
Discrimination Not a Significant Barrier to Entrepreneurship in Ohio	25
Discrimination Not a Significant Barrier to Entrepreneurship in Ohio: Conclusion and Observations	27
Discrimination May be a Significant Barrier to Entrepreneurship in Ohio	28
Disparate Impact as it Relates Generally to Business.....	28
Public Sector and Private Sector Requirements.....	30
Educational Barriers to Business	32
Access to Funding as a Barrier to Business	34
Conclusions and Observations Regarding Discrimination as a Barrier to Minority Entrepreneurship.....	36
Final Conclusions and Recommendations	37
The Importance of Small Businesses	37
Education	37
Barriers to Successful Bidding.....	38
Access to Capital.....	39
Regulation Barriers to Entrepreneurship in Ohio	41

Discrimination as a Barrier to Minority Entrepreneurship in Ohio	42
APPENDIX.....	0
Additional Comments by OH SAC Members	0
Hal R. Arkes.....	0
Mark Strasser, Subodh Chandra, Diane Citrino, Catherine Crosby, and Robert Salem.....	0
Diane Citrino.....	1
Dilip Doshi.....	1
Dave Tryon	1
Addendum:.....	2
Sharon Davies	2

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Introduction

On April 4, 2012 the Ohio Advisory Committee to the United States Commission on Civil Rights held a hearing on *Civil Rights Issues Regarding Barriers to Entrepreneurship in Ohio* at Wilmington College in Wilmington, Ohio. The Committee received testimony from several witnesses about the obstacles to entrepreneurship faced by several groups, including military veterans, rural residents, and ethnic minorities. Following these hearings, members of the Committee were asked to serve on a subcommittee to draft a report summarizing the testimony at the hearing and making recommendations. Each volunteer drafted a segment of the report which was reviewed and received comments from the other subcommittee members. This introduction as well as a conclusions and recommendations section were drafted and reviewed by the subcommittee. The report was then reviewed by the entire Committee. As indicated in the conclusions and recommendations section, many recommendations were supported by all members of the Committee, but on some issues there was disagreement.

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Education

Entrepreneurial Education

Several of the speakers who gave testimony at the April 4, 2012 meeting at Wilmington College mentioned the importance of education in fostering successful entrepreneurship. For example, Mr. Rea Waldon¹, Mr. Sean Rugless², Mr. John Marrocco³, and Mr. Jose Rafi Rodriguez⁴ all emphasized this point. In addition, Ms. Ariana Ulloa-Olavarrieta⁵ mentioned the importance of mentors who could provide guidance to nascent entrepreneurs. Finally, Mr. Mark Rembert⁶ mentioned the positive feedback he received with regard to entrepreneurship training programs.

Given the apparent importance of such education, one question to be addressed is whether there is a sufficient supply of such programs to meet the demand. Ms. Ariana Ulloa-Olavarrieta, Director of the Development Center at the Columbus State University stated that the personnel needed to do this type of training in the Columbus area were woefully inadequate to meet the need.⁷ Mr. Rembert testified that the Small Business Development Center was an hour away from Wilmington and thus inconvenient for many people in Clinton County.⁸ However some non-government and government agencies have attempted to meet the demand. The former category includes the Entrepreneurship Center run by the Urban League of Greater Cleveland. This organization oversees a “boot camp” for entrepreneurs that attracts 40 people per month.⁹ Ms. Eleanor Stocks reported on the educational efforts of the Greater Dayton African American Chamber of Commerce Service Center. Mr. Rodriguez mentioned the Ohio Hispanic Chamber of Commerce, which has partnered with the City of Dayton to provide education on how potential entrepreneurs might get State of Ohio and federal certification.

Within the category of governmental programs, Mr. Gregorich reported on the District 4 Ohio Small Business Development Center at Wright State University.¹⁰ There are 42 such centers

¹ Rea Waldon, testimony before the Ohio Advisory Committee to the U.S. Commission on Civil Rights, meeting, Wilmington, OH, April 4, 2012, transcript, p. 72 (hereafter cited as Meeting Transcript).

² Rugless Testimony, Meeting Transcript, p. 98.

³ Marocco Testimony, Meeting Transcript, pp. 100-101.

⁴ Rodriguez Testimony, Meeting Transcript, p. 106.

⁵ Ulloa-Olavarrieta Testimony, Meeting Transcript, pp. 113-117.

⁶ Rembert Testimony, Meeting Transcript, pp. 181-182.

⁷ Ulloa-Olavarrieta Testimony, Meeting Transcript, p. 114.

⁸ Rembert Testimony, Meeting Transcript, p. 181.

⁹ Smith, R. L. (2012, June 3). “Re-energized urban league pursues new civil rights strategy: entrepreneurship.” *The Plain Dealer*. http://www.cleveland.com/business/index.ssf/2012/06/a_re-energized_urban_league_fi.html (last accessed June 12, 2012).

¹⁰ Gregorich Testimony, Meeting Transcript, p. 29-38.

throughout the State of Ohio. We also heard testimony concerning the Ohio Minority Business Advisory Council, the aforementioned Development Center at Columbus State, the Small Business Administration Center in Dayton, and the Office of Business Assistance at the Ohio Department of Development. Some of these offices have many responsibilities other than education, however.

There also exist governmental programs whose goals are not educational in the narrow sense but which do provide assistance to entrepreneurs who need information about how to comply with regulations and paperwork demands. For example, the Ohio Department of Development has 10 regional Procurement Technical Assistance Centers in addition to their main office in Columbus.¹¹ Other important topics which entrepreneurial education might cover include sources of capital, state and federal certification requirements, and budgeting.

The government and non-government programs represent a good attempt to provide education to potential entrepreneurs. However other outlets exist, ones which might not be fully utilized at the present time. For example, SCORE (www.score.org) is an organization with 364 chapters which collectively provide 13,000 mentors to entrepreneurs. There are currently 11 chapters in Ohio covering all of the major cities in the state. Their services are cost-free, thanks in part to a cooperative agreement with the Small Business Administration. SCORE has programs for many different constituencies including veterans, a group which Mr. Gregorich testified would greatly benefit from entrepreneurial education.¹² They also have programs designed specifically for rural entrepreneurs, a group which Mr. Rembert testified was in dire need of entrepreneurial education.¹³

General Education

Ms. Sharon Smith testified that more than entrepreneurial education was needed in order to further economic growth among all members of the Ohio citizenry.¹⁴ She pointed out that many of the primary and secondary schools in Ohio are not providing the general educational tools that would enable Ohioans to perform adequately in our economy. Among the nations ranked by the Organization for Economic Cooperation and Development in 2010, the United States ranks 14th in reading, 25th in mathematics, and 17th in science among the 470,000 15-year olds tested¹⁵ (these data do not include scores from non-industrialized countries, some of whom rank higher than does the U.S.). In a global economy such a mediocre ranking does not bode well for

¹¹ Smith Testimony, Meeting Transcript, pp. 193-201.

¹² Gregorich Testimony, Meeting Transcript, p. 33.

¹³ Rembert Testimony, Meeting Transcript, p. 180.

¹⁴ Smith Testimony, Meeting Transcript, p. 194-195.

¹⁵ Shepherd, J. "World education rankings: Which country does best at reading, maths, and science?" *The Guardian*. <http://www.guardian.co.uk/news/datablog/2010/dec/07/world-education-rankings-maths-science-reading> (last accessed Dec. 7, 2010).

Ohioans whose reading, mathematics, and science education are sub-optimal. It may be beyond the scope of this Advisory Committee to make recommendations concerning the US educational system, but Ms. Smith's testimony suggests that attention needs to be given to improvements to general education as well as entrepreneurial education.

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Set-Aside Programs

This section of the report discusses set-aside and/or diversity inclusion programs. It is important to provide a definition of such programs, review case law that has challenged the programs over the years and provide a discussion of the importance of such programs, particularly to the success of minority and women-owned businesses. Set-aside and diversity and inclusion programs are designed to provide certain advantages to small, minority, female, and other disadvantaged businesses to ensure these businesses receive a fair proportion of contracts awarded by public and private entities. In order to qualify for such programs, companies must prove their eligibility by providing documentation to allow the certifying agent to determine certain criteria are met. Ms. Ariana Ulloa-Olavarrieta, Director of the Latino Small Business Development Center at the Columbus State University, encourages clients to pursue certification before it is actually needed because of the amount of time it takes to complete the process.¹⁶ She further adds, “If you’re lucky enough to get into Honda, Nationwide, P&G, Macy’s, you have to have certification.”¹⁷ While fulfilling these requirements may be laborious, these programs can prove to be beneficial to small, minority, female, and disadvantaged businesses in the long run. Mrs. Hope Cooper, owner of Weaver Janitorial Services, commented that through the advice of her attorney, they became certified with a number of government entities. Ms. Cooper stated, “As you can see, we did our homework and it paid off. We got jobs from ODOT. We worked for the National Weather Service. We also worked for the Ohio State University for seven years.”¹⁸

Many jurisdictions now have diversity inclusion programs, rather than set-aside programs, which encourage minority and female business participation in contract awards. As a result of the *City of Richmond v. J.A. Croson Co.*¹⁹ decision, government entities are now required to conduct a disparity study in order to justify a need for diversity programs that set goals to benefit minority owned businesses.²⁰ In the *Croson* decision, the Supreme Court determined that strict scrutiny was the appropriate standard of judicial review for minority-owned business enterprise (MBE) programs.²¹ This standard means that a race-conscious program must be based on a compelling governmental interest as well as be narrowly-tailored to achieve its objectives. “This standard

¹⁶ Ulloa-Olavarrieta Testimony, Meeting Transcript, p. 130.

¹⁷ *Ibid.*

¹⁸ Cooper Testimony, Meeting Transcript, p. 20.

¹⁹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

²⁰ *Id.* at 499-506.

²¹ *Id.* at 493.

requires a firm evidentiary basis for concluding that the underutilization of minorities is a product of past discrimination.”²²

In evaluating gender-based classifications, the Court has previously used what some call ‘intermediate scrutiny,’ a less rigid standard of review than the ‘strict scrutiny’ standard applied to race-based classifications.²³ Intermediate scrutiny requires that classifying persons on the basis of sex “must carry the burden of showing an exceedingly persuasive justification for the classification.”²⁴ The classification meets this burden “only by showing at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.”²⁵

Public entities have a duty to ensure that public dollars benefit all citizens equally and without prejudice. The Court in *Croson* identified two necessary factors for establishing racial discrimination in order to demonstrate a compelling governmental interest when forming an MBE program. First, there needs to be identified discrimination in the relevant market.²⁶ Second, ‘the governmental actor enacting the set-aside program must have somehow perpetuated the discrimination to be remedied by the program,’²⁷ either actively or at least passively with ‘the infusion of tax dollars into a discriminatory industry’.²⁸ As a matter of fact, in *Croson*, the Supreme Court stated, “It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that *public* dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of *private* prejudice.”²⁹ The Court alluded to the notion that government ‘can use its spending powers to remedy private discrimination’.³⁰

The City of Dayton recently completed a disparity study in 2008 that showed the city was a passive participant in discriminating against minority and female-owned businesses. As a result, the city revised and enacted the Procurement Enhancement Program (PEP) setting aspirational goals for minority and female-owned business contracting. As Marci Wright, supervisor of

²²“A Second-Generation Disparity Study for the City of Dayton, Ohio: Final Report” MGT of America Inc., Tallahassee, Fla. Aug. 8, 2008 at 223 (citing *City of Richmond v. J.A. Croson Co.*, 488 U.S. at 493), <http://www.cityofdayton.org/departments/hrc/Documents/disparitystudyreport.pdf>.

²³ *Id.* (quoting *Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1982) (quoting *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981)); see also *United States v. Virginia*, 518 U. S. 515, 531 (1996), *Nguyen v. U.S.*, 533 U.S. 53, 60 (2001).

²⁴ *Id.*

²⁵ *Id.* (quoting *Mississippi University for Women*, *supra*, at 724 (quoting *Wengler v. Druggists Mutual Insurance Company*, 446 U.S. 142, 150 (1980)); see also *Virginia*, *supra*, at 533, *Nguyen*, *supra*, at 60).

²⁶ *Id.* at 26 (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. at 492, 509-10).

²⁷ *Id.* (quoting *Coral Construction v. King County*, 941 F.2d at 922).

²⁸ *City of Richmond v. J.A. Croson Co.*, 488 U.S. at 492.

²⁹ *Id.*

³⁰ *Id.*

contract compliance with the City of Dayton Human Relations Council (HRC), indicated in her testimony:

I often remind our teams and partners that we are in the public sector and the money that the city spends in procurement construction goods and services is the people's money. This requires we spend it in a way that is reflective of the values of the people we serve.³¹

Set Aside Programs as a Means to Overcome Barriers

The State of Ohio understands the barriers faced by minority-owned businesses and seeks to eliminate those barriers by creating set-aside programs that have a goal of 15% contracting to minority and disadvantaged businesses.³² Furthermore, the state has established the Minority Business Advisory Council to continue to promote policies and build a framework for discussions about how to improve minority business owners' potential for success, and to undertake a collaborative effort with the minority business community to develop strategies that will encourage stability and prosperity for minority-owned businesses.³³

The testimony presented during the fact finding session further elaborates on the barriers that exist for minority and women-owned businesses. While the barriers presented may be applicable to many businesses, the testimony suggests that they disproportionately impact minority businesses and prevent minority firms' participation in the contracting process. Terms like "good old boy network", "shut-out", and "favoritism" were mentioned frequently. Mr. Rafi Rodriguez, president of Rodriguez Financial Strategies, described civil rights issues that included what some refer to as the "good old boy" network. He discussed challenges faced with not having long standing childhood relationships such as attending the same high school, playing on the same youth sports teams or coming from the same community. He stated:

I feel that it's under the rug. It does not come directly. What I sense in a conversation for years was more anecdotal. If you do business and go through regulations there is no reason they want to turn down. Everything has been equal. Financial planning with a different firm or my firm, everything as being equal, I'm going against the good old boy network that they've known each other from childhood, that's my challenge.³⁴

³¹ Wright Testimony, Meeting Transcript, p. 142.

³² Perkins, Olivera. "Ohio Wants to Increase Number of Contracts Awarded to Minority-Owned Businesses." *The Plain Dealer*, http://www.cleveland.com/business/index.ssf/2013/02/ohio_seeking_to_increase_the_n.html. (last accessed Feb. 25, 2013).

³³ See powerpoint at: https://development.ohio.gov/bs/bs_ombacouncil.htm.

³⁴ Rodriguez Testimony, Meeting Transcript, p. 136.

Mr. Rodriguez stated he was told one time, “Oh, you have an accent. You come into battle with two strikes against you.”³⁵

Lack of Notice and Access to Business Opportunities

To add to the challenges faced by not having access to the appropriate networks, minority owners claimed that information regarding contracts is not disseminated effectively and that they are not notified of bid opportunities. Minorities do not always have the established business contacts or relationships with key persons or organizations necessary to promote his or her business. Furthermore, he or she claim that prime contractors frequently do not provide them with timely information about contracting opportunities. They are left out of the information flow whether inadvertently or by design. When they do get information, it is sometimes so late that they are unable to prepare an adequate proposal. As a result, M/WBEs cannot prepare bid documents to the level of expertise required to secure the contract. This leads to contractors using subcontractors that they have always used or requesting a waiver of the participation goal. Mr. Troutman added:

They have a term called best effort to include, but the term can be as loosely [applied] as someone just calling and asking us if we would like to bid. We don’t get notices of who won the bid or anything — suggesting that the “good old boy network” prevails.

Mr. Troutman contended that “there is no real enforcement to include minorities in this practice.”³⁶

Panelists also cited stringent certification and multiple certifications as barriers, however, it was also stated that without these programs there is no guarantee that minority and women owned businesses would receive a fair proportion of contracts awarded by public and private entities. While this barrier appears to be a double edged sword, the ability to compete among peers for contracting opportunities far exceeds the amount of time a contractor has to dedicate to completing certification applications. Kenneth Troutman, VP of Troutman Construction Companies stated, “We actually have nine different certifications, so, you know, I think any certification that can help us get in the door is greatly appreciated.” He further adds:

If it does not have a MBE or some type of certification requirement we get no phone calls. We’ve never worked on a union job that had no MBE or FBE requirements, period. Not once. That doesn’t sound right.³⁷

Mr. Bob Cooper, Owner of Weaver Janitorial commented:

³⁵ Ibid.

³⁶ Troutman Testimony, Meeting Transcript, p. 41.

³⁷ Ibid., p. 58.

And the other thing is we've never bid on a bid that was not a minority set-aside, almost never, because there wasn't — I can't imagine what you are going through, there was no sense in bidding on it because you were just so out gunned. When we were doing well the state, ODOT Garage, Ohio State University, and National Weather Service came into town, and, you know, we were eligible, you know, DHL — DHL never returned my phone calls.”³⁸

The State of Ohio, the City of Dayton and other jurisdictions are working to streamline the certification process in order to create one stop shops where businesses can submit one application for multiple certification programs in order to reduce the amount of time small businesses must commit to the certification process.

Mr. Troutman contended that there should be more enforcement embedded in the process for pass through companies. He further added:

Pass through companies do nothing but sit at the table and push paperwork. They become, in every sense, part of this “good old boys network” that shuts everyone else out for a small percentage. We need stricter monitoring standards to identify suspicious activities to ensure companies participating in the programs are eligible.”³⁹

Tes Tech, Inc. is an example of a pass through situation. In a *Dayton Daily News* article, published October 22, 2011, it was reported that the company was being investigated on allegations that it was owned by a wealthy company who received millions of dollars in awards as a result of being certified in multiple programs designed for disadvantaged businesses. The article further adds comments from state and federal elected officials stating that “the government needs to do everything possible to prevent and detect fraud in set-aside programs.”⁴⁰

In order for certification and inclusion programs to be effective, there must be consistent monitoring by public and private entities. This cost, in most cases, is built into the programs when they are established. For public entities, it is in the public interest to ensure that tax dollars spent on contracting and procurement opportunities benefit the entire community. For private entities, it's the cost of being socially responsible. Contracting and procurement opportunities have a direct impact on the ability of companies to create and retain jobs. Minority owned businesses increase the opportunity for a more diverse workforce, which is desperately needed. Sean Rugless provided JobsOhio as an example.⁴¹ JobsOhio focuses on nine categories and

³⁸ Cooper Testimony, Meeting Transcript, p. 58.

³⁹ Troutman Testimony, Meeting Transcript, p. 42.

⁴⁰ Hulsey, Lynn and Tom Beyerlein. “TesTech Investigations Expanding.” *Dayton Daily News*. <http://www.daytondailynews.com/news/news/testech-investigations-expanding-1/nMwmC/>. (last accessed Oct. 22, 2011).

⁴¹ Rugless Testimony, Meeting Transcript, p. 65.

indicated that the categories are misaligned with availability of minority businesses. He specifically noted manufacturing as an industry where there are not minority businesses. Mr. Rugless further stated there is a need to increase the scale of existing businesses or introduce new categories. He added, by not having a very strong pipeline of minority and women-owned businesses in the State of Ohio, it makes the state less competitive. Mr. Rugless further added, the unemployment rate for minorities is three times that of majority population. He further stated that not having a very strong pipeline of minority and women owned businesses in the State of Ohio not only makes Ohio less competitive but hinders job creation and retention efforts needed to create an economic strategy to reverse the high rate of unemployment in minority communities in a slow economy.⁴² Dr. Rea Waldon, senior vice president for economic empowerment and entrepreneurship at the Cincinnati Urban League, suggested that if corporations aren't driving opportunities in areas where there are available minority businesses, they don't get those opportunities in those categories where they have the capacity to grow. She stated, "To identify those new construction related opportunities that they can grow under would certainly help."⁴³

Challenges Arising Post-Contract Creation

Another challenge also arises after a contract is awarded. Marci Wright, supervisor of contract compliance with the City of Dayton Human Relations Council (HRC), described a situation where a trucking company that won a \$12,000 sub-contract only received \$4,000 from the prime contractor.⁴⁴ All too often, situations occur where prime contractors win bids based on their participation and the sub-contractor does not receive the full amount of the sub-contract by the end of the project. Appropriate monitoring will further ensure that certified minority and women-owned businesses are not only awarded a fair proportion of contracting opportunities, but that they actually complete the work and are paid the full amount of the contract. Ms. Wright added, the HRC has the ability to investigate and to hold prime contractors accountable indicating that it is better to know while it is happening rather than after the job is done because it is difficult to recreate dollars. She further indicated that the HRC addresses the pass through issue that Mr. Troutman discussed by determining whether or not the truck with a magnetic sign really belongs to the prime or the sub-contractor and whether or not the person driving is an employee of the prime contractor or the sub-contractor. Ms. Wright also discussed the City's efforts to create a centralized process for goods and services opportunities to work closely with the people who make buying decisions to ensure equity in the process. Without strict monitoring and enforcement in place there is a risk that minority and women-owned businesses will see an even greater reduction in the proportion of contracts from the public sector.

⁴² Ibid., p. 61.

⁴³ Waldon Testimony, Meeting Transcript, p. 75.

⁴⁴ Wright Testimony, Meeting Transcript, p. 149-150.

Bundling was also mentioned as a barrier for minority and women-owned businesses. Mrs. Hope Cooper, owner of Weaver Janitorial Services, spoke to how public entities, in an attempt to save money, consolidated work into one bid instead of breaking it up to allow small businesses the opportunity to bid. She stated that these bids could be in the millions and require bond for the work.⁴⁵ Bob Cooper from Weaver Janitorial Service stated:

Even the state has turned around — when you bid on this package, this time you bid on four buildings at one time. That is not helping the person just starting out. They told me they didn't want to mess with that paperwork, they wanted one person to answer to, one company to write a check to . . . but that leaves you out.⁴⁶

The end result of bundling often precludes small business participation at the prime contractor level and generally provides for awards to a fewer number of contractors. Even with relaxed qualification requirements for certified companies minority and women-owned firms can't measure up on these larger “bundled” government contracts. Oftentimes minority and women-owned businesses are disproportionately impacted. Dr. Waldon added, “Larger corporations are trying to shrink their supplier base. They want somebody who can service them across the country. Typically, that does not work for a small business.”⁴⁷ Many jurisdictions will review contracting and procurement trends to determine areas where there are opportunities for participation. Intentional efforts to identify opportunities for participation will ensure fair and equitable processes for engaging minority and women-owned businesses.

Lack of Financial Capital, Education, and Experience

Lack of financial capital and difficulty obtaining bonding and insurance was also discussed as a barrier. Traditionally minorities have lower incomes, fewer assets, and diminished access to business loans. Small businesses, particularly M/WBEs, often lack sufficient funds to undertake medium to large-scale projects. Any possibility of discrimination in the lending process poses additional hurdles for M/WBEs to receive sufficient capital. Without these elements, it is difficult for M/WBEs to provide sufficient collateral to support a business loan. M/WBEs claim that limited access to capital and bonding sources is a significant barrier to their development, often citing instances of risking their own credit or personal savings.⁴⁸ With limited operating funds and small staff, some M/WBEs cannot adequately prepare bids, carry payroll, or purchase equipment as work progresses. Prime contractors may consider this a weakness and avoid choosing that firm as a subcontractor. In addition, to be successful, firms must have sufficient

⁴⁵ Hope Cooper Testimony, Meeting Transcript, p. 22.

⁴⁶ Bob Cooper Testimony, Meeting Transcript, p. 27.

⁴⁷ Waldon Testimony, Meeting Transcript, p. 75.

⁴⁸ Meeting Transcript, pp. 40, 48-51, 171-72.

bonding to bid for a contract. Particularly for newly established firms, it is hard to get funding from financial institutions for start-up capital or money to meet bonding requirements.

Sharon Smith, interim director of the Office of Business Assistance with the Ohio Department of Development, discussed inadequate education as the beginning of the barriers minority business owners face. In her testimony, Ms. Smith stated that many of the schools minority business owners attended, dating back to their elementary schools, are located in minority communities that are traditionally underfunded. They have a poor track record of retaining good teachers, high dropout rates, and graduates are ill-prepared for employment, much less entrepreneurship, which contributes to the poverty cycle. Poor education limits minority economic success. Many minority businesses are first generation entrepreneurs that have few options for funding their business. Ms. Smith stated the root cause of this educational disparity may be found in looking at the country's history of discrimination and neglect in the minority community.⁴⁹

Testimony also included M/WBE owners claim that majority contractors and vendors hold prejudicial views that M/WBEs in general are not fully capable of completing a project. Not only are these views demeaning, but M/WBE owners are also faced with the additional hurdle of having to prove their capability to handle a particular job. Alphonso Cornejo of Greater Cincinnati Hispanic Chamber of Commerce stated, "This resentment and hate create an environment in which you don't feel welcome. They (Hispanics) have opportunity to grow, however they don't. If you have a fear of being deported, of being harassed, or ridiculed, just an environment is not healthy."⁵⁰

Continued Support for Set-Aside Programming

While inclusion programs can involve lengthy processes to provide eligibility, panelists supported the need for such programs in the future. Concerns and comments in the testimony support that their effectiveness depends on how vigorously they are pursued and enforced, the ability of businesses to access capital, the best faith efforts of prime contractors and agencies to preserve small business opportunities, the consequences that follow unlawful practices, and most importantly, the belief that W/MBEs have a place at the table and are capable of performing. As one business owner, Mr. Cooper (Weaver Janitorial Services) contended: "We must identify or shape [gender] specific programs and create a welcoming environment for more minority businesses."⁵¹ Effectively monitoring these programs and the appropriate use of citizen taxes include ensuring that equal opportunity exists for all. Government entities should take advantage of technology and other cost effective strategies to ensure an inclusive environment exists for anyone interested in doing business.

⁴⁹ Smith Testimony, Meeting Transcript, p. 195.

⁵⁰ Cornejo Testimony, Meeting Transcript, p. 69.

⁵¹ Cooper Testimony, Meeting Transcript, p. 28.

A review of the *Civil Rights Issues Regarding Barriers to Entrepreneurship in Ohio* transcripts suggests that inclusion programs have been pivotal in the success and survival of minority and small businesses. Companies attribute their success and ability to obtain government contract to becoming a certified W/MBE. Testimony indicates that there is no guarantee that minority/small companies are included or are successfully winning bids in the absence of MBE or certification requirements. Marci Wright quoted John F. Kennedy, stating: “There are risks and costs to a program of action. They are, however, far less than the long range risks and costs of comfortable inaction.”

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Access to Capital

Nearly all the witnesses at our hearing mentioned access to capital as a problem for their businesses.⁵² Alfonso Cornejo, president of the Greater Cincinnati Hispanic Chamber of Commerce, testified to the difficulty of small business people in finding loans. He said that in many cases “a small loan, a \$5,000 loan . . . would be a huge difference.”⁵³ Several witnesses mentioned the difficulty or impossibility of providing the capital necessary for a bond required to bid on many jobs.⁵⁴

Several witnesses mentioned that many small businesses cannot borrow from banks because they have not developed the credit score that banks require. Marci Wright testified that “The credit score for many of the small companies and small business owners that I deal with is a complete mystery. They don’t know how to get it, how to have any effect on it.”⁵⁵ Ariana Ulloa-Olavarrieta, director of the Development Center at Columbus State University in Columbus, stated that “local bankers’ requirements are stringent; very few can qualify.”⁵⁶

Dr. Rea Waldon, senior vice president and president for economic empowerment and entrepreneurship of the Cincinnati Urban League also noted this problem.⁵⁷ She acknowledged, however, that this “is not the banks’ fault.”⁵⁸ Rather, it is a result of the caution that banks are required to exercise when lending money. Sharon Smith of the Office of Business Assistance of the Ohio Department of Development agreed with the proposition that over-regulation of banks is one of the biggest problems for small business owners seeking loans.⁵⁹

John Marrocco, senior vice president for Business and Banking of the Fifth Third Bank, testified that any problems faced by minority-owned businesses are not the result of discrimination because banks are not permitted to make distinctions based on “ethnicity, gender [or] address.”⁶⁰ The problem is that banks now “have too many deposits” and that the reason for their reluctance to lend is “not a shortage of capital [and] not a shortage of desire to lend money”, but rather

⁵²Meeting Transcript, pp. 121, 135, 171, 199.

⁵³ Cornejo Testimony, Meeting Transcript, p. 70.

⁵⁴Meeting Transcript, pp. 22, 48-49, 120, 171.

⁵⁵ Wright Testimony, Meeting Transcript, p. 172.

⁵⁶ Ulloa-Olavarrieta Testimony, Meeting Transcript, p. 115. *See also* Waldon, Testimony, Meeting Transcript, p. 87; Rugless Testimony, Meeting Transcript, p. 89; Cornejo Testimony, Meeting Transcript, p. 100; Stocks Testimony, Meeting Transcript, p. 136.

⁵⁷ Waldon Testimony, Meeting Transcript, p. 74.

⁵⁸ *Ibid.*

⁵⁹ Smith Testimony, Meeting Transcript, p. 202.

⁶⁰ Marrocco Testimony, Meeting Transcript, p. 82.

restrictions created by state and federal regulatory bodies.⁶¹ This necessitates the use of credit scores.⁶² He also mentioned the problem of red tape with the Small Business Administration.⁶³ This is discussed in another part of this report.

In practice, some government regulations greatly increase the capital requirements for starting a business. Maurice Thompson, executive director of the 1851 Center for Constitutional Law in Columbus, mentioned regulations that make it necessary in practice “to have 25 cabs to have a cab business; you can’t be an owner-operator with one cab.”⁶⁴

Witnesses also discussed access to equity capital markets. Colleen O’Toole, founder and president of On Demand Interpretation Services, stated that most startup businesses cannot meet the requirements of angel investors.⁶⁵ Waldon referred to “a misalignment between where the equity is available and what the opportunities are.”⁶⁶

Part of the problem is that most small business owners are not familiar with finance. Donna Dabs, director of the Entrepreneurship Center at the Cleveland Urban League said that for most entrepreneurs “Financial intelligence, that’s what they need the most.”⁶⁷

The need for education is particularly acute with respect to equity investing. Dr. Waldon testified that many entrepreneurs are “shy” about equity investment and that her organization tries to educate them “about what equity is.”⁶⁸ Mr. Rugless stated that “with regard to mindsets of business owners, we have to identify ways to position them to attract an equity investment.”⁶⁹ He added that:

⁶¹ Ibid., p. 81.

⁶² Ibid., p. 84.

⁶³ Ibid., p. 85.

⁶⁴ Thompson Testimony, Meeting Transcript, p. 174.

⁶⁵ O’Toole Testimony, Meeting Transcript, p. 192-193.

⁶⁶ Waldon Testimony, Meeting Transcript, p. 96.

⁶⁷ Smith, Robert L. “Budding Businesses Get Advice to Get Going,” *The Plain Dealer*, http://www.cleveland.com/business/index.ssf/2012/06/a_re-energized_urban_league_fi.html. (last accessed June 3, 2012).

⁶⁸ Waldon Testimony, Meeting Transcript, p. 97.

⁶⁹ Rugless Testimony, Meeting Transcript, p. 98.

Most were novices as to how it is to have a business presentation that presents information equity investors would need to know to attract capital; it was not about business operation, they need to know how to structure their conversation.⁷⁰

Nonetheless, he agreed that either a bank loan or equity is “the right source.”⁷¹

Eleanor Stocks, founder and president of the Greater Dayton African American Chamber of Commerce, runs a business center that provides not just education but service to small business owners.⁷² The service includes help satisfying bonding requirements. Ms. Ulloa-Olavarrieta testified that her Latino Small Business Center also provides such services. However, she added that “We have so many people that walk through the door; we don’t have enough time to actually service everybody in a timely manner.”⁷³ Mark Rembert stated that “rural communities often lack the capacity to provide the necessary business advising and mentoring”⁷⁴ and that “the entrepreneurial support programs that achieve the greatest impact are not found in rural communities, which lack the resources required to fund such a program.”⁷⁵

Another problem is that the sources of capital and the business people needing capital are scattered. Each business owner must undertake an independent search for funding from among the many and varied providers. John Marrocco testified that the sources of capital are “discombobulated; if we could find some way they could be consolidated and presented to these entrepreneurs, I think it would be great.”⁷⁶

The problem of access to capital is by no means limited to racial and ethnic minorities. Earl Gregorich, lead center director of the District 4 Ohio Small Business Development Center at Wright State University, stated that veterans “may not be in the same financial situation as their civilian counterparts.”⁷⁷ Mark Rembert, co-founder and executive director of the Wilmington-Clinton County Chamber of Commerce, discussed the financial problems of small businesses in rural areas.⁷⁸

Some independent efforts are being made to address the problem of access to capital. Jose Rodriguez, president of Rodriguez Financial Strategies, mentioned that Ohio’s first Hispanic credit union has been created in Toledo and that it is making micro loans safeguarded by big

⁷⁰ Ibid.

⁷¹ Ibid., p. 99.

⁷² Stocks Testimony, Meeting Transcript, pp. 120-123.

⁷³ Ulloa-Olavarrieta Testimony, Meeting Transcript, p. 128.

⁷⁴ Rembert Testimony, Meeting Transcript, p. 181.

⁷⁵ Ibid., p. 182.

⁷⁶ Marrocco Testimony, Meeting Transcript, p. 101-102.

⁷⁷ Gregorich Testimony, Meeting Transcript, p. 35.

⁷⁸ Rembert Testimony, Meeting Transcript, pp. 175-183.

banks.⁷⁹ Alfonso Cornejo mentioned the emergence of “peer-to-peer lending with an NGO” (i.e., non-governmental organization).⁸⁰ Sharon Smith reported that Ohio has a minority direct loan program that provides small business with capital at three percent interest.⁸¹ The program requires bank participation.

Access to capital is a problem for small business owners. The problem does not seem to stem from discrimination or from minority status per se; witnesses testified that veterans and rural residents who own small businesses face the same problem. Moreover, there was testimony that banks are not the problem; they are eager to lend to small owners of any race or color when the required conditions are satisfied.

Unfamiliarity with the ways of business finance is an important part of the problem. Many small business owners do not know much about the various sources of funding and the steps required to access those sources. Mark Rembert said: “Many studies have shown that when business advising and mentoring is combined with capital, business performance and growth increase dramatically.”⁸² To address this problem some organizations (like that of Ms. Ulloa-Olavarrieta; see supra) provide guidance and service to small business owners, but their resources are often inadequate to satisfy the need.

Another part of the problem is that the sources of capital are scattered so that small businesses seeking funding must hunt down those sources one at a time. On the other side, existing and potential sources of capital are ignorant of the investment opportunities offered by small businesses.

⁷⁹ Rodriguez Testimony, Meeting Transcript, p. 115. Ariana Ulloa-Olavarrieta also mentioned that her organization helps small business people to obtain financing through smaller banks and credit unions.

⁸⁰ Rodriguez Testimony, Meeting Transcript, p. 100.

⁸¹ Smith Testimony, Meeting Transcript, p. 203.

⁸² Rembert Testimony, Meeting Transcript, pp. 180-181.

Regulation Barriers to Entrepreneurship in Ohio

While other variables may impact business development and growth in Ohio, regulation is most likely to influence it. Based on direct testimony from numerous business professionals during an April 4, 2012 community forum, hosted by the Ohio Advisory Committee to the United States Commission on Civil Rights, regulatory constraints were cited as one of the top three barriers to their ability to start, maintain or grow their businesses — access to capital and bond ability followed among the top three concerns.

In some of the cases presented, panel participants stated that regulatory requirements have cost them their businesses and ultimately their livelihood. Therefore, business regulation may be a critical barrier to entrepreneurship.

Pertinent policy issues can be derived from two perspectives: 1) bureaucrats who possess the power to spur economic growth, and 2) the business community who is rendered powerless to bureaucratic red tape including expensive regulations that inhibit them from business development, expansion and jobs creation.

To the first point, Ohio's Small Business Development Center (SBDC) is a front-line, immediate response, high-impact program designed to facilitate small business growth, job creation, and access to capital. Staffed by trained business advisors, the SBDC offers low-cost training workshops for entrepreneurs in all industries, at all stages of their business development.⁸³ According to the agency's website:

Since 1985, the SBDC program has fostered a strong climate for small business growth with many local community partners including colleges and universities, economic development agencies, chambers of commerce, and other community organizations.⁸⁴

However, from January 2000 to October 2013, the Bureau of Labor Statistics shows that Ohio had 251,052 fewer people employed over that time span. An Urban League representative claimed that lack of access to capital is the most common problem cited by firms that seek assistance with her agency. However, John Marrocco, senior vice president at Fifth Third Bank, the 18th largest bank in America and our largest regional bank, says that all banks want to lend money, and that there is no shortage of capital, but they are all ready to lend to technology-based firms.⁸⁵ But credit scores is a big issue with emerging, small and mid-sized businesses.

⁸³ See powerpoint: https://development.ohio.gov/bs/bs_sbdc.htm.

⁸⁴ Ibid.

⁸⁵ Marrocco Testimony, Meeting Transcript, p. 96.

To the latter perspective, testimony from several panel participants revealed that the success of emerging, small, and medium-sized businesses may very well hinge upon their ability to meet regulatory requirements.

Additionally, regulation of business may indiscriminately create barriers to entrepreneurship in the State of Ohio for emerging, small, and medium-sized firms.

Based on the testimony we discovered the following:

1. Emerging, small, and medium-sized firms perform well under moderately regulated conditions, but decrease when regulations increase, which suggests that regulations matter. Kenneth Troutman, vice president and general manager of Troutman Construction, states that high bonding requirements are one of his company's biggest hurdles.⁸⁶
2. The costs of fulfilling regulations are higher to emerging, small and medium-sized business opposed to larger businesses. Long-time business owners Bob and Hope Cooper, owners of Weaver Janitorial Services in Wilmington, Ohio, spoke passionately about their once very successful business becoming unable to compete in bidding processes with larger companies, and the fact that larger companies refused to do business with their firm.⁸⁷
3. Because regulatory costs hamper growth, they may even discourage emerging firms or force others out of business since they cannot compete. Sean Rugless, president, African American Chamber of Commerce in Cincinnati, Ohio, states that 15 years ago, there were approximately 1.9 million African Americans in business in America, and 82 thousand minority owned firms (52,000 of which is black-owned) in the state Ohio.⁸⁸

Historically, commercial loans (in the millions) were not made available to emerging, small business and mid-sized businesses, much less minority owned businesses, because of their low investment dollars, therefore, they relied on community-based program such as economic literacy and empowerment implementation programs for information, education, and capitol, says Dr. William Tate of Tate Financial Consultants in Cincinnati.⁸⁹

4. Small and medium-sized firms enhance economic productivity and are a major source of job creation and business competition. Therefore, a chilling effect of regulation is slow or no business growth and absence of competition. The fastest growing population in this country is without doubt the Hispanic population, however, according to Alfonso Cornejo, president of the Hispanic Chamber of Commerce in Cincinnati, Ohio, the

⁸⁶ Troutman Testimony, Meeting Transcript, p. 40.

⁸⁷ Cooper Testimony, Meeting Transcript, p. 27.

⁸⁸ Rugless Testimony, Meeting Transcript, p. 61.

⁸⁹ Tate, W. Interview on June 4, 2012.

business environment is not welcoming to Hispanics who own a mere 1600 businesses in the greater Cincinnati metropolitan area.⁹⁰

Given the testimony of nearly 15 business professionals, and other data included in this section, it is safe to say that government regulation has a disproportionately negative effect on smaller businesses. Capital expenditures mandated by government regulation produce a false “economies of scale.” And one of the most serious consequences to government regulation is the threat to continued existence by the smaller firm.

There needs to be regulatory reform in which our government and regulatory agencies weigh the impact of their requirements on all businesses — not just small businesses and firms so as to maximize the benefits to the firm and public.

⁹⁰ Cornejo Testimony, Meeting Transcript, p. 68.

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Discrimination as a Barrier to Minority Entrepreneurship in Ohio

Although the Committee came to a consensus on a number of the issues regarding barriers to entrepreneurship in Ohio, there was disagreement among Committee members regarding the significance of discrimination as a barrier. At its public meeting on June 5, 2013, in Toledo, OH, the Ohio Advisory Committee briefly discussed the issue but determined that some sort of compromise would better serve the purpose of the advisory committee in its role of informing the U.S. Commission on Civil Rights. To that end, two versions of the section on discrimination are presented. The first section, VI.A, was originally drafted by and has support among some members of the Committee. The second section, VI.B, was drafted in response to section VI.A. and is supported by other members of the Committee. The Committee has agreed to include both sections so that the Commission can be advised on this point of conflict and review the arguments of each position on their own merits.

Discrimination Not a Significant Barrier to Entrepreneurship in Ohio

The question addressed in this section is if discrimination is a barrier to minority entrepreneurship. The testimony alleged very few instances of discrimination against protected groups as barriers to entrepreneurship. This does not mean it does not exist, but there was certainly very little evidence presented to the committee which would suggest it. Indeed, at least one African American entrepreneur was asked if his business had experienced discrimination based on race in connection with his business. He did not identify any such acts or even indicate that it was so.⁹¹

There were a few instances cited by the witnesses, but there were very few specifics and most of them were not raised in the initial testimony, but rather as a result of pointed questioning. The most blatant example was one from 1978 where a Hispanic man, an air force officer, was pulled over by the police purely because he was Hispanic. It is a tribute to the present state of our country that the witnesses did not have any specific current examples of discrimination (other than one cited below which has not been substantiated).

The minimal testimony regarding discrimination follows. In some communities in Ohio, Hispanics feel unwelcome and bullied. While the witness provided no specific examples, this is at least a perceived impediment to Hispanic entrepreneurs' starting or expanding a business.⁹² There was one strongly worded accusation that a county sheriff is issuing bounties for arresting minorities and is a "hate-monger."⁹³ The witness was asked to provide a letter to the committee

⁹¹ Troutman Testimony, Meeting Transcript, p. 56.

⁹² Cornejo Testimony, Meeting Transcript, pp. 67-70.

⁹³ Marocco Testimony, Meeting Transcript, p. 103.

with details and to be able to provide the ‘accused’ sheriff the opportunity to respond. No such letter was ever received. There was also some testimony that suggested that unions were actively discriminating against African Americans.⁹⁴ One witness claimed that there was discrimination against rural entrepreneurs vs. urban entrepreneurs and asked that the protected classes be expanded to include such groups. One witness cited a disparity study showing that “small women and minority businesses were not getting the opportunity to bid and compete for those contracts.” However, the testimony did not blame this on discrimination by others based on any protected class, but seemed to address disparate impact on small versus large businesses. The disparate impact study was not submitted to the committee.

The majority of the testimony addressed typical obstacles to new entrepreneurs, such as lack of access to capital, burdensome government laws and regulations as well as the need for expensive lawyers and accountants to interpret and deal with those extensive laws and regulations; this is not unique to the protected groups. However, some might argue that there is a disparate impact on the protected groups because they are proportionately unable to access capital and other services needed by entrepreneurs. It is certainly a hypothesis worthy of exploration. Interestingly, there are numerous services and companies created specifically for minority entrepreneurs to assist in these difficult challenges. In fact, probably the majority of the witnesses were from organizations which are formed specifically to help minority entrepreneurs. These organizations are in nearly every major city in the state, some tailored to specific minority groups and others designed to serve all minorities. They give free assistance to minorities but apparently do not provide them to non-minorities. Hence, the minorities are given special assistance not available to others trying to start or run a small business. Few if any of the witnesses from these organizations were able to point to any instances of discrimination being an impediment to minority entrepreneurship. In fact, one specifically explained that a reason minorities do not get jobs is because they fail to get involved in the community and once they do so, they share in the business opportunities.⁹⁵ One witness noted that undocumented immigrants have legal impediments since they are not here legally.⁹⁶ Moreover, most of the witnesses cited specific government set-asides for minorities. These governmental barriers were raised over and over again by multiple witnesses. These set-asides are discriminatory against non-minorities and certainly show that opportunities are available for minority entrepreneurs if they choose to take advantage of them. Indeed, many do.

The vast majority of the testimony was based on the problems minorities have with dealing with the typical problems of small businesses. It became apparent during the testimony that one of the most, if not the most, difficult issues related to dealing with governmental laws and regulations. These may well hit the minority community harder than non-minorities for some reason.

⁹⁴ Troutman Testimony, Meeting Transcript, pp. 44-45.

⁹⁵ Stock Testimony, Meeting Transcript, pp. 136-138.

⁹⁶ *Ibid.*, p. 136.

Problems with access to capital were traced back (at least in part) to government regulations on banks. Small banks which lend to smaller businesses have the same expansive regulations as larger banks, making it harder for small banks to survive. Also, banks cannot loan based on personal knowledge of a person's abilities or business plan, but only based on strict numbers. The Small Business Administration has become a large business tool, not one for small entrepreneurs. Indeed, one commissioner referred to it as the "worst agency in Washington."⁹⁷ Thus access to capital to minority entrepreneurs is controlled largely by the government, and in a bad way.

Occupational licensing restrictions also impede minority entrepreneurs.⁹⁸ A dramatic example of governmental barriers to minorities [as well as other small businessmen/women] is "in the City of Dayton it costs almost \$70,000 to start a taxi cab business."⁹⁹ That does not include the cost of a car, rather other costs created by the government. When regulatory barriers are taken away, new businesses are quickly created.¹⁰⁰ Further, prevailing wage laws have been an impediment to minority businesses. According to Mr. Thompson, since 1979 the U.S. Government Accountability Office (GAO) has advocated eliminating the Davis Bacon Act requiring prevailing wages in order to support minority businesses.¹⁰¹ ¹⁰² This is supported by the testimony of a minority general contractor who blamed the unions for his company's difficulty in getting work.¹⁰³ Government certifications, while free, are "overwhelming" because of the time and effort it takes to get them.¹⁰⁴

Discrimination Not a Significant Barrier to Entrepreneurship in Ohio: Conclusion and Observations

The big problem is not with actual discrimination. It is with the impact of normal challenges of small businesses on minority entrepreneurs. A very large part of these problems stemmed from government laws, rules, and regulations at all levels (federal, state and local). The government has exclusive and complete control over these. The next, and perhaps most important step, is to have each level of government immediately begin to evaluate the costs and impacts of existing and future laws, rules, and regulations on small businesses and determine which ones can be changed or eliminated in order to encourage and assist small businesses. Indeed, the GAO's

⁹⁷ Marocco Testimony, Meeting Transcript, p. 86.

⁹⁸ Thompson Testimony, Meeting Transcript, pp. 158-159.

⁹⁹ *Ibid.*, pp. 160, 173-74.

¹⁰⁰ *Ibid.*, p. 160.

¹⁰¹ See <http://www.gao.gov/products/HEHS-94-95R>.

¹⁰² Thompson Testimony, Meeting Transcript, p. 160-161. See also <http://www.gao.gov/products/HEHS-94-95R>.

¹⁰³ Troutman Testimony, Meeting Transcript, p. 44-45.

¹⁰⁴ Stock Testimony, Meeting Transcript, p. 129-130.

“scoring” of new legislation should be broadened to specifically score the direct and indirect costs of new laws to minority entrepreneurs.

Some members of the Committee therefore observe the Commission’s consideration:

1. Government deregulation is likely more effective at assisting minorities than reliance on set-asides which can also create resentment and attempted evasion by non-minorities competing for the same jobs.
2. Congress should consider having the GAO score all new legislation on its impact on small entrepreneurs, especially minority entrepreneurs.
3. Outreach and networking programs between minorities and non-minorities should be encouraged with an emphasis on commonalities between the participants rather than highlighting their differences in order to create personal bonds and overcome real or perceived prejudices.

Discrimination May be a Significant Barrier to Entrepreneurship in Ohio

The question addressed in this section is whether or not discrimination is a barrier to minority entrepreneurship. The testimony alleged very few instances of traditional, overt discrimination against protected groups as barriers to entrepreneurship. One rationale would be to suggest that, in light of very little testimony reflecting scenarios of direct discrimination based upon a protected class, discrimination does not exist. However, the testimony reflects indirect discrimination within the mechanisms of business creation in terms of education and funding, securing contracts in both the public and private sector, and also in the overall ability of minorities to secure investments. Where there were suggestions of direct discrimination, it impacted whether or not a minority would start a business in a certain area but these instances did not seem to be barriers to entrepreneurship in and of themselves.¹⁰⁵ Thus, the focus should be not on *whether* discrimination occurs but rather *how* it occurs, taking into consideration that, on its face, barriers to entrepreneurship are the same for both minority and non-minority business owners alike. The testimony reflects discrimination, not in the overt sense, but rather it has a foundation in the doctrine of disparate impact where facially neutral policies have an adverse impact on a protected group.

Disparate Impact as it Relates Generally to Business

The prohibition of discrimination against protected classes is contained within Title VII of the Civil Rights Act of 1964.¹⁰⁶ Other legislation as well as executive action has originated from the Civil Rights Act as the nature of discrimination has changed. Today, it is less common to see

¹⁰⁵ Cornejo Testimony, Meeting Transcript, p. 68.

¹⁰⁶ 42 U.S.C. Sections 2000e, et seq.

instances of overt discrimination. Rather, discrimination is more obscure and results, regardless of intent, from policies that are reasonably seen as “neutral.” While the transcript does not suggest pervasive, intentional, and open discrimination, there is a substantial amount of testimony suggesting that policies and conduct in different aspects of entrepreneurship have a disparate impact on the ability of minorities to enter into and maintain a small business.

The transcript contains a few instances of overt discrimination, which impact minority groups as they function in their community as a whole. Alphonso Cornejo, president of the Greater Cincinnati Hispanic Chamber of Commerce, recounted his experiences as president and as an average citizen.¹⁰⁷ He explained that the general public was not used to seeing Hispanics in this expanding role as entrepreneurs and that community development was a major issue. Specifically, the Hispanic community takes issue with law enforcement “bullying” families and creating an environment where people feel uncomfortable in their daily public interactions.¹⁰⁸ This discomfort in the community — “the fear of being deported, of being harassed, or ridiculed” — based on overt discriminatory treatment makes it unlikely that minority groups will integrate into their communities and decide to own a home or start a business.¹⁰⁹ Jose Rafi Rodriguez, president of Rodriguez Financial Strategies and veteran of the United States Air Force, has lived in California for several decades and reported similar treatment from law enforcement officials¹¹⁰ and persistent questioning from his peers about when he would “go back” home. Mr. Rodriguez also said that people do not want to do business with you if you are not “from here” and that having an accent can be “two strikes against you.”¹¹¹ This kind of testimony reflects discrimination on its face based on the personal experiences of minorities in their community however, instances of overt discrimination as a barrier to minority entrepreneurship were hardly ever alluded to.

To illustrate disparate impact in a more obvious form, Maurice Thompson from the 1851 Center for Constitutional Law, recounted his experiences with his law firm handling client work related to occupational licensing laws.¹¹² Mr. Thompson’s public interest law firm represented plumbers who had upwards of twenty years of experience but were disparately impacted by the requirement to pass a written test to obtain a city permit to open their own business. These licensing laws are potentially discriminatory as they have the effect of restricting competition in a way that skews the disadvantage toward minority groups.¹¹³ Similarly, taxi drivers were disparately impacted by taxicab regulations despite their experience in the business. Here, Mr.

¹⁰⁷ Cornejo Testimony, Meeting Transcript, p. 67.

¹⁰⁸ *Ibid.*, p. 68.

¹⁰⁹ *Ibid.*, p. 68-69.

¹¹⁰ Rodriguez Testimony, Meeting Transcript, p. 107.

¹¹¹ Stock Testimony, Meeting Transcript, pp. 136-137.

¹¹² Thompson Testimony, Meeting Transcript, p. 159.

¹¹³ *Ibid.*, p. 160.

Thompson pointed to the deregulation of the cab industry in Indianapolis which led to thirty-two new businesses being created, of which three-quarters are owned by minority groups or women.¹¹⁴ This witness's comments provide a clear illustration of disparate impact because they describe laws which are barriers to business formation and which disproportionately impact minority groups.

Public Sector and Private Sector Requirements

The application of the policies and procedures behind securing contracts both in the private and public sector serve as examples of disparate impact on minority groups and create disadvantages for minority owned businesses. As a direct result, minority groups are unable to create jobs and assist other minorities. This disadvantage can most noticeably be seen in the unemployment rate for minorities in the state and country as whole. Sean Rugless, president and CEO of the African American Chamber of Commerce of Greater Cincinnati notes "the unemployment rate for minority populations is two or three times the majority population."¹¹⁵ Unemployment rates of 10 percent correlate to 20 and 25 percent for minorities respectively.¹¹⁶ Therefore, the creation of jobs and business opportunities within the state's minority populations is important and can result from the elimination of many of the barriers around securing those contracts needed to grow their business and create jobs for other minorities.

For example Kenneth Troutman, a local small business owner in the state's construction industry, asserts front companies also called pass through companies are said to be one of the biggest hurdles making it difficult for minorities to be included in projects in the private sector.¹¹⁷ The practice of establishing pass through companies prevents minority and female business owners from acquiring new projects which would create job opportunities and cultivate new business by creating paperwork that shows various percentages of ethnic minority or female workers even though that is simply not the case.¹¹⁸ Troutman asserts "why would a large company actually give a legitimate minority company or female companies a shot when they can boost their profit margin and just pay a small percentage to a pass through company?"¹¹⁹ His concern evidences a concerted effort at eliminating business opportunities that affect certain minority groups. Per Rugless, "when we start talking about barriers to entrepreneurship we are talking about barriers to having this business segment create their own opportunity in jobs."¹²⁰

¹¹⁴ Ibid.

¹¹⁵ Rugless Testimony, Meeting Transcript, p. 61.

¹¹⁶ Ibid.

¹¹⁷ Troutman Testimony, Meeting Transcript, p. 42.

¹¹⁸ Ibid., p. 43.

¹¹⁹ Ibid., p. 42.

¹²⁰ Rugless Testimony, Meeting Transcript, p. 60-61.

Troutman further suggests enforcement mechanisms are needed to ensure minorities are included in the bidding process for acquiring contracts. Many private companies claim diversity is an important initiative and efforts are taken to ensure minority owned businesses are given every chance to be included in the bidding process, but there are no enforcement mechanisms in place to ensure minority inclusion is actually occurring. Companies need only put forth “best efforts” to include minority and female owned businesses and Troutman claims this is a relative term that can be met as simple as someone just calling and asking companies if they would like to bid.¹²¹ Rugless suggests that, related to enforcement then, is the need for some mechanism to attempt to hold businesses accountable when they decide to employ or contract with minority and women owned businesses and fail to do so.¹²²

Minorities also bear the disadvantage of being fairly new to the realm of entrepreneurship and therefore lack the business relationships with key decision makers to acquire potential contracts and the requisite funding for the start-up and development of their business. This is especially a concern in the private sector and banking industry. Without these relationships, minority business owners are not necessarily able to pinpoint any direct form of discrimination because privately owned businesses do not have to give reasons for not awarding contracts. “We don't get notices of who won the bid or anything. So there is no real enforcement to include minorities in this practice.”¹²³ Indeed when Bob and Hope Cooper, local African American small business owners, were asked if they thought race was a reason for not receiving call backs after bidding for contracts, Mr. Cooper responded:

You want to say race, some of the answers I got was that we've got somebody now, we worked with them a long time and we like them, we built up communication with them and it's working out real good.¹²⁴

This is where minority inclusion programs can be extremely beneficial in the private sector but can usually be found in the public sector in the form of minority set-aside programs. Minority set-aside programs work particularly well in the public sector where the focus is more on the certification process and related cost factors rather than relationship building. The Coopers admit they have never bid on a contract that was not a minority set-aside and these programs were in large measure responsible for the success of their business because bidding in the private sector felt like an impossible feat.¹²⁵

Getting government contracts is important because they can help jump-start and grow new businesses, create jobs, and create capital. However, due to the heavily regulated nature of the

¹²¹ Troutman Testimony, Meeting Transcript, p. 41.

¹²² Rugless Testimony, Meeting Transcript, p. 64.

¹²³ Troutman Testimony, Meeting Transcript, p. 41.

¹²⁴ *Ibid.*, p. 56.

¹²⁵ *Ibid.*, p. 55.

public sector, bidding on government projects can be extremely burdensome and costly. Minority business owners must work twice as hard to acquire the requisite knowledge and capital associated with bidding on government projects. The Coopers attribute a large part of their success in acquiring government contracts to their attorney and certified public accountant who kept them informed about the certifications needed in their field early on.¹²⁶ However, despite the availability of information, the cost associated with the development of a new business creates another disadvantage for minority groups because “most minority business owners don’t have the capital to be able to bid successfully.”¹²⁷ According to Troutman, because his business is a union company he has to deal with bonding issues and noted the high almost insurmountable costs associated with bonding which has resulted in him backing away from many possible opportunities.¹²⁸ Moreover, in the instance a government contract is awarded, the owner must have the capital to produce the product because the government does not finance contracts up front. It is the responsibility of the business owner to have enough capital to fulfill the contract once awarded.

Troutman further suggests that the “season period” for many certifications requiring a business to be up and running for a period of at least two years should be eliminated because it negatively impacts many minority owned businesses just starting out and therefore cannot bid on certain contracts needed to grow their business.¹²⁹ Therefore, the sheer cost of certifications and bidding in the public sector, in addition to the heavily regulated nature of the public sector as a whole, can have a disparate impact on ethnic minorities and women owned businesses reducing the ability of these protected groups to succeed in entrepreneurship.

Educational Barriers to Business

Access to education can also be a barrier to minority success in small business. As the face of discrimination has changed greatly in the past 50 years, many scholars have chosen to acknowledge the cycle of poverty as it plays into discrimination. While minorities may no longer suffer from overt discrimination as a legal barrier to success, there are still other barriers resulting from financial and educational disparities that have existed for generations. These social barriers impact groups differently. For someone who have migrated to the United States more recently, they may not have the same education on and general awareness of procedures (to open a business, for example) that someone who has lived in the U.S. their entire life and received formal education (graduate school, for example) would have. Similarly, access to education may be different based on gender and ethnic background regardless of how long they have lived in the U.S. Thus, while overt racism and discrimination may not be an issue as much

¹²⁶ Cooper Testimony, Meeting Transcript, p. 20.

¹²⁷ Ibid.

¹²⁸ Troutman Testimony, Meeting Transcript, p. 40.

¹²⁹ Ibid., p. 41.

as it would have been in past decades, minority groups may be disadvantaged due to their lack of access to the same quality of education non-minority groups receive.

For many minority groups, the access to higher education, or even access to general information about starting a business, may not be easily obtained. Colleen O'Toole, founder of On Demand Interpretation Services, described her experience trying to obtain a grant for her company where all of the selection committee, as well as most of the finalists, were white male engineers, Ph.D.s., or M.D.s.¹³⁰ She noted that to get this funding, you would have to be educated in engineering, meaning you would need to be highly educated.¹³¹ While higher education may be necessary for some types of business, poverty is still a factor in accessing higher education which is linked to fewer minority groups being involved in business. As Sharon Smith from the Office of Business Assistance of the Ohio Department of Development explained, the lack of adequate education makes employment options more limited and continues the cycle of poverty.¹³² Thus, while facially discriminatory laws are not necessarily a problem, there is a cycle of poverty faced by many minority groups that creates barriers to education and access to funding.

A suggestion we have would be to include entrepreneurial education in the curriculum of the many vocational and technical colleges in Ohio. There are a large number of such educational institutions, and the infrastructure thus already exists in which to introduce such training. These institutions are in both urban and rural areas, so access to entrepreneurial education around Ohio would be substantially enhanced if such training could be included in their set of courses.

Additionally, to counteract this problem, many private and government groups have created “set-aside” programs. These set-aside programs are a part of public and private business and generally only require that the majority owner of a company is female or a member of an ethnic minority group, and the company must show that it is a viable business and has good prospects for success in the future. Set-aside programs also exist for veterans and persons with disabilities. Earl Gregorich, lead center director of District 4 Ohio Small Business Development Center at Wright State University, mentioned two programs for entrepreneurship in Ohio. One program, run by the Rehabilitation Services Commission, provides better prospects for employment to people who may not otherwise be employed due to physical or mental handicaps.¹³³ Mr. Gregorich also mentioned there is a greater necessity to create more set-aside programs for veterans, especially those who are disabled, as their earning power is different and they experience different time constraints.¹³⁴ Rea Waldon, senior vice president for the Economic Empowerment and Entrepreneurship of the Cincinnati Urban League, as well as Mr. Cornejo,

¹³⁰ O'Toole Testimony, Meeting Transcript, pp. 186-189.

¹³¹ *Ibid.*, p. 189.

¹³² *Ibid.*

¹³³ Gregorich Testimony, Meeting Transcript, pp. 30-31.

¹³⁴ *Ibid.*, pp. 33-37.

mentioned the importance of assisting the Latino population through providing Spanish speaking translators and counselors to potential business owners.¹³⁵

Generally, while these set-aside and assistance programs exist to provide greater access to business prospects and to educate minority groups on business skills and requirements to form a company, there is still a problem in promoting awareness of these programs to give minorities this greater access. To create equal opportunities in business, our focus should be on what kinds of barriers exist in society and not just in the law.

Access to Funding as a Barrier to Business

Capital in all forms is needed to start and grow any business and all business owners agree access to capital is a barrier most entrepreneurs face. However, the avenues in accessing capital have a disparate impact on minority groups their ability to create small businesses for several reasons. Troutman speculates that union favoritism presents a problem and conflicts of interest arise because there is no entity to police the union when owners of large construction companies that award contracts sit on the union's board of trustees.¹³⁶ He implies that minority small business owners suffer because they lack this kind of capital, influence and power.¹³⁷

Minority business owners can also attempt to secure capital through bank loans. However, the procedures behind obtaining a bank loan also have a disparate impact upon certain minority groups. John Marrocco, senior vice president for Business and Banking at Fifth Third Bank in the Greater Cincinnati area noted that banks must follow legal regulatory guidelines and credit procedures and are not allowed to segregate any kind of loan application based upon any protected class. "We have to purely look at it on a numbers basis on an application. We use credit scores. [I]t's virtually our only option to create a non-biased recognition."¹³⁸ Therefore, one could argue the procedures themselves behind obtaining a bank loan are facially non-discriminatory however, this credit-based loan distribution system is shown to have a disparate impact on minority groups. Marrocco states "I personally have seen credit agencies are one of the — a primary obstacle for good business plans and entrepreneurs to be successful."¹³⁹ Thus, Marrocco promotes small business lending reform and suggests reducing the regulation surrounding the banks' ability to lend money. He admits that banks struggle with state and federal government regulating bodies which tells banks what they need to be doing and what industries they need to focus on.¹⁴⁰

¹³⁵ Marrocco Testimony, Meeting Transcript, p. 87.

¹³⁶ Troutman Testimony, Meeting Transcript, p. 44.

¹³⁷ Ibid.

¹³⁸ Marrocco Testimony, Meeting Transcript, pp. 82-84.

¹³⁹ Ibid., pp. 84-85.

¹⁴⁰ Ibid., p. 81.

Reducing the red tape and legislation around making good common sense decisions to lend \$5,000 to a local micro business to buy . . . a pickup truck, something as simple as that makes a difference.¹⁴¹

Rea Waldon, senior vice president for the Economic Empowerment and Entrepreneurship of the Cincinnati Urban League, agrees that the credit-based scoring system governing the distribution of loans for small businesses is a particular problem for minorities. She suggests the access to capital problem stems, not from the banks themselves, but rather the regulatory model the banks need to follow.¹⁴² “There is the whole culture of decision making based on credit score, which most people will agree that . . . it’s not always reliable.” She notes often times that personal finances and resources must serve as a back drop when business owners fail to acquire bank loans due to a bad credit situation and this is how many small businesses fail.¹⁴³ Sharon Smith, from the Office of Business Assistance of the Ohio Department of Development, agrees that loan procedures have a disparate impact on minorities and stated that numerous studies have found minority business owners are twice as likely to be turned down for a loan than their non-minority peers and both African Americans and Hispanics are charged higher interest rates when the loans are approved.¹⁴⁴ ¹⁴⁵ Waldon suggests addressing this problem by tying lending to capacity building and focusing on the creation of more tools to assist those net contributors to the economy so that there is an actual impact.¹⁴⁶ For Waldon, the problem with minority entrepreneurship growth is not the inability to provide jobs to other minorities but rather the inaccessibility of those resources needed to help develop and grow their businesses.

Waldon also notes the minimal attention given to educating minority groups on the state’s market forces and the importance of being familiar with the industries where the funding opportunities are being created. She believes there should not be so much of a push on construction and construction related opportunities in the state because “when you look at the demographics in our region about small business, our economy is based on financial services insurance, those kinds of things.”¹⁴⁷ Therefore, minorities must create small businesses in areas where these funding opportunities are growing otherwise they will continue to lack the capacity to grow their business.¹⁴⁸ Colleen O’Toole, a small business owner specializing in providing language interpretation services, has seen this focus on the market play out when attempting to secure funding from private investors and asserts that funding opportunities are in industries

¹⁴¹ Ibid., p. 86.

¹⁴² Waldon Testimony, Meeting Transcript, p. 73.

¹⁴³ Ibid., p. 74.

¹⁴⁴ The studies Smith mentioned were never provided to the Commission.

¹⁴⁵ Rembert Testimony, Meeting Transcript, p. 177.

¹⁴⁶ Waldon Testimony, Meeting Transcript, p. 77.

¹⁴⁷ Ibid., p. 75.

¹⁴⁸ Ibid.

dominated by white males. She notes that attempting to secure funding through private investors is a highly competitive process and, in sharing one of her experiences behind securing investment money for her small business, noted that the selection committee she presented in front of was entirely white males.¹⁴⁹ Many minority groups may not be successful at acquiring capital in the form of private investments and fail to create small businesses in the fields where the investment opportunities are located.

Conclusions and Observations Regarding Discrimination as a Barrier to Minority Entrepreneurship

In conclusion, while there were few instances of overt discrimination reported in the testimony, many witnesses described the impact of laws, regulations, and other conduct having a disparate impact on their ability to start and compete in small business. Given that the doctrine of disparate impact does not require discriminatory intent, it is often difficult to directly point out instances of discrimination as they have affected minority groups in business. To better address discrimination in entrepreneurship, more needs to be done in terms of speaking to minority groups about their experiences and making a concerted effort to publicize any assistance groups can get in starting a business. Some members of the Committee observe:

- Set-aside programs and programs performing minority assistance need to have more public exposure in their respective communities.
- Investigations should be done into the treatment of ethnic minorities in their communities and how they feel it has impacted their role in the community and in business.
- The public sector should look into deregulation and private companies could make a concerted effort to partner with minority groups that own small businesses within their community.
- In terms of access to capital, the suggestions of several of the witnesses should be examined.

¹⁴⁹ O'Toole Testimony, Meeting Transcript, p. 186.

Final Conclusions and Recommendations

The following conclusions and recommendations made through the U.S. Commission on Civil Rights are submitted in accordance with the provisions of Section 703.2(e) of the Commission's regulations calling upon Advisory Committees to "initiate and forward advice and recommendations to the Commission upon matters which the state Committee has studied."

The Importance of Small Businesses

Starting a business has always been an important path to a better life for low-income Americans, and it remains so today. However, the importance of small businesses is not limited to their owners and their families. Small businesses provide important goods and services to low-income communities where these resources otherwise are often scarce. Small businesses also provide employment to people who may otherwise have difficulty finding a job. Small businesses also provide a positive model to young people in low-income neighborhoods where negative models may be more common.

It therefore is in the interest of all Americans to support the creation and flourishing of small businesses. Unfortunately, our hearing revealed that aspiring business owners who have useful goods and services to offer nonetheless face many obstacles to starting and maintaining a business. The following is a discussion of these problems and a series of recommendations to mitigate these problems.

Education

The Committee agrees unanimously that a major difficulty faced by many people aspiring entrepreneurs is that, although they have the ability to provide valuable goods and services, they lack of knowledge about the mechanics of starting and running a business. The problem areas include learning how to obtain necessary licenses and approvals and to comply with regulations and paperwork; and how to obtain credit and other sources of financing.

Witnesses testified that there little or no attention is paid to entrepreneurship in K-12 schools or in vocational and technical colleges. There are many programs in Ohio to educate or provide assistance to aspiring entrepreneurs in Ohio. However, these programs do not seem large enough to meet the need. Because the multiplicity of their services are fragmented; an aspiring entrepreneur may have to go to several sources to get a full range of information and assistance. In some places the same services may be offered by several programs, while in others (especially rural areas) there no program at all for aspiring business people. Even where programs are available, their existence may be unknown to potential clients.

The Committee recommends that K-12 offer age-appropriate instruction about the importance of business and of business people in America. Vocational and technical colleges should offer

instruction in how to start and run a business in one's chosen vocation. Programs to educate and assist new entrepreneurs should be coordinated so that a full range of services can be provided in one place. Programs should be made available to rural areas, and the availability of programs should be publicized to all segments of the state.

Several witnesses stressed the importance of educating small business owners about all aspects of creating and running a business. As John Marrocco said, "I think education is the key theme. . . . If we can get entrepreneurial thinking business people educated and informed, that would go a long way."¹⁵⁰ A general discussion of this issue is contained in another part of this report. Therefore, we will mention here only that an important part of this education is informing small business owners about the various sources of capital and the steps required to access those sources. The representatives of the Fifth Third Bank¹⁵¹ mentioned its efforts to educate small business owners about bank lending.

Education about equity funding should be included. One witness reported rejecting an offer of equity capital because the equity investors were "going to boot me out as soon as I got up and running."¹⁵² However, there are ways to structure equity investments that protect the interests of the entrepreneur. Entrepreneurs need to be informed about these possibilities.

Some organizations now provide small business owners with guidance and service. As suggested by Eleanor Stocks¹⁵³, the creation and expansion of such service centers should be encouraged. Among other things, they could help owners of small businesses with the paper work necessary to apply for a loan or an equity investment. Mark Rembert urged foundations and state and local government agencies to make a specific effort to help rural communities provide the support "necessary to help their entrepreneurs grow and create jobs."¹⁵⁴

Many law schools have clinics whose purpose is to support community and economic development.¹⁵⁵ These clinics can educate entrepreneurs about the legal issues involved in starting and running a business and also help entrepreneurs to take some of the legal steps. These clinics should be encouraged to make support of entrepreneurship one of their primary missions.

Barriers to Successful Bidding

The majority of the Committee agrees that stringent licensing and certification requirements, union favoritism, lack of financial capital, and the difficulty of obtaining bonding and insurance

¹⁵⁰ Marrocco Testimony, Meeting Transcript, pp. 100-101.

¹⁵¹ *Ibid.*, p. 183.

¹⁵² O'Toole, Testimony, Meeting Transcript, p. 185.

¹⁵³ Stock Testimony, Meeting Transcript, p. 132.

¹⁵⁴ Rembert Testimony, Meeting Transcript, p. 182.

¹⁵⁵ One example is the Community Development Clinic at Case Western Reserve University School of Law.

are often barriers to small entrepreneurs. The Committee recommends that steps be taken to reduce these barriers. (Some of these issues are also discussed in other parts of this report.)

Some members of the Committee believe that set-aside programs for certain ethnic minorities are a fair and effective way to assist minority entrepreneurs. They propose to retain existing set-aside programs and to strengthen them with better monitoring against “pass throughs,” in which a minority individual serves as a cover for what is not truly a minority-owned business. They also propose to increase notice of contract competitions and the results of those competitions.

However, a majority of the Committee note that stricter monitoring of set-aside programs to prevent pass throughs would increase paperwork and the costs to government of operating these programs and the costs to minority businesses of complying with them. Thus, this step is inconsistent with the goals of reducing the costs of compliance to minority businesses and/or making set-aside programs more cost effective.

Further, a majority of the Committee believe that set-asides are neither fair nor effective. One problem is that considerable effort is required to satisfy the complex requirements of set-aside programs. As a result, many minority businesses come to specialize in and to depend largely or entirely on set-asides. At our hearing, some witnesses testified that they never sought business except through set-asides.¹⁵⁶ As a result, set-aside programs do not serve primarily as an entrance ramp helping to ease minority businesses into mainstream activity, but rather as dead-ends in which set-asides become substitutes for mainstream economic activity.

Accordingly, a majority of the Committee recommend that set-aside programs be phased out over a period long enough to allow businesses that have become dependent on them to adjust to general competition. The resources currently devoted to these programs should be shifted to other uses to benefit small businesses identified in this report.

Access to Capital

Nearly all the witnesses at our hearing identified access to capital as a problem for their businesses. One aspect of this problem is the difficulty of getting bank loans.¹⁵⁷ Not only the one banker, John Marrocco, but also several other witnesses acknowledged that the underlying obstacle is not an unreasonable unwillingness of banks to lend but restrictive banking regulations.¹⁵⁸ Another problem is the lack of communication between small business owners and providers of equity capital, a problem compounded by a lack of knowledge among owners of how equity financing works.¹⁵⁹

¹⁵⁶ Troutman Testimony, Meeting Transcript, p. 55.

¹⁵⁷ Marrocco Testimony, Meeting Transcript, p. 95.

¹⁵⁸ Smith Testimony, Meeting Transcript, p. 202.

¹⁵⁹ Marrocco Testimony, Meeting Transcript, p. 97.

Some witnesses testified that government regulation exacerbates the finance problem by raising costs for small businesses.¹⁶⁰ Several mentioned the costs of satisfying government bonding requirements. Others mentioned licensing requirements that make it impractical to operate a small business.

The Committee recommends that the educational and assistance programs previously discussed include explanation of and help in obtaining financing for aspiring entrepreneurs. A particularly helpful form of assistance would be the convening of regular forums in which private equity investors could meet with small business owners seeking capital.

The relevant governmental bodies should also consider easing the regulatory burdens on small businesses where those regulations disparately impact federally protected groups of potential entrepreneurs. To the extent possible, licensing requirements and restrictions on bank loans to small businesses should be relaxed. Tax laws could be revised to encourage small business financing.

A particularly valuable service would be to bring together sources of capital with business owners seeking funding, as recommended by John Marrocco. Government agencies could either provide forums for this purpose or partner with private organizations (like the Urban League or local chambers of commerce) that can offer such forums. Small businesses could be informed about these forums in which they could talk with potential sources of capital. In addition, sources of capital should be notified of these forums. Those notified could include not only those who already make such investments but also sources with capital who may not already be aware of the investment opportunities offered by small businesses.

Private efforts to provide capital for small businesses should be encouraged. Eleanor Stocks suggested the possibility of getting 50 large companies to provide \$20,000 each — a total capital fund of \$1 million — for this purpose.¹⁶¹ If carefully managed, such a capital fund could continue indefinitely on its own and even expand as borrowers repaid their loans with interest, thereby expanding the principal of the fund. After companies used these loans to get a successful start, they could then qualify for traditional sources of capital, such as bank loans. Thus there would be a continuing cycle of small businesses starting and growing.

Private efforts can be leveraged with government cooperation. Sharon Smith reported on one such program.¹⁶² By such cooperation access to capital for small businesses can be increased and risk to providers of capital can be reduced.

¹⁶⁰ *Ibid.*, p. 85.

¹⁶¹ Stock Testimony, Meeting Transcript, pp. 123-124.

¹⁶² *Ibid.*, p. 124.

Regulation Barriers to Entrepreneurship in Ohio

Our primary objective in this section of our report is to explore whether regulation of business may indiscriminately create barriers to entrepreneurship in the State of Ohio for emerging, small, and medium-sized firms.

Based on the testimony we discovered the following:

1. Emerging, small, and medium-sized firms perform well under moderately regulated conditions, but decreased when regulations increase, which suggests that regulations matter. Kenneth Troutman, vice president and general manager of Troutman Construction, states that high bonding requirements are one of his company's biggest hurdle.¹⁶³
2. The costs of fulfilling regulations are higher to emerging, small and medium-sized business opposed to larger businesses. Long-time business owners Bob and Hope Cooper, owners of Weaver Janitorial Services in Wilmington, Ohio, spoke passionately about the inability of their once very successful business to compete in bidding processes with larger companies, and the fact that larger companies refused to do business with their firm.¹⁶⁴
3. Because regulatory costs hamper growth, they may even discourage emerging firms or force others out of business since they cannot compete. Sean Rugless, president, African American Chamber of Commerce in Cincinnati, Ohio, states that 15 years ago, there were approximately 1.9 million African Americans in business in America, and 82 thousand minority owned firms (52,000 of which is black-owned) in the state Ohio.¹⁶⁵
4. Historically, commercial loans (in the millions) were not made available to emerging, small business and mid-sized businesses, much less minority owned businesses, because of their low investment dollars; therefore, they relied on community-based programs such as economic literacy and empowerment implementation programs for information, education and capital, says Dr. William Tate of Tate Financial Consultants in Cincinnati.¹⁶⁶
5. Small and medium-sized firms enhance economic productivity, and are a major source of job creation and business competition. Regulation imposes the chilling

¹⁶³ Troutman Testimony, Meeting Transcript, p. 40.

¹⁶⁴ Cooper Testimony, Meeting Transcript, p. 27.

¹⁶⁵ Rugless Testimony, Meeting Transcript, p. 61.

¹⁶⁶ Tate interview.

effects of slow or no business growth and the absence of competition. The fastest growing population in this country is without doubt the Hispanic population, however, according the Alfonso Cornejo, president of the Hispanic Chamber of Commerce in Cincinnati, Ohio, the business environment is not welcoming to Hispanics who own a mere 1600 businesses in the greater Cincinnati metropolitan area.¹⁶⁷

Given the testimony of nearly 15 business professionals and other data included in this section, it is safe to say that government regulation has a disproportionately negative effect on smaller businesses. Capital expenditures mandated by government regulation produce a false “economies of scale.” And one of the most serious consequences to government regulation is the threat to continued existence experienced by the smaller firm.

There needs to be regulatory reform in which our government and regulatory agencies weigh the impact of their requirements on all businesses — not just small businesses and firms so as to maximize the benefits to the firm and public.

Regulatory barriers were one of the most commonly cited obstacles to small businesses identified by witnesses at our hearing. As noted elsewhere in this report, the major problem of access to capital stems in part from regulations that restrict bank loans to small businesses. Bonding requirements magnify both the financing and paperwork problems of small businesses.¹⁶⁸ Although most regulations apply equally to larger businesses, the costs of complying with these regulations are comparatively large for small businesses.¹⁶⁹

Regulators should consider the impact of regulations on small businesses separately. Because regulations are relatively more costly to small businesses, and because small businesses are relatively more important to low-income communities, the costs of extending some regulations to small businesses may exceed their benefits. In such cases, regulators should provide exemptions or lighter requirements for small businesses. Governmental bonding requirements should be reviewed to determine if the required amounts are necessary to protect the relevant parties or if the relevant parties can be adequately protected with a smaller bond amount. Government restrictions and regulations on bank loans should be reviewed and relaxed or eliminated where possible.

Discrimination as a Barrier to Minority Entrepreneurship in Ohio

Although all members of the Committee believe that existing anti-discrimination laws should be fully enforced, the Committee disagreed on the extent discrimination was a barrier to

¹⁶⁷ Cornejo Testimony, Meeting Transcript, p. 68.

¹⁶⁸ Troutman Testimony, Meeting Transcript, pp. 39–40.

¹⁶⁹ *Ibid.*, p. 40.

entrepreneurship in Ohio. The two sections regarding this topic reflect the divergent viewpoints of Committee members. As a bipartisan federal advisory committee that is mandated to have a balanced and diverse makeup, these disagreements are expected. The Committee presents both interpretations to the Commission in this report for its consideration.

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APPENDIX

Additional Comments by OH SAC Members

Hal R. Arkes

On page 25 of our report, it is suggested that “. . . licensing requirements . . . to small businesses should be relaxed.” On page 24 it is suggested that barriers to bonding be reduced for small businesses. My concern is that if small, minority, or woman-owned businesses have lower requirements for licensing or bonding, then they might be at a serious competitive disadvantage compared to businesses that are fully bonded and have passed more stringent licensing requirements. There may be solutions to this problem. For example, if a small business occupies a niche in a particular industry, then licensing for that niche could be made less costly and less complete than licensing for more extensive coverage of work within that industry.

Mark Strasser, Subodh Chandra, Diane Citrino, Catherine Crosby, and Robert Salem

While we endorse some of the Committee’s proposals, e.g., greater availability of financing and entrepreneurial education, we must dissent from some of the report.

The report suggests “The big problem is not with actual discrimination,” although no one so testified and there was testimony alleging discrimination. The report also suggests that “a majority of the Committee believe that set-asides are neither fair nor effective,”¹⁷⁰ but there was no testimony to that effect. Without such testimony, there is no basis for the committee to recommend that set-aside programs be phased out,¹⁷¹ especially when a different part of the report recommends promoting awareness of set-aside and assistance programs to give minorities greater access.¹⁷²

This report of the Ohio Advisory Committee to the United States Civil Rights Commission implies that little or no racial discrimination exists and recommends the discontinuation of set-asides. Because there is nothing in the record that warrants drawing such conclusions, we risk undermining our own mission and credibility by offering such a position and recommendation.

¹⁷⁰ *Supra* pg. 24.

¹⁷¹ *Ibid.*

¹⁷² *Supra* pg. 21.

Diane Citrino

I would further add that, as written, the characterization that the Committee agrees “unanimously” regarding the Barriers to Successful Bidding recommendations appears inaccurate. I certainly do not agree with Section VII C as written, and I dissent from that portion of the report in its entirety.

Dilip Doshi

For the record, I am in agreement with the comments made by Mark, et al.

My understanding/clarifying Hal’s concern regarding lowering bonding/insurance requirement: I believe when such requirements are lowered, all vendors benefit, not just minorities. I believe it is done across the board and it simply lowers the cost to entry in the competitive process. However, it might increase liability not covered to the extent desired. One such example would be if the State of Ohio had certain liability insurance requirements for its vendors for many years. However, a newly created state monopoly (a private entity IT service contracting company) required all state vendors to now have minimum 3M errors and omission coverage. All business would then need to be done only through this new private company and their terms and conditions would have to be accepted. This would quadruple our insurance cost — an increase from several hundred to several thousand. Such cost increases hurt smaller organizations more than they do larger ones.

Although I am serving as an advisory committee member, I have had many years of experience as an entrepreneur. Between my wife and I, we have significant experience in bidding for contracts.

Implicit bias and very high insurance/bonding requirements can and indeed do present a barrier to entrepreneurs.

Different types of businesses go through different regulatory challenges. Access to decision makers and the ability to bid and then to win present significant barriers as well. Once the process of bidding is gone through, winning is another challenge. Disguised under the “Best Value” clause used by the contract, award decision makers mask possible discrimination. This discrimination does not have to be against any specific protected class but can simply keep the contracts within network, effectively keeping out otherwise qualified entrepreneurs.

Dave Tryon

I disagree with the following portions of section VI.B:

The minority set-aside programs only work on the governmental level because they are mandated by law. They are unfair to groups excluded by the set-aside programs, such as underprivileged non-minorities. Further, since by definition they are discriminatory in favor of

minorities based on minority status only, they are becoming increasingly disfavored by the courts.

Section VI.B.3, first paragraph is the authors opinion and does not rely on the actual evidence to support it. As such it should be considered the opinion of the author and not a finding of fact or law.

Thank you.

Respectfully,

Dave Tryon

Addendum:

Sharon Davies

Member Sharon Davies, Gregory H. Williams chair in Civil Rights and Civil Liberties, The Ohio State University Moritz College of Law, did not take part today in the vote of the Advisory Committee respecting whether to forward its report to the U.S. Commission on Civil Rights.

Member Davies asked that the Report reflect that fact and that it include the following Addendum:

Because I was not a member of the advisory Committee when testimony was taken on civil rights barriers to entrepreneurship, and because I had no role in earlier discussions about the issue under study, I felt it was inappropriate to participate in the advisory Committee's vote on this report. However, had I participated I would have recommended that the advisory Committee's process include testimony that could have informed it about the state of the science of implicit bias research, as to which the report reflects no awareness.

In addition, I would have encouraged the advisory Committee to include a discussion of the historical and structural forces that provide important context for any discussion of existing racial and ethnic disparities in the United States, including underrepresentation of black and latino/a entrepreneurs.

Respectfully,

Sharon L. Davies

Gregory H. Williams Chair in Civil Rights & Civil Liberties

The Ohio State University, Moritz College of Law

Executive director, Kirwan Institute for the Study of Race & Ethnicity

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