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The Honorable Roger Williams
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nydia Velazquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Williams and Ranking Member Velazquez,

On behalf of NFIB, the nation's leading small business advocacy organization, I write regarding the hearing entitled, "Reviewing the SBA's Office of Advocacy Report on the Regulatory Flexibility Act." NFIB's nearly 300,000 small businesses appreciate the opportunity to discuss the impacts of burdensome regulations and ways Congress can reduce red tape for small businesses.

In 1980, the Democratic-led Congress unanimously approved the Regulatory Flexibility Act (RFA), legislation to reduce the impact of regulations on small businesses. Upon signing the RFA into law, President Carter stated "[t]his bill adds another piece to the far-reaching regulatory reform record that we and the Congress are building."¹ The President continued "[s]mall businesses are crucial to a competitive, healthy, and productive economy. However, regulations often impose heavier burdens on small organizations than on big ones. The Regulatory Flexibility Act recognizes that regulations need not be uniform to be effective. It requires agencies, whenever appropriate, to tailor their rules to the size and resources of those affected."²

As President Carter described, federal regulations disproportionately impacted small businesses and the RFA sought to remedy the increasing burdens on small businesses. However, in the 40-plus years since the RFA became law, agencies have found ways to disregard or bypass many of the requirements. In fact, NFIB's recent white paper analyzed the Small Business Administration (SBA) Office of Advocacy's (Advocacy) comment letters to federal agencies from January 2021 to January 2023 and found significant noncompliance with the

¹ The American Presidency Project "Regulatory Flexibility Act Statement on Signing S. 299 Into Law," UC Santa Barbara, <https://www.presidency.ucsb.edu/documents/regulatory-flexibility-act-statement-signing-s-299-into-law>.

² *Id.*

RFA.³ In these letters, Advocacy highlighted 28 instances where agencies failed to adequately examine the economic costs of regulations.⁴ Advocacy noted that agencies often improperly certify that rules will not have a significant economic impact on a substantial number of small entities.⁵ By doing so, agencies essentially disregard the intent of the law, leaving small businesses subject to the very one-size-fits-all regulatory environment the RFA sought to correct.

One recent example of a federal agency's questionable certification of a rule is the Environmental Protection Agency's (EPA) and the Department of the Army's expansive Waters of the United States (WOTUS) rule. In finalizing the rule, the EPA and Department of the Army certified it "will not have a significant economic impact on a substantial number of small businesses."⁶

This conclusion seems implausible. According to one estimate by the Attorney General of Iowa, as much as 97% of land in Iowa could now be subject to federal regulation under the Biden Administration's final rule.⁷ In response, a farmer in Iowa will be forced to hire expensive consultants to determine whether their land is subject to the EPA and Department of the Army's regulatory authority. And yet somehow, the EPA and the Department of the Army concluded that the millions of farmers, ranchers, developers, and small businesses across the country will not be significantly affected.

Small businesses believe this conclusion makes little sense. However, it highlights the major flaws with the current regulatory environment. Unfortunately, WOTUS is just one example where federal agencies disregard the clear Congressional intent of laws like the RFA. The result is a massive expansion of regulatory costs and burdens. In fact, since January 2021, the Biden Administration has imposed more than \$367 billion in regulatory costs and added more than 228 million hours of paperwork burdens on businesses.⁸

Small businesses remain concerned by the expanding regulatory authority of federal agencies, and the corresponding increasing costs and red tape. NFIB members are alarmed by a proposed rule on climate disclosures by the Securities and Exchange Commission (SEC). The SEC's Scope 3 proposed rule would require public companies to report the greenhouse gas emissions of the private companies with which they do business. This massive reporting expansion would ensnarl millions of private, small businesses under the SEC's regulatory

³ Rob Smith, *The Regulatory Flexibility Act: Turning a Paper Tiger Into a Legitimate Constraint on One-Size-Fits-All Agency Rulemaking*, National Federation of Independent Business Small Business Legal Center, May 2023, <https://strgnfibcom.blob.core.windows.net/nfibcom/NFIB-RFA-White-paper.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ 88 *Fed. Reg.* 3139, col. 3. <https://www.epa.gov/system/files/documents/2023-01/Revised%20Definition%20of%20Waters%20of%20the%20United%20States%20FRN%20January%202023.pdf>.

⁷ Donnelle Eller, *Iowa joins states fighting Biden's EPA 'power grab' to regulate waters of the US*, Yahoo! News, February 18, 2023, <https://news.yahoo.com/iowa-joins-states-fighting-bidens-114024507.html>.

⁸ Dan Goldbeck, *Energy Rules and Massive New Paperwork Highlight Busy Week*, American Action Forum, June 5, 2023, <https://www.americanactionforum.org/week-in-regulation/energy-rules-and-massive-new-paperwork-highlight-busy-week/>.

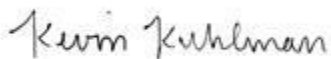
authority. And yet, the SEC estimated that only 1,004 small entities would be affected by the proposed rules.⁹

These unprecedented burdens and the obvious understatement of the impacts of regulations highlight the need for Congress to address the regulatory burdens imposed on small businesses. Congress must strengthen the RFA to ensure the intent of the law is fulfilled. Congress should consider increasing Advocacy's role in the certification of an agency's economic impact analyses. Congress should also require agencies to publicly disclose the less burdensome alternative rules they examined. Additionally, the RFA requires federal agencies to review existing regulations to ensure new regulations are not duplicative of existing ones or burdensome on small businesses. However, agencies often take a minimalist approach to these retrospective reviews. NFIB's white paper and Advocacy's warnings are a clear signal to Congress to stand up for overburdened small businesses. At a minimum, Congress must enforce the existing RFA requirements or increase the consequences for agencies that fail to comply with the RFA.

In 2021, President Biden stated "[s]mall businesses are the engines of our economic progress; they're the glue and the heart and soul of our communities. But they're getting crushed."¹⁰ NFIB agrees with President Biden—small businesses are the engines of economic progress, and they are getting crushed. However, the President's expansive regulatory agenda is contributing to the crushing of small businesses with red tape and paperwork. Congress must come together to provide relief for small businesses across the country.

NFIB appreciates your leadership to create an environment where small businesses can grow, invest, and flourish. We look forward to working with you on these critical issues facing small businesses during the 118th Congress.

Sincerely,



Kevin Kuhlman
Vice President, Federal Government Relations
NFIB

⁹ 87 Fed. Reg. 21462, col. 3, <https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf>.

¹⁰ Remarks by President Biden on Helping Small Businesses, Feb. 21, 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/>.