

February 1, 2024

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

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

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

The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: Small Business Input in Federal Rulemaking

Dear Chairmen Williams and Jordan and Ranking Members Velazquez and Nadler:

On behalf of millions of small businesses across the country, we urge legislative action to strengthen the meaningful input of small businesses in federal regulatory processes and ensure the intent of the Regulatory Flexibility Act is fulfilled.

The Regulatory Flexibility Act (RFA) of 1980 was signed into law after a bipartisan coalition of small businesses, community leaders, and elected representatives confronted the danger of imposing burdensome red tape on American small businesses. Upon signing the RFA into law, President Carter stated that “small businesses are vital to the growth and to the future of our country” and that regulations “can impose a disproportionate and unfair burden on small businesses.”

The RFA sought to correct this disproportionate burden on small businesses by encouraging federal regulatory agencies to transparently consider the impact of new mandates on small businesses and to minimize negative impacts without compromising the underlying regulatory objectives.

Unfortunately, loopholes in the RFA allow federal regulators to bypass the law’s requirements and misrepresent the costs of new mandates on small businesses because (a) transparency requirements only apply to businesses *directly* regulated and (b) judges may not punish agencies for ignoring small business concerns.

Federal agencies have on numerous occasions failed to comply with requirements under the RFA. In 2023, the National Federation of Independent Business (NFIB) reviewed comment letters from the Office of Advocacy at the U.S. Small Business Administration (SBA), the independent office responsible for overseeing compliance with the RFA, from the 117th Congress and found 28 instances where SBA’s Office of Advocacy cited agencies for lack of RFA compliance. SBA’s Office of Advocacy found agencies often improperly certify that rules will not have a significant economic impact on a substantial number of small entities, only consider

the direct costs on small businesses, or misrepresent the costs on small businesses from regulation.

For example, SBA's Office of Advocacy found the Department of Labor's analysis of the impact of its independent contractor rule "deficient" because it "severely underestimate[d]" the economic impacts of the rule on small business; and "failed to estimate any costs" for small businesses to reclassify independent contractors as employees.

Agency exploitation of the loophole that only requires publishing small business impacts for *directly* regulated businesses is apparent in the ongoing Basel III Endgame rulemaking. Bank regulators published their perceived impact on large banks but did not publish how new mandates will make small business loans more expensive.

The Environmental Protection Agency/Army Corps of Engineers Waters of the United States (WOTUS) final rule is a case study in agency misrepresentation of a regulation's costs on small businesses. In their rule, the agencies certified the rule "will not have a significant economic impact on a substantial number of small entities." For decades, bipartisan administrations have claimed that revising the WOTUS definition will not harm small businesses. Yet the millions of farmers, homebuilders, and other industries heavily dominated by small businesses render such a "certification" implausible. Moreover, they highlight a major problem – small businesses lack the legal recourse to force regulators to take them seriously and judges' hands are tied when it comes to holding agencies accountable to small business concerns.

Unfortunately, the concerns raised in this letter are not new. In fact, SBA's Office of Advocacy has sought to close the loopholes over the past 40 years but has not been successful.

Our concern that small businesses are being shut out of the regulatory process are amplified by recent data showing the growth of federal red tape. The National Association of Manufacturers' most recent study on the cost of regulation shows that the cost per employee to comply with federal regulations is three times greater for small firms than the average costs for manufacturers. Former CBO Director, Douglas Holtz-Eakin recently testified before the Small Business Committee that the costs from regulatory mandates currently being issued are fifty percent greater than under any previous administration.

At a time when we are counting on small business growth to enrich communities and bolster America's economy, we cannot afford to bury free enterprise under red tape emanating from Washington.

We urge the Committee to prioritize legislation that strengthens and closes loopholes in the Regulatory Flexibility Act.

We thank you for your leadership to create an environment where small businesses can operate, invest and grow. We look forward to working with you on ways to reduce red tape and burdens for small businesses.

Sincerely,

National

Alliance for Chemical Distribution
American Bakers Association
American Chemistry Council
American Farm Bureau Federation
American Foundry Society
American Hotel and Lodging Association
American Land Title Association
American Road & Transportation Builders Association
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors of America
Associated Wire Rope Fabricators
Brick Industry Association
Consumer Bankers Association
Consumer Brands Association
Council for Responsible Nutrition
FMI - The Food Industry Association
Independent Electrical Contractors
Independent Lubricant Manufacturers Association
Independent Petroleum Association of America
Innovative Lending Platform Association
International Franchise Association
International Sign Association
Job Creators Network
Leading Builders of America
Metals Service Center Institute
National Association for Surface Finishing
National Association of Home Builders
National Association of Insurance and Financial Advisors
National Association of Wholesaler-Distributors
National Automobile Dealers Association
National Federation of Independent Business (NFIB)
National Funeral Directors Association
National Mining Association
National Parking Association
National Retail Federation
National Roofing Contractors Association
National Rural Electric Cooperative Association
National Small Business Association (NSBA)
National Stone Sand & Gravel Association
National U.S. India Chamber of Commerce

Small Business & Entrepreneurship Council
Small Business Investor Alliance
The Toy Association
Treated Wood Council
U.S. Chamber of Commerce

Alabama

Albertville Chamber of Commerce
Central Baldwin Chamber of Commerce

Arizona

Chandler Chamber of Commerce
Greater Flagstaff Chamber of Commerce
Greater Phoenix Chamber
Lake Havasu Area Chamber of Commerce
Nogales Santa Cruz County Chamber of Commerce
Northwest Valley Chamber of Commerce
Tucson Metro Chamber

Arkansas

Holiday Island Chamber of Commerce

California

Buellton Chamber of Commerce
Carlsbad Chamber of Commerce
Coalition of California Chambers - Orange County
Fremont Chamber of Commerce
La Verne Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Western States Trucking Association
Yorba Linda Chamber of Commerce

Colorado

Alamosa County Chamber of Commerce
Denver Metro Chamber of Commerce
Greater Woodland Park Chamber
Vail Valley Partnership

Florida

Coral Gables Chamber of Commerce
Lakeland Chamber of Commerce

Georgia

Habersham County Chamber of
Commerce
Murray County Chamber of Commerce

Guam

Guam Chamber of Commerce

Idaho

Boise Metro Chamber of Commerce
Jerome Chamber of Commerce
Pocatello-Chubbuck Chamber of
Commerce, Inc.

Illinois

Dixon Chamber of Commerce & Main
Street
Edwardsville/Glen Carbon Chamber of
Commerce
GLMV Chamber of Commerce
Greater Rockford Chamber of Commerce
Joliet Region Chamber of Commerce &
Industry
Sauk Valley Area Chamber of Commerce
The Greater Springfield Chamber of
Commerce
West Suburban Chamber of Commerce &
Industry

Indiana

Crossroads Chamber Indiana
Indiana Chamber of Commerce
South Bend Regional Chamber

Iowa

Quad Cities Chamber of Commerce

Kansas

Grant County Chamber of Commerce
Greater Topeka Chamber

Louisiana

Greenwood Chamber of Commerce

Maryland

Talbot County Chamber of Commerce

Massachusetts

Metro South Chamber of Commerce

Michigan

Battle Creek Area Chamber of Commerce
Detroit Regional Chamber
Hartland Area Chamber of Commerce
Jackson County Chamber of Commerce
Oscoda-AuSable Chamber of Commerce

Minnesota

Greater Mankato Growth
Minnesota Chamber of Commerce

Mississippi

Hancock County Chamber of Commerce

Missouri

Greater Kansas City Chamber of Commerce

Montana

Billings Chamber of Commerce
Montana Chamber of Commerce

Nevada

Vegas Chamber

New Jersey

New Jersey State Chamber of Commerce

New York

Capital Region Chamber
North Country Chamber of Commerce
Sullivan County Chamber of Commerce

North Carolina

The Caldwell Chamber

North Dakota

Greater North Dakota Chamber

Oklahoma

Broken Arrow Chamber of Commerce
Edmond Area Chamber of Commerce

Oregon

Canby Area Chamber of Commerce
Gresham Area Chamber of Commerce
Lincoln City Chamber of Commerce
Oregon Business & Industry
Roseburg Area Chamber of Commerce

Pennsylvania

Blair County Chamber of Commerce
Columbia Montour Chamber of Commerce
Hanover Area Chamber of Commerce
Harrisburg Regional Chamber
Huntingdon County Chamber of Commerce
Lancaster Chamber of Commerce
Pennsylvania Chamber of Business and
Industry
Pittsburgh Airport Area Chamber of
Commerce
Schuylkill Chamber of Commerce

South Carolina

Greater Columbia Chamber of Commerce

Texas

Alvin-Manvel Area Chamber of Commerce
Coppell Chamber of Commerce
Irving Hispanic Chamber of Commerce

Utah

ChamberWest Chamber of Commerce
Salt Lake Chamber
St. George Area Chamber of Commerce

Virginia

Central Fairfax Chamber of Commerce
Loudoun County Chamber of Commerce

Washington

Burlington Chamber of Commerce
Greater Lake Stevens Chamber of
Commerce
Mercer Island Chamber of Commerce
Pullman Chamber of Commerce & Visitor
Center
Shelton-Mason County Chamber of
Commerce

Wyoming

Casper Area Chamber of Commerce
Greater Cheyenne Chamber of Commerce
Riverton Chamber and Visitors Center
Rock Springs Chamber of Commerce
Wyoming State Chamber of Commerce

cc: Members of the Committee on Small Business
Members of the Committee on the Judiciary