

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 117<sup>th</sup> 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 Bankers 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