

Statement for the Record of Karen R. Harned  
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U.S. House of Representatives Budget Committee  
Hearing on  
Reigniting American Growth And Prosperity Series:  
Removing The Burdens of Government Overreach  
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Thank you, Chairman Arrington, Ranking Member Boyle, and Members of the Committee for inviting me to testify today on the impact of regulation and government overreach on the nation's economy.

My name is Karen Harned and for over twenty-five years I have worked as an attorney focusing on administrative law. Early in my career as a food and drug lawyer I represented both large and small businesses and their trade associations. For the last twenty-one years I have represented small businesses -- first as Executive Director of the NFIB Small Business Legal Center and now on behalf of the Job Creators Network.

Over my career I have watched as federal agencies have grown their power to not just administer the law but to make it. Agency officials appear to treat many of the laws governing rulemaking as box checking exercises rather than meaningful processes to ensure (1) transparency in how rules are developed and (2) protect against new regulations having unintended consequences on businesses and, ultimately, the American people.

Federal regulations cost the U.S. economy real money. And, for the part of our economy responsible for growing the most jobs—America's small businesses – that cost is disproportionately higher than what bigger businesses pay.<sup>1</sup> Small businesses with fewer than 50 employees pay \$11,700 per employee, as compared to \$10,700 per employee for medium-sized businesses, and \$9.100 per employee for large businesses.<sup>2</sup>

During my career I have seen first-hand the impact of regulation on business. While at NFIB, I witnessed one of the clearest pictures of the correlation between regulations and the economy during the presidential transition from 2016 to 2017.

In 2012, experts predicted the coming of a “regulatory tsunami” after that election.<sup>3</sup> And that prediction came to pass with the 2016 printed version of the Federal Register coming in at 97,110 pages – a record.<sup>4</sup> Small business optimism at that time was at historically low levels.<sup>5</sup> However, during the 2016 presidential election cycle, then-candidate Trump promised that, if elected, he would work to reduce regulation and eliminate unnecessary regulations on the books. And, in the end, President Trump significantly reduced the number of new rules issued as compared to earlier administrations and made some progress in reviewing and removing outdated regulations. Following his election, NFIB's monthly survey of small businesses showed

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<sup>1</sup> Mark Crain and Nicole Crain, [“The Cost of Federal Regulation to the U.S. Economy, Manufacturing, and Small Business,”](#) Sept. 2014.

<sup>2</sup> Id.

<sup>3</sup> Richard W. Rahn, [“Rahn: The coming regulatory tsunami,”](#) The Washington Times, Oct. 29, 2012.

<sup>4</sup> Clyde Wayne Crews Jr., [“Obama's Legacy: 2016 Ends With A Record-Shattering Regulatory Rulebook,”](#) Forbes, Dec. 30, 2016.

<sup>5</sup> William C. Dunkelburg and Holly Wade, [NFIB Small Business Economic Trends](#), p. 4, April 2023.

a sharp rise in business optimism starting in January 2017 – a trend that continued until the onset of the COVID-19 pandemic in 2020.<sup>6</sup>

During the regulatory ramp up of the Obama Administration the small business owners I spoke with expressed concern about what was coming out of Washington. Many could point to regulatory proposals -- like redefining what is a navigable water under the Clean Water Act, lowering salary thresholds for employees exempt from overtime, and the proposed massive restructuring of the energy industry under the Environmental Protection Agency's "Clean Power Plan" – as a cause of specific concern. But many others seemed almost paralyzed by the number of regulations coming out of the federal government. They did not know what or how those regulations would impact their business, they just knew a significant number of new rules were in the works. The uncertainty caused by such government regulatory expansion was a significant factor in their decisions not to grow their business.

My conversations with small business owners and what they were experiencing mirrored what NFIB's research covering regulations at the end of that administration bore out.

### **Cost of Compliance Is the Biggest Problem for Small Business**

First, the cost of complying with regulation is the biggest regulatory problem for small business.<sup>7</sup> According to the Job Creators Network's Small Business IQ Monthly Poll, seventy-nine percent of small businesses have fewer than ten employees.<sup>8</sup> In the regulatory context, this is particularly important to appreciate. Firms with fewer than ten employees do not employ attorneys, accountants, or human resource professionals. If they are lucky, they have someone to manage sales. As a practical matter that means that it is the small business owner who is tasked with those duties, many of which involve regulatory compliance. That is why in 2016 over 41 percent of small business owners reported reaching out to talk with someone at a government agency for help complying with a regulation over the last three years.<sup>9</sup> Because of the new regulations and programs during the pandemic, this number is likely higher today.

Time is money. Time spent filling out paperwork, keeping up with new regulations, and, in many cases, hiring a lawyer or other outside professional to help navigate the regulatory jungle is time and money not spent investing in and growing the business.

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<sup>6</sup> Id.

<sup>7</sup> NFIB National Small Business Poll, "[Regulations](#)," Volume 13, Issue 3, 2017.

<sup>8</sup> John McLaughlin and Scott Rasmussen, "[Small Business IQ Monthly Poll](#)" Job Creators Network, April 2023, at 5.

<sup>9</sup> "[Regulations](#)", at 1, 3-4, and 6.

## **Death by a Thousand Regulations**

The volume of regulations, rather than a few specific regulations, is the biggest problem for 55 percent of small businesses.<sup>10</sup> Unless a business owner is in a highly technical or regulated industry, the regulatory burden they experience is more generalized. It's the famous death by a thousand cuts, or in the case of a business owner – death by a thousand regulations. I have heard presentations from agency officials who, when explaining how to comply with the regulation, say something like, "All the business has to do is fill out this two-page form." But it's not just that form, it's the ten, twenty or more other forms (including tax forms), that are so problematic. And, again, for almost 80 percent of businesses in America, it's the small business owner who is the firm's de facto regulatory compliance officer. Not surprisingly, in its most recent SBIQ Monthly Poll, Job Creators Network found that 56 percent of small business owners reported spending a significant amount of time complying with local, state, and federal regulations.

## **Another Regulatory Tsunami**

Unfortunately, it appears that the Biden administration may be on a path of regulation like that in the last four years of the Obama Administration.<sup>11</sup> At the end of 2022, the Biden Administration had issued over 7,600 new rules, which is the most since right after 9/11.<sup>12</sup> More concerning, many of these proposed regulations -- like the Department of Labor's changes to the definition of who is an independent contractor, the National Labor Relations Board's tightening of the joint employer standard, and EPA's recent proposals to significantly reduce car and power plant emissions – are based on questionable legal authority and would impose significant costs on businesses of all sizes and ultimately the American consumer.

In light of this new "regulatory tsunami," it is not surprising to see that small business owners are growing increasingly concerned about the economy and their ability to succeed. According to the most recent Job Creators Network SBIQ Monthly Poll, 63 percent of small businesses think the climate for small business is only fair or poor. For small businesses with revenues of \$100,000-\$250,000 that number rises to 73 percent.<sup>13</sup> Seventy-four percent of small businesses rate the economy as fair/poor.<sup>14</sup> As the poll notes in its "key takeaways," the small business community thinks we are close to a recession.

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<sup>10</sup> "The volume of regulations is the largest problem for 55 percent of small employers compared to 37 percent who are most troubled by a few regulations coming from one or two sources." ["Regulations,"](#) at 1.

<sup>11</sup> Phil Gramm and Pat Toomey, ["Biden is Transformational, and Not in a Good Way,"](#) Wall Street Journal, April 24, 2023.

<sup>12</sup> Clyde Wayne Crews Jr., ["Joe Biden's Happy New Year In Federal Regulation,"](#) Forbes, Dec. 30, 2022.

<sup>13</sup> ["JCN Small Business IQ Monthly Poll"](#) at 4.

<sup>14</sup> Id.

## **Solutions to Holding Agencies Accountable and Better Rulemaking**

The good news is there are several bills that have been introduced this Congress that would go a long way in ensuring that federal agencies are: held accountable when they overstep their statutory authority; not engaging in one-size-fits all rulemaking that is particularly harmful to small businesses; and reviewing the thousands of regulations on the books to ensure that unnecessary “regulatory underbrush” is eliminated. Here are a few House bills that I think, if enacted, could make good progress in meeting these objectives.

H.R. 261, “Article I Regulatory Budget Act,”: Introduced by Representative Good, would require a regulatory budget detailing regulatory costs like the annual budget for taxes and government spending.

H.R. 262, “ALERT Act of 2023”: Also introduced by Representative Good, this legislation would require a monthly update from federal agencies with detailed information concerning any rules they are working on.

H.R. 277, “Regulations from the Executive In Need of Scrutiny (REINS) Act”: Introduced by Representative Cammack, this legislation would help ensure that an agency is not acting beyond the authority given to it by Congress. Among other things, it would expand the Congressional Review Act to require congressional approval of certain significant agency regulations before an agency could implement them.

H.R. 358, “Small Business Regulatory Flexibility Improvements Act”: Introduced by Representative Cline, this legislation would make needed changes to the Small Business Regulatory Enforcement Fairness Act of 1996, which gave small businesses a seat at the table during the rulemaking process. Since SBREFA was enacted, federal agencies have exploited loopholes in that law and many times are not properly considering the economic impact of new regulations on small businesses. H.R. 358 would close those loopholes to ensure the agency is properly considering and addressing the potential impact of new rules on small businesses.

H.R. 442: “Regulatory Accountability Act”: Introduced by Representative Van Duyne, this comprehensive legislation would modernize and make several much-needed changes to the Administrative Procedure Act and how rulemaking is conducted. Among other things, it would expand and provide statutory authority for notice-and-comment rulemaking procedures to require that federal agencies consider: (1) whether a rulemaking is required by statute or is within the discretion of the agency; (2) whether existing laws or rules could be amended or rescinded to address the problem; and (3) reasonable alternatives to a new rule.

H.R. 890, “Guidance Out of Darkness (GOOD) Act”: Introduced by Representative Comer, this legislation would require agencies to publish their regulatory guidance on the internet in a single, easily accessible location. This legislation would provide much-needed transparency for the public and small businesses seeking to know how agencies are interpreting the laws with which they must comply.

H.R. 317, “Regulation Reduction Act of 2023”: Introduced by Representative Bice, this legislation would help eliminate “regulatory underbrush” by requiring agencies to repeal three existing regulations before a new regulation takes effect.

### **Conclusion**

Federal regulation has a direct impact on the economy. Businesses large and small consider regulation when deciding where to locate, and whether to expand and hire employees.

Over the last two decades we have seen agencies become particularly aggressive in how they regulate and less concerned with whether they even have the legal authority to promulgate a regulation in the first place. It is past time for Congress to step in to ensure that agencies are acting within the bounds of the law, meaningfully considering more targeted regulatory alternatives, and eliminating unnecessary and antiquated regulations.

Thank you for the opportunity to testify today. I look forward to answering any questions you may have.