

**The Honorable Blaine Luetkemeyer**  
**Ranking Member**  
**Committee on Small Business**  
**Statement for the Hearing Record**  
**Committee on the Judiciary**  
**Member Day Hearing**  
**October 22, 2021**

Good morning, Chairman Nadler and Ranking Member Jordan. I am pleased to provide this statement for the Committee's Member Day hearing record.

As Ranking Member of the Committee on Small Business, I know that there is no more important issue for small businesses, and indeed, all of America, than the recovery from the COVID-19 pandemic. As small businesses continue to regain their footing and operate facing new challenges in the post-COVID environment, they are coping with the added pressures of skyrocketing inflation; labor shortages; higher costs of materials, products, and services; supply chain disruptions; and threats of higher taxes. For small businesses, one constant that remains is the ever-increasing regulatory burden. In a very difficult environment, small businesses are doing their best to meet the needs of their customers and communities, but they continue to be hampered by the cost and burdens of regulatory compliance.

Small businesses comprise 99.9 percent of U.S. businesses, with 46.8 percent of all U.S. employees.<sup>1</sup> However, small business growth, and their potential for job growth, is limited by the cost of regulatory compliance.<sup>2</sup> According to NFIB, the annual cost per employee of complying with federal regulations is significantly higher for small firms than large firms.<sup>3</sup> The burden is heaviest on small businesses because their compliance costs are often not affected by economies of scale,<sup>4</sup> and the problem has continued to grow for decades.<sup>5</sup> Recent research tracks the large body of literature that has found regulation is less harmful to large firms because of their scalability in managing the operating costs and compliance risks associated with

---

<sup>1</sup> OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION (2021), *available at* <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143723/Small-Business-Economic-Profile-US.pdf>.

<sup>2</sup> NATIONAL ASSOCIATION OF MANUFACTURERS, THE COST OF FEDERAL REGULATION TO THE ECONOMY, MANUFACTURING AND SMALL BUSINESS (2014), *available at* <https://www.nam.org/the-cost-of-federal-regulation/>.

<sup>3</sup> NATIONAL ASSOCIATION OF INDEPENDENT BUSINESS, REGULATIONS (2021), *available at* <https://www.nfib.com/advocacy/regulations/>.

<sup>4</sup> *Supra* note 2.

<sup>5</sup> *Supra* note 3.

regulation.<sup>6</sup> According to NFIB’s most recent Small Business Economic Trends survey, “unreasonable government regulations” ranks as the third largest problem for small firms.<sup>7</sup>

In fact, the regulatory burdens imposed by Congress and federal agencies force small business owner to divert already limited resources away from economic expansion toward regulatory compliance costs. Over time, this has restricted the ability of small firms to hire workers and lead an economic recovery. In the COVID economy, the burden has become even heavier as small businesses struggle to stay open amid escalating costs coupled with state and local mandates.<sup>8</sup>

The Regulatory Flexibility Act<sup>9</sup> (RFA) requires federal regulators to consider the economic consequences of their proposed and final rules on the small businesses they regulate. The RFA is an important law that, if fully complied with in letter and spirit, has the potential to significantly reduce the regulatory burden for small businesses without undermining the protections inherent in statutes.

The premise is simple. If an agency has two ways to achieve its regulatory objectives, it should select the one that imposes the lesser cost on small businesses, since they represent the vast majority of entities subject to federal regulation.<sup>10</sup> Detailed analysis on the impact of regulations is necessary to ensure that regulators are not making irrevocable decisions that will reduce the competitive ability of entrepreneurs. By forcing federal agencies to assess the consequences of their rules, they are less likely to impose unintentional barriers to job creation and economic growth. It is common sense that federal agencies should determine how their rules will affect businesses – businesses that need increased capital to recover from COVID and keep their companies operating rather than comply with the unwieldy dictates of federal agencies.

Our Committee regularly hears testimony from small business owners about the impact that regulations have on small businesses struggling to survive and grow, struggles that are particularly acute in the COVID economy. Despite the importance of the RFA to the small business community, federal agencies routinely ignore its requirements. Testimony has repeatedly demonstrated that agencies are failing to comply with the RFA.<sup>11</sup> The result is

---

<sup>6</sup> CHARLES W. CALOMIRIS, HARRY MAMAYSKY & RUOKE YANG, MEASURING THE COST OF REGULATION: A TEXT-BASED APPROACH, RESEARCH BRIEFS, CATO INSTITUTE (Aug. 19, 2020), available at [https://www.cato.org/sites/cato.org/files/2020-08/RB228\\_v2.pdf](https://www.cato.org/sites/cato.org/files/2020-08/RB228_v2.pdf).

<sup>7</sup> NFIB, SMALL BUSINESS ECONOMIC TRENDS (Sept. 2021), available at <https://www.nfib.com/surveys/small-business-economic-trends/>.

<sup>8</sup> CBS NEWS, NINE MILLION SMALL BUSINESSES FEAR THEY WON’T SURVIVE PANDEMIC, available at <https://www.cbsnews.com/news/small-business-federal-aid-pandemic/>.

<sup>9</sup> 5 U.S.C. § 601 et seq.

<sup>10</sup> OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, HOW TO COMPLY WITH THE REGULATORY FLEXIBILITY ACT (Aug. 2017), available at <https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf>.

<sup>11</sup> See, for example, *Reducing Federal Agency Overreach: Modernizing the Regulatory Flexibility Act: Hearing Before the House Comm. On Small Bus.*, 112<sup>th</sup> Cong. (testimony of David Squires, Bill Frulla, Craig Fabian, and Rich D. Draper), available at <https://www.congress.gov/event/112th-congress/house-event/LC2621/text?s=1&r=81>; *Improving the Regulatory Flexibility Act: Hearing Before the House Comm. On Small Bus.*, 108<sup>th</sup> Cong. (testimony of The Hon. Lee Terry, The Hon. Mike Pence, The Hon.

reduced small business competitiveness, which prevents them from expanding and creating additional jobs. This is not a result that we can afford.

I have introduced legislation to help those who must comply with regulations to better understand their requirements. H.R. 1507, the Providing Accountability Through Transparency Act of 2021, would require each agency, in providing notice of a rulemaking, to include a link to a 100-word plain language summary of the proposed rule.<sup>12</sup> H.R. 1508, the Guidance Clarity Act of 2021, would require federal agencies to state on the first page of guidance documents that such guidance: (1) does not have the force and effect of law, and (2) is intended only to provide clarity to the public about existing legal requirements or agency policies.<sup>13</sup> These practical reforms would help to clarify the thousands of pages of often obscure and complicated regulations that are finalized every year. I look forward to working with my colleagues on these bills.

A smart regulatory environment can have benefits. But regulations also have costs, by building barriers to entry, distorting markets, and diverting scarce capital from job creation and growth. These costs are compounded for small businesses because they bear the disproportionate impact of regulations on their operations. By mandating that federal agencies assess the impact of proposed and final regulations on small businesses, the RFA can help to reduce the burden of regulations on small firms. However, federal agencies continue to ignore the letter and the spirit of the RFA. I look forward to partnering with the House Judiciary Committee Members to strengthen the RFA and encouraging federal agencies to comply with its provisions.

Thank you for the opportunity to provide this statement.

---

Jere Glover, The Hon. Frank Swain, and Jim Morrison, Ph.D.), *available at* <https://www.govinfo.gov/content/pkg/CHRG-108hhr94113/html/CHRG-108hhr94113.htm>.

<sup>12</sup> H.R. 1507, The Providing Guidance through Transparency Act of 2021, 117<sup>th</sup> Cong. (2021), *available at* <https://www.congress.gov/bill/117th-congress/house-bill/1507>.

<sup>13</sup> H.R. 1508, The Guidance Clarity Act of 2021, 117<sup>th</sup> Cong. (2021), *available at* <https://www.congress.gov/bill/117th-congress/house-bill/1508>.