

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

“Businesses are struggling everyday to serve their customers, clients, and communities. It’s hard enough to compete in one of the most difficult economies in a generation. Additional burdens and barriers from federal agencies only further exacerbates that challenge. Minnesota ranks toward the bottom of new business creation in the U.S. in part due to the high barriers created by both state and federal policy. The Prove It Act is necessary legislation that will reform the Regulatory Flexibility Act. It will remove avenues that federal agencies have used to circumvent the law that have been at the peril of small business owners. We urge Congress to step up and help give small businesses a fighting chance to build something special.” Andy Wilke, Executive Vice President, Greater Mankato Growth

“Too often, regulators are able to pay lip service to their responsibilities to mitigate the impact of federal regulations on Americas small businesses under the Regulatory Flexibility Act. The bipartisan, bicameral Prove It Act helps ensure small businesses get the consideration they deserve during the regulatory process, and offers clarity as well as meaningful pathways for redress. The National Small Business Association (NSBA) is proud to support this legislation,” said Todd McCracken, President & CEO of the National Small Business Association (NSBA).

"Any American who has attempted to start a business or earn a living as their own boss understands that a law degree shouldn't be a prerequisite for entrepreneurship; however, it often feels like it is. This legislation, HR 7198, will address this issue by giving small businesses a seat at the table as bureaucrats try to draft and implement new regulations." – Marc Marie, Regulatory Policy Fellow – American’s for Prosperity

"Job Creators Network applauds Representatives Finstad, Caraveo, and Moran for introducing this legislation that would provide needed relief to small businesses contending with overregulation. Their bill would protect small businesses from executive overreach by finally meaningfully holding government bureaucrats accountable for considering the small business impact of new regulations before they are imposed. And it would empower small businesses and their defenders to challenge certifications claiming proposed rules don't significantly impact small businesses. Representatives Finstad, Caraveo, and Moran's legislation would fulfill a key pillar of Job Creators Network's American Small Business Prosperity Plan by reducing the regulatory burden on small businesses," said Alfredo Ortiz, President and CEO of Job Creators Network.

“The Prove It Act will close loopholes in the Regulatory Flexibility Act that have allowed federal regulators to shut out small businesses from decision making," said Tom Sullivan, Vice President of Small Business Policy at the U.S. Chamber of Commerce. “Rep. Finstad, Rep. Moran, and Rep. Caraveo understand that small businesses provide oversized benefits to our economy, from job creation to innovation, and their legislation will prevent hidden regulatory costs and ensure agencies consider small business input before issuing new rules and regulations.”

“NFIB members annually rate “unreasonable government regulation” as one of the top concerns facing small businesses. Unfortunately, the red tape and compliance burdens of small businesses continue to grow exponentially... The pace of regulation has significantly increased over the last

three years. As of January 26, 2024, President Biden had imposed more than \$454 billion of final rule costs and 279 million paperwork hours... That is why legislation like the *Prove It Act* is so important. The *Prove It Act* seeks to address the loopholes in the RFA by increasing small business input in the regulatory process and strengthening the requirements for agencies to examine the impacts of regulations on small businesses. NFIB supports the *Prove It Act* and urges Congress to promptly enact this legislation.” - Josh McLeod, Director of Federal Government Affairs, NFIB

“The regulatory burden on insurance producers, registered representatives of broker-dealers, and financial advisors is often put in place without proper discussion or concern for the negative impact on the ability to conduct business or properly serve clients and consumers. Additionally, federal regulators often work to circumnavigate the RFA, which leads to a loss of growth and opportunity for these small businesses that represent Main Street America and make up an integral part of the community in which they work. That is why legislation like the *Prove It Act* is so important. The *Prove It Act* seeks to address the loopholes in the RFA by increasing small business input in the regulatory process and strengthening the requirements for agencies to examine the impacts of regulations on small businesses. NAIFA offers its full support to the *Prove It Act* and urges Congress to promptly enact this legislation.” - Michael W. Hedge, Jr., Senior Director of Government Affairs, National Association of Insurance and Financial Advisors.

“Community banks, more than any other lenders, partner with the small businesses in their communities and are responsible for the majority of small business loans. They have a special interest in ensuring that small businesses are not hampered by excessive and inflexible regulatory burden. We believe your legislation will result in more flexibility agency rules that better accommodate small businesses... Thank you again for introducing this important legislation. We look forward to working with you to advance it into law.” – Rebeca Romero Rainey, President & CEO, Independent Community Banker Association

“Not only are small businesses the backbone of America’s economy, they’re the backbone of America’s supply chain. Over 70% of American freight is transported exclusively by truck and 96% of trucking is made up of small business carriers. OOIDA and the 150,000 small business truckers we represent support the bipartisan *Prove It Act* to keep government overreach and burdensome overregulation off of the backs of the men and women behind the wheel who keep our economy moving. We thank Representative Finstad, Representative Caraveo, and Representative Moran for their leadership in Congress on this commonsense legislation.” - Todd Spencer, President of the Owner-Operator Independent Drivers Association.

“I am writing on behalf of the over 400 members of the National Stone, Sand & Gravel Association (NSSGA), to express our strong support for the bipartisan *Prove It Act* that you recently introduced. The aggregates industry, like many others, has faced considerable challenges due to the increasing complexity and scope of federal regulations. These regulations often impose substantial direct and indirect costs on small businesses, which unlike larger entities, lack the resources to navigate these regulatory burdens effectively... The *Prove It Act*

represents a significant step forward in ensuring that small businesses, including those within the aggregates sector, are not unduly burdened by regulations that can stifle innovation, reduce job creation, and hamper economic growth.” - Michele Stanley, Executive Vice President and Chief Advocacy Officer, National Sand, Stone, & Gravel Association