



**Testimony of**

**Randy Noel**

**On Behalf Of the  
National Association of Home Builders**

**Before the  
United States House of Representatives  
Small Business Committee**

**Hearing on  
Regulatory Reform and Rollback: The Effects on Small Businesses**

**March 7, 2018**

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**Introduction**

Chairman Chabot, Ranking Member Velázquez and Members of the Committee, thank you for the opportunity to testify today. My name is Randy Noel. I am a home builder and small business owner from LaPlace, Louisiana, and the Chairman of the Board of Directors of the National Association of Home Builders (NAHB).

NAHB is a federation of more than 700 state and local associations representing more than 140,000 members nationwide. NAHB's members are involved in home building, remodeling, multifamily construction, land development, property management, and light commercial construction. Taken together, NAHB's members employ more than 1.26 million people and construct about 80 percent of all new American housing each year.

The majority of NAHB's builder members are truly small businesses constructing 10 or fewer homes each year with fewer than 12 direct employees. These builders, in addition to building homes, must navigate a dense thicket of regulations. There is no question that we need to protect public health, welfare, safety and the environment. But federal agencies need to fully and consistently consider the unique burdens small businesses face in complying with regulations.

As a second-generation home builder with more than 30 years of experience, I understand all too well how difficult (and often costly) it can be to comply with the many and varied government regulations that apply to my day-to-day work. NAHB estimates, on average, regulations imposed by government at all levels account for nearly 25 percent of the final price of a new single-family home built for sale.<sup>1</sup>

The significant cost of regulations reflected in the final price of a new home is not just a problem for the small businesses that build them; it has a negative effect on main street U.S.A. by making affording a home that much more difficult. Based on findings from a 2016 study, NAHB estimated that approximately 14 million American households were priced out of the market for a new home by government regulations in that year.<sup>2</sup>

But I am happy to report today that things are getting better. The first year of Donald Trump's presidency has seen major progress on efforts to reduce the relentless and costly over-regulation of American industry. The home building industry and the small businesses that

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[http://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=250611&channelID=311&\\_ga=1.255452874.358516237.1489032231](http://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=250611&channelID=311&_ga=1.255452874.358516237.1489032231)

<sup>2</sup> <http://eyeonhousing.org/2016/05/14-million-households-priced-out-by-government-regulation/>

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predominate it have been significant beneficiaries of these efforts. Builders have taken note and entered 2018 with a great deal of optimism.

Over the last three months, NAHB's Housing Market Index (HMI), a measure of builder sentiment, has recorded its highest readings in nearly two decades. Much of that optimism is due to tight existing home inventory, a solid economy with low unemployment, and an improving policy environment that offers hope for reduced regulatory burdens.

**Good Progress but the Job is Not Done**

Today I wish to focus on the significant progress that has already been made in reducing regulatory burdens for small businesses in our industry, how the changes have helped builders, and what regulatory headwinds still linger. While much has been accomplished, the hefty price home buyers are paying for government regulations represents just one more obstacle that home builders need to overcome in restoring the marketplace to normal conditions. Later in my testimony, I outline a number areas that Congress and the administration should address that would further reduce regulatory burdens on small businesses and spur job and economic growth.

On the positive side, the successful efforts of this administration and Congress to reduce the regulatory burdens on small businesses in the home building industry are remarkable both in their number and scope. To date, we have seen more than 20 significant regulatory changes that will benefit home owners, home buyers, and home builders. Allow me to quickly summarize some of the more significant changes.

**HUD Federal Flood Risk Management Standard (FFRMS)**

The Obama administration executive order that created the FFRMS would have expanded the federally regulated floodplain and required increased structural elevation and flood-proofing for all federally funded projects, including single-family homes and multifamily projects using FHA mortgage insurance.

In response to the FFRMS, HUD proposed a problematic rule in 2016 to expand its floodplain management oversight. HUD's proposal threatened access to FHA mortgage insurance for single-family home buyers and multifamily builders and would have jeopardized affordable housing opportunities for countless low- to moderate-income working-class families.

The additional elevation and flood-proofing requirements proposed for multifamily properties using FHA mortgage insurance programs would have made many projects infeasible, thereby preventing the delivery of much-needed rental housing during the current affordable housing

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crisis. Additionally, multifamily builders would have had no way of knowing if they had to comply with the new floodplain rules because maps of the expanded floodplain did not (and still do not) exist. President Trump rescinded the executive order and soon after HUD followed suit by withdrawing its FFRMS proposal.

EPA/Corps Waters of the U.S. (WOTUS) Rule

The 2015 WOTUS rule expanded federal jurisdiction of the Clean Water Act to isolated wetlands, channels that only flow when it rains, and most man-made ditches. The result would have greatly increased federal regulatory power over private property and led to increased permit requirements, project delays, and significant avoidance and mitigation costs. Equally important, the changes would not have significantly improved water quality because much of the rule improperly encompassed water features under state regulatory authority. As a result, 31 states sued the federal government over the deeply flawed rule. The agencies are in the process of withdrawing the 2015 rule and developing a new rule.

Expanded Health Care Options

Small businesses continue to struggle to provide health benefits to their employees. On October 12, 2017, President Trump signed an executive order that will ease restrictions on association health plans and health reimbursement accounts to create more options for small businesses to provide health benefits to their employees. Easing restrictions on association health plans will grant small businesses access to better and more affordable health care plans, allow them to negotiate lower costs for coverage, and level the playing field for smaller firms that want to help their workers and their families with their health care needs. Additionally, expanding the use of health reimbursement arrangements will allow small businesses to offer pre-tax dollars to insured employees to help pay premiums and/or other out-of-pocket costs associated with medical care and services.

OSHA Volks Recordkeeping Rule

Finalized on December 19, 2016, this rule extended the explicit six-month statute of limitations on recordkeeping paperwork violations in the Occupational Safety and Health (OSH) Act of 1970 to five years. Earlier court rulings had affirmed applicability of the six-month statute of limitations; nonetheless, the agency proceeded with its rulemaking.

The Volks Rule represented a particularly egregious end run around Congress's power to write the laws and a clear challenge to the judicial branch's authority to prevent an agency from exceeding its authority to interpret the law. Had it been allowed to stand, the rule would have subjected millions of small businesses to potential citations for paperwork violations, but do

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nothing to improve worker health or safety. Congress voted to overturn the rule by a joint resolution of Congress under the Congressional Review Act. President Trump signed the resolution into law on April 3, 2017.

**More to Be Done**

The Code of Federal Regulations didn't grow to over 180,000 pages overnight. Even with the significant progress of the past year, there still remains significant work to be done in peeling back and revisiting the accumulated layers of regulations heaped upon small businesses. In particular, NAHB urges Congress and the administration to focus on the following:

OSHA Multiemployer Policy

Existing policy outlines agency procedures for allowing compliance officers to issue citations on work sites where there is more than one employer. On construction sites, this policy allows OSHA to issue citations to a general contractor (i.e., a home builder) for safety violations created by subcontractors, even if none of the general contractor's employees are exposed to the hazardous condition. This interpretation impermissibly nullifies the employer/employee relationship and must be changed.

EPA Lead Renovation, Repair and Painting (RRP) Program

This rule addresses lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities built before 1978.

The RRP program, as it is currently being implemented, is an inefficient tool for achieving the environmental and health goals of the underlying statute and rule. The regulation is needlessly burdensome, costly, and fails to provide the tools needed for efficient implementation, which discourages homeowners from using the services of certified renovators. Most importantly, the lack of a reliable, commercially available lead paint test kit (more than five years after EPA believed a test kit would be ready) means renovators are left in the dark when it comes to compliance. Other aspects of the program, including the new renovator recertification requirements, add needless complexity to the rule's implementation and create an unnecessary bias against online training. EPA expects to complete a comprehensive review in spring 2018; NAHB is hopeful this review will lead to change.

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DOL Apprenticeship Programs

With labor shortages in the residential construction industry reaching levels not seen in two decades, it is critically important that the administration and Congress take immediate steps to encourage the development of a skilled workforce now and for the future.

Consistent with the President's Executive Order on Expanding Apprenticeships in America, the Employment and Training Administration (ETA) will be proposing regulations to establish the framework for industry-recognized apprenticeship programs, a new industry-led initiative to promote innovation and opportunity in apprenticeship, and integrate this initiative with the existing Registered Apprenticeship system. NAHB applauds this effort and looks forward to working with the administration to further this important program.

FWS/NMFS Endangered Species (ESA) Regulations

Implementation of the ESA increasingly impacts land use activities. The current regulations enable the services to assert authority over large swathes of land and a broad array of activities that are rarely associated with species conservation. The consultation requirements also remain expensive, burdensome and unwieldy. As land is impacted by the ESA, it becomes too expensive or otherwise extremely difficult to use for home building. The higher costs invariably translate into higher home prices, and higher prices, in turn, disqualify more individuals from being able to afford a home.

**Fixing the Underlying Problem**

The administration and this Congress is to be commended for its successful efforts thus far to reduce regulatory burdens on small businesses. Additionally, I urge the administration and Congress to continue its work and move swiftly to address outstanding regulatory hurdles. However, all of these actions will amount to little more than a Band-Aid on the problem until such time as Congress and the administration can successfully address our broken regulatory rulemaking system.

NAHB has consistently said the only sure way to safeguard against future bad regulation is to fix the broken regulatory rulemaking process itself, ensure all regulations are designed with small businesses in mind, and, perhaps most importantly, restore meaningful congressional oversight to the rulemaking process. Fortunately, the solution already exists. Legislation has already passed the U.S. House that would go a long way toward accomplishing these goals: the Regulatory Accountability Act (RAA); the Regulatory Flexibility Improvements Act (RFIA); and the Regulations from the Executive in Need of Scrutiny (REINS) Act. NAHB will continue to urge the Senate to take up these important bills.

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The REINS Act restores much-needed congressional oversight to the rulemaking process, a desperately needed improvement given the growth of the regulatory state over the past few decades. Without meaningful congressional oversight, poorly-crafted rules often go into place and businesses are forced to divert precious resources to lengthy and uncertain legal challenges.

While the REINS Act returns control of the regulatory process to the people, the RAA repairs the decades-old, badly-broken system and the RFIA makes common sense improvements to existing law to ensure all agencies are considering the true impact or proposed regulations on small businesses. Taken together, these reforms will ensure we protect the environment and our workers, while also adding fuel to the engine of economic growth that America's small businesses represent.

Thank you again for the opportunity to testify today.