



August 23, 2023

The Honorable Ben Cardin  
Chairman  
Committee on Small Business  
& Entrepreneurship  
United States Senate  
Washington, DC 20510

The Honorable Joni Ernst  
Ranking Member  
Committee on Small Business  
& Entrepreneurship  
United States Senate  
Washington, DC 20510

Dear Chairman Cardin and Ranking Member Ernst:

Thank you for holding the field hearing today in Des Moines, Iowa, entitled, “One Size Does Not Fit All: Understanding the Importance of Rightsizing Regulations for Small Businesses.”

I am Natalie Kaddas, CEO of Kaddas Enterprises in Salt Lake City, Utah. My manufacturing company specializes in manufacturing thermoform plastic products for the energy, transportation, and aerospace industries. I serve as the Chair of the Small Business Council at the U.S. Chamber of Commerce. 96% of Chamber member companies have fewer than 100 employees and 75% have fewer than 10. The Small Business Council works to ensure the views of small businesses are integrated into the Chamber’s policy-making process.

At a time when regulatory experts estimate a sharp increase in federal regulation<sup>1</sup>, the scheduling of this hearing is appropriate to ensure that small businesses have a legitimate voice in federal rulemakings. The hearing today will feature testimony from the Acting Chief Counsel for Advocacy, whose office plays a critical role in protecting small businesses from costly federal red tape. The U.S. Chamber of Commerce believes that the Office of Advocacy’s legal authority, which helps ensure that small business has a legitimate voice in the development of federal rules and regulations, should be strengthened. We are hopeful that this hearing and the consideration of legislation like the PROVE It Act will bolster the ability of the Office of Advocacy to independently represent the views and interests of small business in federal rulemakings, and will also end the ability of agencies to ignore small business input prior to imposing new mandates.

### **Small Business and the Regulatory Flexibility Act**

Small businesses have long been understood as America’s economic engine. The roughly 33.1 million small businesses make up over 99% of all U.S. businesses, represent 43.5% of America’s GDP, and account for 62% of net job creation since 1995.<sup>2</sup> Despite small businesses’ strength in economic contributions, they are at a disadvantage when it comes to dealing with regulations.

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<sup>1</sup> Wall Street Journal Editorial, *Regulators Gone Wild*, print edition (August 15, 2023).

<sup>2</sup> U.S. Small Business Administration, Office of Advocacy, *Frequently Asked Questions About Small Business*, (March, 2023).

The Chamber's work with the Bradley Foundation showed that U.S. businesses shoulder \$1.9 trillion in annual regulatory compliance costs.<sup>3</sup> For small businesses with 50 or fewer employees, the costs are nearly 20% higher than the average for all businesses. Small manufacturers incur costs of \$34,671 per employee per year. This is more than three times the cost shouldered by average U.S. companies.<sup>4</sup>

The Regulatory Flexibility Act (RFA), amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), was intended to rectify the disproportionate regulatory burden faced by small business by incorporating their concerns into the regulatory process and by insisting that federal agencies find ways to meet their regulatory objectives while at the same time minimizing costs on small businesses.<sup>5</sup> The Small Business Administration's (SBA) Office of Advocacy is responsible for overseeing agency compliance with the RFA and acts as an independent voice within the Administration to ensure that agencies are sensitive to how their regulations impact small businesses.

### **Abuse of "Certification" under the RFA**

Unfortunately, one way for federal agencies to avoid small business input is to incorrectly certify that a rulemaking will not have a significant economic impact on a substantial number of small entities. This year's RFA report, as well as RFA reports over the past 41-years, cites numerous examples of how agencies do not properly "certify" whether their proposals will impact small businesses. One of the most egregious multi-year / multi-Administration failures to consider small business is the series of Waters of the United States (WOTUS) rulemakings promulgated by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers. Rather than seek appropriate input from small businesses on how to manage wetlands permitting in a way that would be both environmentally protective and sensitive to impacts on small businesses, EPA and the Corps repeatedly insisted - in 2014, 2019, and in 2023 – that their proposed WOTUS rules did not impose additional costs on small businesses.

When each of these proposals was issued, SBA's Office of Advocacy correctly faulted EPA and the Corps for improperly "certifying" that their rulemaking would not harm small businesses. On each occasion, the Office of Advocacy faulted the agencies for not convening a panel of small businesses that is required under SBREFA to ensure that EPA, the Consumer Financial Protection Bureau, and the Occupational Safety and Health Administration specially consider small business recommendations for less burdensome alternatives in their rulemakings.<sup>6</sup> In this

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<sup>3</sup> U.S. Chamber of Commerce Foundation, *The Regulatory Impact on Small Business: Complex.Cumbersome.Costly*, (March 2017).

<sup>4</sup> W. Mark Crain and Nicole V. Crain, A Report for the National Association of Manufacturers, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business*, (September 10, 2014).

<sup>5</sup> Regulatory Flexibility Act, 501 U.S.C. Sec. 601 et seq (1980).

<sup>6</sup> See SBA Office of Advocacy letter to Administrator Gina McCarthy and Maj. Gen. John Peabody re: Definition of "Waters of the United States" Under the Clean Water Act, (October 1, 2014) and SBA Office of Advocacy letter to Administrator Andrew Wheeler and Lieutenant General Todd T. Semonite re: Revised Definition of "Waters of the United States" (Docket No. EPA-HQ-OW-2018-0149), (April 11, 2019) and SBA Office of

regard, it is worth noting that the Chamber’s lawsuit challenging the 2023 WOTUS rule, which is now pending in the U.S. Court of Appeals for the Sixth Circuit, specifically challenges EPA’s and the Corp’s “certification” that the rule “will not have a significant economic impact on a substantial number of small entities under the RFA.” As the Chamber’s complaint in that case notes, this certification “is based on a description of the Final Rule that does not reflect reality,” as “the Final Rule will impose significant costs on small businesses.” The Sixth Circuit has issued a temporary injunction against enforcement of the 2023 rule, as have two other courts.

Even more recently, the Supreme Court’s decision in *Sackett v. EPA* rejected the broad theory of regulatory jurisdiction that was central to the 2023 WOTUS rule. In its decision, the Supreme Court observed that “because the [Clean Water Act] can sweep broadly enough to criminalize mundane activities like moving dirt,” “a *staggering* array of landowners” were “at risk of criminal prosecution or onerous civil penalties” under that broad theory of jurisdiction. (Emphasis added.)

It is unfortunate that EPA and the Corps went to such great lengths to avoid ensuring appropriate small business input. The purpose of the RFA and SBREFA is to ensure that agencies receive constructive small business input that can help regulators meet their regulatory objectives while at the same time minimizing the burden on small businesses like mine. The trend is only expected to get worse as recent changes to the government’s centralized regulatory review process and proposed concepts for cost-benefit analysis would further obscure the true costs of regulations.

The concept of regulating while being sensitive to small business compliance costs makes sense and it is something I am personally passionate about. I am an advocate for protecting birds of prey and their environment. Our largest source of revenue at Kaddas Enterprises is our patented designs of Birdguard™ products. They are designed to protect birds and other animals from electrocution. I take pride in the fact that our manufacturing contributes to energy resilience by preventing wildlife-caused power outages. The Chamber has long made building smart, modern, resilient infrastructure among our top priorities. A commonsense WOTUS definition is foundational to achieving America’s ambitious climate and infrastructure goals. My company is a good example of how industry, environmental protection, and small business growth can work together to provide economic growth and conservation. These ideals are not exclusive.

### **Support for the PROVE It Act and Legislative Recommendations**

The Chamber applauds Senator Ernst’s introduction of the PROVE It Act, which would advance the following small business priorities:

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Advocacy Letter to Administrator Michael S. Regan and Michael L. Connor re: Comments on EPA and Army’s proposed rule defining “Waters of the United States” under the Clean Water Act (EPA Docket EPA-HQ-OW-2021-0602 and Army Docket COE-2021-0001-0016), (February 7, 2022).

I. Amending the “certification” requirements under Regulatory Flexibility Act in order to ensure that agencies take small business input seriously.

II. Requiring agencies to be transparent about costs on small businesses by including all reasonably foreseeable impacts. For example, a recent proposal by the Securities and Exchange Commission (SEC) may require small private companies to report their greenhouse gas emissions if they are part of the value chain of a publicly traded company under the SEC’s jurisdiction. As the Office of Advocacy pointed out, the SEC did not disclose those costs and did not consider less burdensome alternatives for small businesses.<sup>7</sup>

III. Bolstering the effectiveness of the RFA by making its provisions expressly subject to judicial review. Modernizing the RFA should provide small businesses with timely court review of whether agencies are meeting their legal obligations to adequately consider small business in the development of federal rulemaking. Making it clear that the judicial branch can enforce the legal requirements governing how agencies treat small business will help convince regulators to seek out, receive, and follow the recommendations of the small business community when there is constructive input on how to meet regulatory objectives while at the same time minimizing the negative impact on small businesses.

Thank you again for holding this important hearing on how regulations impact small business and for working to take effective legislative action to ensure that federal regulators listen to the small business community prior to imposing costly red tape on America’s innovators, community leaders, and job creators.

Please do not hesitate to contact Tom Sullivan, the Chamber’s Vice President for Small Business Policy, who is with you for today’s hearing, if you have questions or comments regarding the content of this statement for the record.

Sincerely,



Natalie Kaddas  
CEO, Kaddas Enterprises, Inc. Chair  
Small Business Council  
U.S. Chamber of Commerce

cc: Members of the Senate Committee on Small Business & Entrepreneurship

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<sup>7</sup> See SBA Office of Advocacy letter to Secretary Vanessa A. Countryman re: The Enhancement and Standardization of Climate-Related Disclosures for Investors – File Number S7-10-22 (June 17, 2022).