



May 22, 2024

The Honorable Roger Williams
Chairman
Committee on Small Business
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

Dear Chairman Williams and Ranking Member Velazquez:

Thank you for holding today's hearing, "Burdensome Regulations: Examining the Biden Administration's Failure to Consider Small Businesses." I am Traci Tapani, Co-President of Wyoming Machine in Stacy, Minnesota. My family-owned company specializes in sheet metal fabrication, and we offer a variety of services to clients from laser cutting to welding.

I serve on the Board of Directors for the U.S. Chamber of Commerce and recently became the Vice-Chair of the Chamber's Small Business Council. 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.

With the recent surge in costly and restrictive federal regulations¹, this hearing will help ensure that small businesses have a legitimate voice in federal rulemakings and builds on previous hearings that demonstrate how federal regulation can disproportionately harm small businesses like mine. I am hopeful that my statement, along with the testimony of other witnesses, can focus Congress's spotlight on ways to improve the effectiveness of small business in federal rulemakings, which was the foundational concept behind the Regulatory Flexibility Act.

Small Business and the Regulatory Flexibility Act

Small businesses are recognized 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 1995.² Despite the strength of small businesses' economic contributions, they are at a disadvantage when it comes to dealing with regulations. The Chamber's work with the Bradley Foundation showed that U.S. businesses shoulder \$1.9 trillion in annual regulatory compliance costs.³ 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.⁴

¹ Forbes, *A Rush to Regulate*, Susan E. Dudley (May 7, 2024).

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

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

⁴ 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).

A more recent study shows that regulatory costs on American businesses in 2022 totaled more than \$3 trillion, which equals 12% of GDP and is larger than the entire economic output of U.S. Manufacturers.⁵

While we might be categorized as small, manufacturers like Wyoming Machine play a big role in supplying custom parts and components to some of the largest U.S. manufacturing companies. The pandemic's supply chain issues were a frightening and painful reminder of how important it is for our economy, safety, and security to have a strong domestic manufacturing supply chain. Manufacturing is a capital-intensive business, and ongoing investments in equipment, facilities, and people are the ways that we can increase productivity and remain competitive. Having worked in the manufacturing sector for 30 years, I know exactly how it feels to balance the cost burden of increasing regulations with a need to invest in my business while offering people in my community good jobs, competitive pay, and a stable place to work.

The Regulatory Flexibility Act (RFA), amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), was intended to rectify the disproportionate regulatory compliance costs and paperwork burdens 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.⁶ 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.

Agency Failures to Abide by the RFA

Federal agencies have on numerous occasions failed to comply with requirements under the RFA. A recent example was when 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.⁷ When the Department of Labor ignored the Office of Advocacy's advice and finalized its rule earlier this year, the U.S. Chamber of Commerce joined with the National Federation of Independent Business (NFIB), Associated Builders and Contractors, American Trucking Associations, and other associations representing millions of small business owners to challenge the rule in court on this and other grounds.⁸

Inviting legal challenges after a rule is finalized does not seem to be an efficient or effective way for federal officials to resolve policy disagreements, especially when the RFA was created to bring small businesses and regulatory officials together for the purpose of finding ways to meet regulatory objectives while minimizing negative economic impacts on small businesses.

⁵ Nicole V. Crain and W. Mark Crain, A Study Conducted for the National Association of Manufacturers, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business* (October, 2023).

⁶ Regulatory Flexibility Act, 501 U.S.C. Sec. 601 et seq. (1980).

⁷ U.S. Small Business Administration, Office of Advocacy, Letter to U.S. Department of Labor re: Employee or Independent Contractor Under the Fair Labor Standards Act (FLSA) (December 12, 2022).

⁸ *Coalition for Workforce Innovation v. Su*, No. 1:21-CV-130 (E.D. Tex. Mar. 5, 2024).

Loopholes in the RFA

Loopholes in the RFA have been used by federal regulators as an excuse to bypass the law's requirements and purpose and to misrepresent the costs of new mandates on small businesses because (a) regulators take the position that transparency requirements only apply to direct regulatory impacts on businesses and (b) gaps in the RFA's remedy provisions often deprive businesses of timely relief when agencies ignore small business concerns in violation of the RFA.

Lack of Transparency

Agency exploitation of interpretations of the RFA that limit it to requiring consideration of small business impacts only 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 disclose how new mandates will make small business loans more expensive.

Abuse of "Certification" under the RFA

Unfortunately, federal agencies often choose to circumvent small business input by incorrectly certifying that a rulemaking will not have a significant economic impact on a substantial number of small entities. Last 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 failures of federal agencies to consider small businesses 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, 2018, and in 2021 – 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.⁹ In this 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

⁹ 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 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).

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.

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.

Support for the PROVE It Act and Legislative Recommendations

H.R. 7198, the Prove It Act, was introduced in February by Representative Brad Finstad, Representative Nathaniel Moran, and Representative Yadira Caraveo and helps close loopholes in the RFA and to shore up its effectiveness by:

- I. Amending the “certification” requirements under Regulatory Flexibility Act to ensure that agencies take small business input seriously; and
- II. Requiring agencies to be transparent about costs on small businesses by including all reasonably foreseeable impacts.

This bipartisan legislation passed the Judiciary Committee on March 21st and is now co-sponsored by Representative David Valadao, Representative Carol Miller, and Small Business Committee member, Representative Maria Salazar. More than 250 state and local chambers of commerce signed on to a letter to Congress this week requesting that the House pass H.R. 7198 and the U.S. Chamber of Commerce Small Business Council will wants to work with you to advance forward the Prove It Act through your committee and to the House floor for a vote."

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

Sincerely,



Traci Tapani
Co-President, Wyoming Machine
Vice-Chair Small Business Council
U.S. Chamber of Commerce

Enclosure (1) Letter supporting H.R. 7198 from local and state chambers of commerce

cc: Members of the House Committee on Small Business

May 21, 2024

To the Members of the United States House of Representatives:

The undersigned chambers of commerce strongly support H.R. 7198, the Prove It Act of 2024, and urge the House to consider this important legislation.

This bipartisan bill was introduced by Representatives Brad Finstad, Nathaniel Moran, and Yadira Caraveo and is co-sponsored by Representatives Mike Gallagher, Harriett Hageman, Maria Salazar, David Valadao, and Carol Miller. H.R. 7198 was reported by the Judiciary Committee in March and would be a major step forward for small businesses that are harmed by excessive federal regulations.

American small business owners are job creators and innovators. While their contributions to their communities and to the American economy are enormous, they bear an unreasonably heavy burden when it comes to regulatory costs. The annual cost of complying with federal regulations has risen by \$465 billion since 2012 and now totals over \$3 trillion (12% of U.S. GDP). The per employee cost of \$12,800 for small businesses is 20% greater than the cost per employee at their larger competitors.

The Regulatory Flexibility Act - passed 44-years ago - was intended to correct the lopsided burden on small business and require that regulators tailor rules to meet government objectives while minimizing the burden on small businesses. Unfortunately, federal agencies too often exploit loopholes in the law to hide costs imposed on Main Street businesses and to ignore their feedback.

The Prove It Act of 2024 would close those loopholes and bring more transparency to the true costs of red tape on America's innovators, job creators, and community builders. The bill would also prevent agencies from ignoring small business input in their rush to finalize new federal regulations.

We urge expeditious House consideration of H.R. 7198, the Prove It Act.

Sincerely,

Alabama

Chandler Chamber of Commerce
Coastal Alabama Business Chamber
Enterprise Chamber of Commerce

Mobile Chamber
Prattville Area Chamber of Commerce
SouthWest Mobile County Chamber of
Commerce

Alaska

Alaska Chamber
Greater Fairbanks Chamber of Commerce
The Greater Juneau Chamber of Commerce

Arizona

Arizona Chamber of Commerce and Industry
Buckeye Valley Chamber of Commerce
Carefree Cave Creek Chamber of Commerce
Greater Flagstaff Chamber of Commerce
Greater Phoenix Chamber
Mesa Chamber of Commerce
Nogales Santa Cruz County Chamber of Commerce
Northwest Valley Chamber of Commerce
Peoria Chamber of Commerce
Prescott Valley Chamber of Commerce
Queen Creek Chamber of Commerce
Scottsdale Area Chamber of Commerce
Southwest Valley Chamber
Springerville-Eagar Regional Chamber of Commerce
Tucson Metro Chamber
West Valley Chamber of Commerce Alliance
Wickenburg Chamber of Commerce
Yuma County Chamber of Commerce

Arkansas

AR State Chamber/AIA
Holiday Island Chamber of Commerce
Little Rock Regional Chamber
Rogers-Lowell Chamber of Commerce

California

Anaheim Chamber of Commerce
Brea Chamber of Commerce
California Chamber of Commerce
Carlsbad Chamber of Commerce
Chatsworth Porter Ranch Chamber of Commerce
Chino Valley Chamber of Commerce
Colusa County Chamber of Commerce
Greater Bakersfield Chamber
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater Grass Valley Chamber of Commerce

Greater Irvine Chamber of Commerce
La Mesa Chamber of Commerce
Laguna Hills Chamber of Commerce
Lodi District Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
Newport Beach Chamber of Commerce
North San Diego Business Chamber
Oceanside Chamber of Commerce
Palm Desert Area Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
San Diego Regional Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santee Chamber of Commerce
South Bay Association of Chambers of Commerce
Tracy Chamber of Commerce
West Ventura County Business Alliance
Yorba Linda Chamber of Commerce

Colorado

Vail Valley Partnership

Florida

Coral Gables Chamber of Commerce
Daytona Regional Chamber of Commerce
Lakeland Chamber of Commerce
St. Johns County Chamber of Commerce
Visitor Information Center
The Greater Boca Raton Chamber of Commerce
Venice Area Chamber of Commerce

Georgia

Barrow County Chamber of Commerce, Inc.
Cobb County Chamber of Commerce
Fayette County Chamber of Commerce
Habersham County Chamber of Commerce
Jackson County Area Chamber of Commerce
Murray County Chamber of Commerce
Newton Chamber of Commerce

Hawaii

Chamber of Commerce Hawaii
Kapolei Chamber of Commerce
Kauai Filipino Chamber of Commerce

Idaho

Twin Falls Area Chamber of Commerce

Illinois

Chamber630
Edwardsville/Glen Carbon Chamber of Commerce
GLMV Chamber of Commerce
Illinois Chamber of Commerce
Oak Lawn Chamber of Commerce
Quad Cities Chamber of Commerce
RiverBend Growth Association
Sauk Valley Area Chamber of Commerce
The Greater Springfield Chamber of Commerce
Western DuPage Chamber of Commerce

Indiana

Greater Lawrence Chamber of Commerce
Indiana Chamber of Commerce
South Bend Regional Chamber of Commerce
Wayne County Area Chamber of Commerce

Iowa

Cedar Rapids Metro Economic Alliance
Dubuque Area Chamber of Commerce
Iowa Association of Business and Industry

Kansas

Goddard Chamber of Commerce
Greater Topeka Chamber
Parsons Chamber of Commerce

Kentucky

Greater Louisville, Inc.
Paducah Area Chamber of Commerce

Louisiana

Central Louisiana Regional Chamber of Commerce
Greenwood Chamber of Commerce
St. Tammany Chamber of Commerce

West Baton Rouge Chamber of Commerce

Maine

Boothbay Harbor Region Chamber of Commerce

Maryland

Maryland Chamber of Commerce
Salisbury Area Chamber of Commerce
Talbot County Chamber of Commerce
Washington County Chamber of Commerce

Massachusetts

Blackstone Valley Chamber of Commerce
Metro South Chamber of Commerce
Peabody Area Chamber of Commerce
United Regional Chamber of Commerce

Michigan

Barry County Chamber and Economic Development Alliance
Cadillac Area Chamber of Commerce
Detroit Regional Chamber
Grand Rapids Chamber
Hartland Area Chamber of Commerce
Lansing Regional Chamber of Commerce
Michigan Chamber of Commerce
Michigan West Coast Chamber of Commerce
North Oakland Regional Chambers Association
Southwest Michigan Regional Chamber of Commerce
Three Rivers Area Chamber of Commerce

Minnesota

Albert Lea-Freeborn County Chamber of Commerce
Austin Area Chamber of Commerce
Brainerd Lakes Chamber of Commerce
Cannon Falls Area Chamber of Commerce
Eden Prairie Chamber of Commerce
FORWARD Worthington
Glenwood Lakes Area Chamber of Commerce
Greater Mankato Growth
Greater Stillwater Chamber of Commerce
I-94 West Chamber of Commerce
Lonsdale Area Chamber of Commerce

Marshall Area Chamber of Commerce
Minnesota Chamber of Commerce
Princeton Area Chamber of Commerce & Tourism
Rochester Area Chamber of Commerce
Shakopee Area Chamber of Commerce
SouthWest Metro Chamber of Commerce
St. Cloud Area Chamber of Commerce
Tracy Area Chamber
Willmar Lakes Area Chamber of Commerce
Windom Area Chamber of Commerce
Winona Area Chamber of Commerce

Mississippi

Hancock County Chamber of Commerce

Montana

Billings Chamber of Commerce
Glasgow Area Chamber of Commerce & Agriculture, Inc.
Missoula Area Chamber of Commerce
Montana Chamber of Commerce

Nebraska

Grand Island Area Chamber of Commerce
Kearney Area Chamber of Commerce
Nebraska Chamber of Commerce
North Platte Area Chamber & Development Corporation
Washington County Chamber of Commerce

Nevada

Carson City Chamber of Commerce
Henderson Chamber of Commerce
Reno + Sparks Chamber of Commerce
Vegas Chamber
White Pine Chamber of Commerce

New Hampshire

Business & Industry Association New Hampshire

New Jersey

New Jersey State Chamber of Commerce
The African American Chamber of Commerce of New Jersey

New York

Capital Region Chamber of Commerce
North Country Chamber of Commerce
Sullivan County Chamber of Commerce
The Business Council of NYS, Inc.

North Carolina

Alamance Chamber of Commerce
Charlotte Regional Business Alliance
Greater Mount Airy Chamber of Commerce
Mint Hill Chamber of Commerce
Moore County Chamber of commerce
NC Chamber
The Caldwell Chamber

North Dakota

Greater North Dakota Chamber
The Chamber Grand Forks - East Grand Forks
Williston Area Chamber of Commerce

Ohio

Chillicothe Ross Chamber of Commerce
Huber Heights Chamber of Commerce
Ohio Chamber of Commerce
Toledo Regional Chamber of Commerce
Troy Area Chamber of Commerce
Zanesville-Muskingum County Chamber of Commerce

Oklahoma

State Chamber of Oklahoma
Tulsa Regional Chamber of Commerce

Oregon

Albany Area Chamber of Commerce
Bend Chamber of Commerce
Canby Area Chamber of Commerce
Gresham Area Chamber of Commerce
Lake County Chamber of Commerce
Oregon Business & Industry
Oregon State Chamber of Commerce
Roseburg Area Chamber of Commerce
Salem Area Chamber of Commerce
The Dalles Area Chamber of Commerce
Washington County Chamber of Commerce

Pennsylvania

Alle Kiski Strong Chamber
Blair County Chamber of Commerce

Chamber of Business and Industry of Centre County
Columbia Montour Chamber of Commerce
Greater Latrobe-Laurel Valley Regional Chamber of Commerce
Hanover Area Chamber of Commerce
Harrisburg Regional Chamber & CREDC
Huntingdon County Chamber of Commerce
Indian Valley Chamber of Commerce
Lancaster Chamber of Commerce and Industry
Pennsylvania Chamber of Business and Industry
Schuylkill Chamber of Commerce
Somerset County Chamber of Commerce
Southern Chester County Chamber of Commerce
TriCounty Area Chamber of Commerce
Venango Area Chamber of Commerce
Williamsport/Lycoming Chamber of Commerce
York County Economic Alliance

Rhode Island

Greater Newport Chamber of Commerce

South Carolina

Anderson Area Chamber of Commerce
Berkeley Chamber of Commerce
Charleston Metro Chamber of Commerce
Greater Hartsville Chamber of Commerce
Hilton Head Island - Bluffton Chamber of Commerce
South Carolina Chamber of Commerce

South Dakota

South Dakota Chamber of Commerce and Industry

Tennessee

Lawrence County Chamber of Commerce
Tennessee Chamber of Commerce and Industry

Texas

Cedar Park Chamber of Commerce
Cuero Chamber of Commerce, Agriculture & Visitors Center

Denison Area Chamber of Commerce
Gainesville Area Chamber of Commerce
Greater Waco Chamber
Kaufman Chamber of Commerce
Kilgore Area Chamber of Commerce
Longview TX Chamber of Commerce
Metrocrest Chamber of Commerce
Nacogdoches County Chamber of Commerce
North Texas Commission
Rowlett Chamber of Commerce
Texas Association of Business
United Corpus Christi Chamber of Commerce

Utah

Cedar City Chamber of Commerce
ChamberWest Chamber of Commerce
Davis Chamber of Commerce
Salt Lake Chamber
South Valley Chamber of Commerce
Utah Pacific Islander Chamber

Virginia

Central Fairfax Chamber of Commerce
Hampton Roads Chamber
Loudoun County Chamber of Commerce
Virginia Chamber of Commerce

Washington

Burlington Chamber of Commerce
Covington Chamber of Commerce
Economic Alliance Snohomish County
Greater Lake Stevens Chamber of Commerce
Mercer Island Chamber of Commerce
Thurston County Chamber of Commerce

Wisconsin

Beaver Dam Area Chamber of Commerce
Heart of Wisconsin Chamber of Commerce
Rice Lake Area Chamber of Commerce
Wisconsin Manufacturers & Commerce

Wyoming

Campbell County Chamber of Commerce
Greater Cheyenne Chamber of Commerce
Jackson Hole Chamber of Commerce
Lander Chamber of Commerce

Rock Springs Chamber of Commerce
Wyoming State Chamber of Commerce