



Statement of the U.S. Chamber of Commerce

Examining How Small Businesses Confront and Shape Regulations

Thomas Sullivan

**Vice President, Small Business Policy
and
Executive Director for the Small Business Council**

**Committee on Small Business & Entrepreneurship
United States Senate**

March 29, 2017

1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic, political, and social system based on individual freedom, incentive, initiative, opportunity, and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96 percent of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Thank you for the opportunity to provide this statement on the important topic of how regulations impact small businesses. My name is Tom Sullivan and I run the Small Business Council at the U.S. Chamber of Commerce. The Chamber is the world's largest business federation. We represent the interests of over 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The majority of our business members are small firms. In fact, approximately 96 percent of Chamber member companies have fewer than 100 employees and 75 percent have fewer than ten. Maxine Turner, who is the founder of Cuisine Unlimited in Salt Lake City, Chairs our Small Business Council, which works to ensure the views of small business are considered as part of the Chamber's policy-making process.

I have spent most of my professional career advocating for small business. First, at the National Federation of Independent Business (NFIB), and then more recently at a law firm where I represented coalitions of small businesses and service providers. From 2002-2008, I was honored to serve as the Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA). That office is charged with independently representing the views of small business before Congress and the Administration and oversees agency compliance with the Regulatory Flexibility Act.¹ Effective implementation of the Regulatory Flexibility Act plays an important role in preventing overburdensome federal regulatory mandates from crushing the small business community. The broad purpose of the Regulatory Flexibility Act is to ensure early input by small businesses in the development of regulatory policy and I applaud this Committee's oversight of the Act and your interest in amending the Regulatory Flexibility Act to make it work better.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires federal agencies to satisfy certain requirements when they plan new regulations, including (1) identifying the small entities that will be affected, (2) analyzing and understanding the economic impacts that will be imposed on those entities, and (3) considering alternative ways to achieve the agency's regulatory goal while reducing the economic burden on those entities.² The Regulatory Flexibility Act was amended in 1996 by the Small Business Regulatory Enforcement Fairness Act (SBREFA).³ SBREFA requires the Occupational Safety and Health Administration (OSHA), U.S. Environmental Protection Agency (EPA), and the Consumer Financial Protection Bureau (CFPB) to convene small business review panels (I refer to the panels as "SBREFA panels") whenever their planned rules are likely to have a significant economic impact on a

¹ *Regulatory Flexibility Act*, Pub. L. No. 96-354, 94 Stat. 1164 (1980), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified as amended at 5 U.S.C. Sec. 601-612), also amended by Sec. 1100 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 2112 (July 21, 2010).

² Keith W. Holman, *The Regulatory Flexibility Act at 25: Is the Law Achieving Its Goal?*, 33 Fordham Urban Law Journal 1119 (2006).

³ *Small Business Regulatory Enforcement Fairness Act of 1996*, Pub. L. No. 104-121, 110 Stat. 857 (1996).

substantial number of small entities. SBREFA panels include representatives from SBA's Office of Advocacy, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) and the agency proposing the rule. The panel prepares a report containing constructive recommendations for the agency planning the rule and that report is made publicly available prior to the public providing comment on the agency's proposed rule.

There are three basic reasons for the Regulatory Flexibility Act.

- (1) One-size-fits-all federal mandates do not work when applied to small business;
- (2) Regulations disproportionately harm small businesses; and
- (3) Small businesses are critically important to the American economy.

Prevention of one-size-fits-all federal mandates

Many times federal laws and regulations that may work for large corporations simply do not work for small firms. Several years ago, I worked with a group of small businesses in Quincy, Illinois, who found themselves in the cross hairs of Superfund. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (referred to here as, "Superfund") was designed to fund cleanups of the nation's most polluted sites.⁴ Rather than wait years and years to figure out what caused the pollution and who polluted, the Superfund law allowed the EPA to get funding from one or two of the largest companies that were responsible. The law then allowed those companies to seek reimbursement, through lawsuits, from other companies and individuals who may have contributed to the polluted site. While the liability scheme did expedite payment to the government and cleanup, it did not anticipate how small businesses could get caught up in a liability web with almost no choice but to pay significant fees, even if their only fault was responsibly sending household garbage, food scraps, and benign waste to their landfill. The authors of Superfund never intended to target small business owners like Greg Shierling who owned two McDonald's restaurants and Mac Bennett who owned a furniture store in the Quincy area, or Barbara Williams who owned a diner in Gettysburg, Pennsylvania. The unintended consequences of a one-size-fits-all statute forced small business owners to spend thousands in legal fees or settlements when they really had not done anything wrong. Thankfully, Congress took action and exempted innocent small businesses from Superfund in 2001.

Whether it is reauthorizing a new law, creating a new agency⁵, or when agencies craft new regulations, government is well advised to solicit input and work with small businesses to devise solutions that maximize the law's or regulation's benefits and minimize harmful economic impact.

⁴ *Comprehensive Environmental Response, Compensation, and Liability Act of 1980*, Pub. L. No. 96-510, 94 Stat. 2767 (1980).

⁵ Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau (CFPB). Section 1100G requires small business input in CFPB rulemaking. *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub. L. No. 111-203 (July 2010).

Small firms are disproportionately impacted by federal regulation

Research that was just released by the U.S. Chamber of Commerce Foundation sheds some light on how small businesses struggle under the yoke of excessive regulatory requirements. The report entitled, “The Regulatory Impact on Small Business: Complex. Cumbersome. Costly,” pegs the impact of federal regulatory burden at \$1.9 trillion per year in direct costs, lost productivity, and higher prices. .”⁶ The Foundation’s research also shows that those costs hit small businesses the hardest, with an impact on firms with 50 employees or fewer that is 20 percent higher than the average for all firms.

When examining the impact on small manufacturers, the Foundation cites a cost of nearly \$35,000 per year per employee to comply with federal regulations for firms with fewer than 50 employees. This is 75 percent higher than the average for all manufacturers.⁷

Importance of small business to the U.S. economy and the threat of over-regulation

Recent figures show there are over 28 million small businesses in the United States.⁸ The 62 million people employed at small firms represent about half of America’s private sector workforce and small business is responsible for creating about 2/3 of the net new jobs over the past 15 years.⁹ However, the United States has experienced a decline in start-ups over the past decade and that trend threatens a full economic recovery.¹⁰ According to data from the U.S. Census Bureau, there were 700,000 fewer net businesses created from 2005 to 2014 than from 1985 to 1994. More worrisome is recent evidence that suggests the number of transformational startups, those that contribute disproportionately to job and productivity growth, has been in decline since 2000.¹¹

At the same time start-ups are struggling, regulation is a growing concern for small businesses. A quadrennial survey of 20,000 small business owners in August found

⁶ *The Regulatory Impact on Small Business: Complex. Cumbersome. Costly*, U.S. Chamber of Commerce Foundation (March 2017), available at: <https://www.uschamberfoundation.org/reports/small-business-regulation-study>.

⁷ *Id.*, at page 6.

⁸ *Frequently Asked Questions*, Office of Advocacy, U.S. Small Business Administration, (June 2016), available at: https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

⁹ *Id.*

¹⁰ Ryan Decker, John Haltiwanger, Ron Jarmin and Javier Miranda, *The Secular Decline in Business Dynamism in the U.S.*, Working Paper, 2014, available at: http://econweb.umd.edu/~haltiwan/DHJM_6_2_2014.pdf.

¹¹ Ryan A. Decker, John Haltiwanger, Ron S. Jarmin, and Javier Miranda, *Where Has all the Skewness Gone? The Decline in High-Growth (Young) Firms in the U.S.*, (NBER Working Paper No. 21776 (December 2015)), as described in the National Bureau of Economic Research Digest On-Line (February 2016), available at: <http://www.nber.org/digest/feb16/w21776.html>.

that “unreasonable government regulations” is the second-most pressing concern, up from fifth in the last survey taken in 2012. Regulation’s placement as the second-most serious issue for small business is the issue’s highest ranking in the 34-year history of the survey.¹² Earlier this year, the National Small Business Association (NSBA) released its survey and found that more than half of small business owners held off hiring a new employee due to regulatory burdens.¹³ Finally, the report by the U.S. Chamber of Commerce Foundation includes a survey of leaders from local chambers of commerce who are alarmed by the slump in new business startups and insist that federal regulations are largely to blame.¹⁴

The decline in entrepreneurship and small businesses’ increasing concern with regulatory burden are trends that should be reversed in order for the United States to experience growth.

Small Business Input Can Work

When agencies and small businesses work together and constructively find solutions, better regulation happens. There are numerous examples of win/win solutions to real challenges that federal agencies are trying to solve. One of my favorite examples of cooperation between small businesses and the EPA occurred shortly after I was confirmed by the Senate as Chief Counsel for Advocacy at the SBA. EPA wanted to reduce pollution from nonroad diesel engines (mostly diesel tractors). Prior to issuing a proposed rule, EPA convened a SBREFA panel and I recall one meeting we hosted between small engine manufacturers from Michigan and EPA engineers. EPA walked us through their plans that basically would have mandated a pollution-reduction device (it looked like a big muffler) attached to the engine. A small business owner, at the meeting, pointed out that the John Deere engine hood would not fit over the device and the small businessman feared that John Deere would simply source the manufacturing overseas instead of waiting for EPA to revise its regulations. Because of that conversation, EPA re-thought their approach. EPA’s decision probably saved the sector, and the revised rules still reduced pollution from diesel tractors by close to 90 percent.

¹² Holly Wade, *Small Business Problems and Priorities*, NFIB Research Foundation (August 2016), available at: <http://www.nfib.com/assets/NFIB-Problems-and-Priorities-2016.pdf>.

¹³ *2017 NSBA Small Business Regulations Survey*, National Small Business Association (January 18, 2017), available at: <http://www.nsba.biz/wp-content/uploads/2017/01/Regulatory-Survey-2017.pdf>.

¹⁴ See, *The Regulatory Impact on Small Business: Complex. Cumbersome. Costly*, U.S. Chamber of Commerce Foundation (March 2017).

Steps Underway to Provide Small Business Relief

I am optimistic that small businesses will benefit from regulatory relief due to action taken by the President and Congress. Several resolutions passed under the Congressional Review Act (CRA) target federal agency overreach and will help alleviate unnecessary regulatory burden.¹⁵ One of those resolutions reversed the Department of Interior's attempt to regulate streams that are already protected by EPA and several state and local authorities.¹⁶ Another resolution that passed Congress reverses an attempt by OSHA to ignore small business input and illegally expand their enforcement authority.¹⁷

In addition to reversing unnecessary, overburdensome, or outdated regulation, Congress should look at ways to modernize the regulatory process and ensure that federal agencies craft regulations in a way that minimizes the burden on small business. The Administrative Procedure Act (APA) was enacted in 1946 and governs the regulatory process.¹⁸ The Regulatory Accountability Act (H.R. 5) brings the Administrative Procedure Act (APA) into the 21st Century and has already passed the U.S. House of Representatives with bipartisan support. The U.S. Chamber of Commerce urges the Senate to take up the RAA and provide needed improvements to the APA. Additionally, the Small Business Regulatory Flexibility Improvements Act (H.R. 33), which bolsters the ability of small businesses to influence regulatory outcomes, has passed the House and was recently introduced in the Senate (S. 584). The Chamber also supports S. 584 and believes it will provide much-needed small business relief by improving the way federal agencies craft regulatory policy.

¹⁵ Tim Devaney, "Here's how Trump is Using a special law to do away with Obama regulations," *The Hill*, (March 26, 2017), available at: <http://thehill.com/regulation/325737-heres-how-trump-is-using-a-special-law-to-do-away-with-obama-regulations>.

¹⁶ *Disapproving the rule submitted by the Department of Interior known as the Stream Protection Rule*, H.J. Res. 38, Pub. L. No. 115-5 (February 16, 2017).

¹⁷ *Disapproving the rule submitted by the Department of Labor relating to "Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness"*, H.J. Res. 83 (submitted to the President Marcy 27, 2017).

¹⁸ *Administrative Procedure Act*, Pub. L. No. 79-404, 60 Stat. 237 (1946).

Conclusion

America needs the economic strength, job-creating power, and innovative genius¹⁹ of small business in order to get back on track economically. Continued vigilance by the Committee on Small Business & Entrepreneurship in holding agencies accountable to how they treat small business and passage of the Regulatory Accountability Act and the Regulatory Flexibility Improvements Act will help calm the regulatory headwinds that prevent small business from being the economic engine of growth here in the United States.

¹⁹ Research by the U.S. Small Business Administration revealed that small firms produce 16 times the number of patents per employee than large patenting firms. Anthony Breitzman and Diana Hicks, *An Analysis of Small Business Patents by Industry and Firm Size*, written for the Office of Advocacy, U.S. Small Business Administration, Contract No. SBAHQ-07-Q-0010 (November 2008), available at: <https://works.bepress.com/anthony-breitzman/15/>.