

TESTIMONY BEFORE THE UNITED STATES CONGRESS
ON BEHALF OF THE
NATIONAL FEDERATION OF INDEPENDENT BUSINESS



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**United States House of Representatives
Committee on Education and Workforce**

Unleashing America's Workforce and Strengthening Our
Economy

February 26, 2025

National Federation of Independent Business
555 12th Street NW, Suite 1001
Washington, DC 20004

Chairman Walberg, Ranking Member Scott, and members of the House Education and Workforce Committee,

On behalf of the National Federation of Independent Business (NFIB), I appreciate the opportunity to participate in today's hearing on the state of the American workforce.

My name is Beth Milito, and I serve as Vice President and Executive Director of the NFIB Small Business Legal Center. NFIB is the nation's leading small business advocacy organization, advocating on behalf of nearly 300,000 small business owner members in Washington, DC, all 50 state capitals, and in our nation's courts. NFIB's mission is to promote and protect the right of our members to own, operate, and grow their businesses. NFIB is proud to represent small businesses nationwide from every industry and sector.

The NFIB Small Business Legal Center is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses.

NFIB members are not publicly traded multi-billion-dollar corporations. Quite the contrary; the average NFIB member has 8 employees and every NFIB member is individually owned and not publicly traded. Small businesses employ nearly half this country's workforce and represent 99.9% of all American businesses.¹ It is no exaggeration to say that for the American workforce to be successful, small businesses must be successful.

Unfortunately, over the last four years, small business owners have weathered storm after storm, including COVID shutdowns, supply chain disruptions, historic inflation, a burdensome regulatory environment, and systemic workforce shortages. It is no surprise that small businesses have had little to be optimistic about over the previous four years.

In fact, according to NFIB's Research Center's October 2024 Small Business Economic Trends survey, small business optimism was below the 50-year average optimism

¹ *Frequently Asked Questions About Small Business 2024*, U.S. Small Business Administration, Office of Advocacy (July, 23, 2024), available at <https://advocacy.sba.gov/2024/07/23/frequently-asked-questions-about-small-business-2024/>.

rating for 34 consecutive months.² On top of low optimism, small businesses were more uncertain than ever about the landscape they would be facing while operating their business.³

Following the 2024 election, small business optimism surged, reaching the highest point since October 2018.⁴ The election results signaled that a major shift to the nation's economic and regulatory policy was on the horizon. Small businesses have hopes that more pro-business policies and a more favorable regulatory environment will provide them with much needed reprieve and opportunities for growth, allowing small businesses to reinvest in and grow their workforce.

Although small businesses remain optimistic, significant economic headwinds create uncertainty. For example, the expiration of key provisions included in the 2017 *Tax Cuts and Jobs Act*, like the 20% Small Business Deduction ("Section 199A"), creates the threat of a massive tax increase in a little over ten months. In fact, the January 2025 Small Business Economic Trends survey showed that the uncertainty index is at the third highest point in history, following two months of steady decline.⁵ This reading stresses the urgent need for our lawmakers to provide small businesses with certainty so they can resume planned investments in their business and workforce without the possibility of a massive tax hike.

Workforce challenges have also persisted with the change of administration. Nearly 25% of small businesses list "locating qualified employees" and "finding and keeping skilled employees" as critical issues facing their business.⁶ Further, 35% of small businesses continue to report that they have job openings that they cannot fill.⁷

² William C. Dunkelberg & Holly Wade, *NFIB Small Business Economic Trends Survey October 2024*, NFIB Research Center, November 12, 2024, <https://strgnfibcom.blob.core.windows.net/nfibcom/NFIB-SBET-October-2024.pdf>.

³ Id.

⁴ The Small Business Optimism Index rose 3.4 points to 105.1 in December, the highest since October 2018, NFIB, January 14, 2025, <https://www.nfib.com/news-article/optimism-index-reaches-six-year-high-as-inflation-remains-top-concern/>.

⁵ William C. Dunkelberg & Holly Wade, *NFIB Small Business Economic Trends Survey January 2025*, NFIB Research Center, February 2025, https://www.nfib.com/news-article/monthly_report/sbet/.

⁶ Holly Wade & Madeleine Oldstone, 2024 Small Business Problems & Priorities, NFIB Research Center, October 2024, <https://nfib.com/wp-content/uploads/2024/10/2024-Small-Business-Problems-Priorities.pdf>.

⁷ William C. Dunkelberg & Holly Wade, *NFIB Small Business Economic Trends Survey January 2025*, NFIB Research Center, February 2025, https://www.nfib.com/news-article/monthly_report/sbet/.

Small Businesses Reinvest Tax Cuts into American Workers

Any small business owner can tell you: their workforce is their greatest asset. The 2017 *Tax Cuts and Jobs Act* provided unique opportunities for small businesses to expand and grow, create more jobs, and reinvest in the American workforce. Specifically, the law created the 20% Small Business Deduction, which provided 9 out of 10 small businesses with tax relief that they utilized in unique ways to benefit their businesses, community, and workers.

NFIB members have used the tax relief provided to them through the *Tax Cuts and Jobs Act* to give bonuses to employees; hire new employees; keep up with inflation; purchase and maintain equipment that makes workers' jobs easier and safer; keep employees on year-round; increase wages; give back to their communities; and strengthen benefits packages to include health insurance, Health Savings Accounts, vision insurance, dental insurance, life insurance, retirement plans, more paid time off, profit sharing, and 401k matching of employee contributions.

Small business owners tell this story best. The testimonials below from NFIB members describe the importance of the 20% Small Business Deduction and how it has been utilized to reinvest in workers and create jobs:

"The 20% Small Business Deduction was a gamechanger for our business. We own and operate an electrical contracting company, servicing new home builds, home remodels, and commercial buildings throughout the state of Oklahoma. The Small Business Deduction allowed us to reinvest in our workforce and grow the business by hiring more employees, allowing us to take on more projects. We used the tax savings from the Small Business Deduction to stand up an apprenticeship and continued learning program that allows us to train new hires, giving them the skills necessary to do the job but also have a successful career, and provide continuing education to our employees, allowing them to obtain new certifications, grow within our company, and open new doors for their career."

- NFIB Member
Choctaw, Oklahoma

"Throughout this period of pandemic, labor shortages, increased regulation, and increased cost of materials my business has been able to grow. We have added to our payroll, and with the money that we haven't had to pay in taxes, now pay 100% of health insurance premiums for our 30 employees and their families."

- NFIB Member
Cataumet, Massachusetts

"As a small business owner and member of NFIB, I urge you to provide permanent tax relief for small businesses... I'm sure you can understand that success within an organization includes planning and budgeting ahead. As our company works now to plan and project budgets for 2025, we remain concerned that the expiration of Section 199A would eliminate tax predictability; necessary for us to responsibly budget, plan, and continue to invest in our employees and our business with certainty in the coming years. Our company has been able to strengthen our small business in consideration of the retained funds that the 20% Small Business Deduction provides. With \$281,409 in Qualified Business Income deductions on line 13 of our 1040's over the last 4 years, we have been able to maintain competitive wages with consistent increases and bonuses, keeping our dedicated, skilled workforce motivated with payroll increases by 2% of revenue for 4 consecutive years. As employees continue to face new cost of living increases, we have maintained our same low health insurance premiums and competitive plans keeping employees happy and healthy. We added two new vehicles to our fleet creating monetary, delivery, and environmental efficiencies contributing to both customer and employee satisfaction. Losing the Small Business deduction will have a negative effect on this Windham Maine Small Business owner's employees, cash flow and our ability to grow."

- NFIB Member
Windham, Maine

"The uncertainty looming behind possibly losing [the] small business deduction has us terrified as we attempt to navigate mounting uncertainty across the board in our construction field. With uncertainty in interest rates, and inflation in general, people are already pulling back on building, and if our taxes are going to jump 20% in 202[6] I don't know how I will keep our business afloat and manage the cash flow to keep our employees paid on a steady weekly pay cycle. As you know, with the current state of the economy, many of our employees live paycheck-to-paycheck. Because we care about them, we make it a point to pay them weekly (versus a bi-weekly or monthly pay schedule), but the uncertainty and volatility in cash flow makes this hard enough as it is. I

could not imagine losing the 20% tax reduction for our small business. We opened our business in 2021, and thus have always had that 20% reduction, but last year as it stood, our tax payment was a significant hit to our business' cash flow, and things got scary for a moment. I do not know how we would manage if it jumped the 20% and we were forced to take a loan out to be able to make those payments... [W]e have been using the 20% savings to pour back into our business and increase our business cash flow, so we can take on larger projects, while still continuing to better the lives of our employees by raising pay and continuing a weekly pay schedule. Because cash flow in our small business is volatile, it takes a large cash reserve to take on bigger scale projects since we must be able to front the cost of materials and labor for so long. To keep our employees busy, and have the ability to employ more people, we have had to continue to increase the size of projects we take on. The tax savings have helped with that. If it can continue, we will continue to re-invest [those] savings into our business and hope to be able to move to a larger business location so that we can give our employees more space to work, which we feel is safer for them. We would also like to be able to provide more benefits to our employees, which to date as a new small business owner (of just 3 years) we have only been able to add time off benefits. We would love to invest more in our employees and provide retirement benefits as well as insurance but need the cash flow to do so... We love our employees and their families, and know they depend on us. We want to ensure we can stick around and keep providing them with that steady paycheck [and] we hope to add additional benefits too."

- NFIB Member
Tallahassee, Florida

Burdensome Regulatory Environment

Between 2021 and 2024, small businesses experienced a regulatory tsunami that added \$1.8 trillion of regulatory compliance costs and 356 million paperwork hours for America's job creators.⁸ These compliance costs disproportionately impact small businesses that often do not have dedicated compliance officers, lawyers, or human resources departments who can keep up with new laws and regulatory requirements.

In 1980, Congress and President Carter recognized the disproportionate impact that burdensome regulations had on small businesses and unanimously approved the Regulatory Flexibility Act (RFA). The RFA requires federal agencies to analyze the impact

⁸ Dan Goldbeck, *Week In Regulation, The Final Week of Biden*, American Action Forum, January 21, 2025, <https://www.americanactionforum.org/week-in-regulation/the-final-week-of-biden/>.

their regulatory actions will have on small entities. The law states that when the regulatory impact is likely to be significant or affect a substantial number of small entities, federal agencies are required to seek less burdensome alternatives for regulatory action.

In the 40-plus years since the RFA became law, however, agencies have found ways to disregard or bypass many of the RFA's requirements. In 2023, NFIB's Small Business Legal Center analyzed the Small Business Administration (SBA) Office of Advocacy's comment letters to federal agencies from January 2021 to January 2023 and found significant noncompliance with the RFA.⁹ For example, agencies improperly certify that rules will not have a significant economic impact on a substantial number of small entities, or disregard RFA requirements to examine alternatives to regulation or the indirect costs of regulations.¹⁰

Below are examples of rulemakings conducted by federal agencies that failed to comply with the existing law, for which the Committee on Education and Workforce has jurisdiction:

- **Standard for Determining Joint-Employer Status, 87 Fed. Reg. 54641**
 - *"Advocacy is concerned that the Board has underestimated the compliance costs and burden of this rule for small businesses. In the IRFA, the Board only estimates one hour of time for a small employer to read and understand the rule, at a cost of under \$150 per small business. The Board acknowledges that employers may choose to rearrange their business relationships 'to minimize risk of joint employer status' but does not estimate any employer compliance costs. Small businesses commented that franchisors may pull back involvement with their franchisees to indemnify themselves from liability. Franchisors may also provide less legal and human resources advice, which will result in hiring outside professionals to provide guidance, documents, and compliance training. Franchisees reported that this proposal may add costs of thousands of dollars a year and may require hiring a dedicated staffer. A restaurant franchisee owner stated that these costs will prohibit small*

⁹ Rob Smith, The Regulatory Flexibility Act: Turning a Paper Tiger Into a Legitimate Constraint on One-Size-Fits-All Agency Rulemaking, National Federation of Independent Business Small Business Legal Center, May 2023, <https://strgnfibcom.blob.core.windows.net/nfibcom/NFIB-RFA-White-paper.pdf>.

¹⁰ *Id.*

business expansion, as restaurants are currently facing increased food prices and labor shortages.”¹¹

- **Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 88 Fed. Reg. 62152**
 - *“Advocacy is concerned that DOL has proposed a costly increase to the EAP overtime exemption, which will have a significant economic impact on a substantial number of small entities. DOL’s rule will increase the standard salary levels under the EAP overtime exemption by over \$24,000 and almost 70 percent. Advocacy believes that DOL’s Initial Regulatory Flexibility Analysis (IRFA) is deficient because it underestimates the economic impact of this rule on small entities. Small entities have commented that this rule will have detrimental impacts to their operations, particularly during the current difficult business environment of high inflation, supply chain disruptions, shutdowns, and tighter labor markets. This rule may also lead to unintended negative consequences for employees, as it may affect worker morale, limit flexible working arrangements, and access to benefits.”¹²*
- **Employee or Independent Contractor Under the Fair Labor Standards Act (FLSA), 87 Fed. Reg. 62218**
 - *“Advocacy is concerned that DOL’s Initial Regulatory Flexibility Analysis is deficient for this rule. DOL significantly underestimates the economic impacts of this proposed rule on small entities at less than \$25 annually per business. Small businesses told Advocacy that they are very confused on how to classify their workers and comply with DOL’s regulations. DOL’s proposed rule may be detrimental and disruptive to millions of small businesses that rely upon independent contractors as part of their workforce. Independent contractors who may also be small businesses also believe that they may lose work because of this rule.”¹³*
- **Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings [Docket No. OSHA-2021-0009] (RIN 1218-AD39)**
 - *“Based on the input from small entities, Advocacy is concerned that the proposed rule is inflexible, overly rigid, and fails to account for sector-specific*

¹¹ Major L. Clark, Deputy Chief Counsel, Office of Advocacy, U.S. Small Business Administration, *Comment Letter to the National Labor Relations Board’s Joint Employer Rule*, November 29, 2023, <https://advocacy.sba.gov/wp-content/uploads/2022/11/Comment-Letter-NLRB-Joint-Employer-Rule-508c.pdf>.

¹² Major L. Clark, Deputy Chief Counsel, Office of Advocacy, U.S. Small Business Administration, *Comment Letter to the Department of Labor’s Overtime Regulations*, November 7, 2023, <https://advocacy.sba.gov/wp-content/uploads/2023/11/Comment-Letter-DOL-Overtime-Regulations-508.pdf>.

¹³ Major L. Clark III, Deputy Chief Counsel, Office of Advocacy, U.S. Small Business Administration, *Letter to U.S. Department of Labor*, December 12, 2022, <https://advocacy.sba.gov/wp-content/uploads/2022/12/Comment-Letter-DOL-Independent-Contractor-508c.pdf>.

and regional differences for many small entities. Small entities raised these concerns during the SBREFA panel and Advocacy's roundtables, and they remain concerned that OSHA has proposed a one-size-fits-all rule that lacks needed flexibility and is unduly burdensome as proposed.”¹⁴

- **Worker Walkaround Representative Designation Process (“Worker Walkaround”) Rule [Docket No. OSHA-2023-0008] (RIN 1218-AD45)**
 - *“OSHA’s certification under the RFA that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities is improper because OSHA has failed to consider the direct and foreseeable costs that small employers would incur as a result of the rule.”¹⁵*

Congress can protect small businesses from burdensome regulations as described above by strengthening the RFA and enacting much-needed regulatory protections for small businesses, such as H.R. 1163, the *Prove It Act of 2025*. Alternatively, Congress could empower the Office Advocacy to enforce RFA compliance on the front end, ensuring that every final rule complies with the RFA before the final rule takes effect.

Do No Harm, How Congress and the Administration can Strengthen the Small Business Workforce

Following the November 2024 elections, small businesses are optimistic for a more business-friendly approach to regulations and employment and labor law. Congress and the Administration can make good on these prospects by not imposing more labor and employment mandates on small businesses that only make it harder for small businesses to hire and onboard new workers.

Proposals such as the *Protecting the Right to Organize Act* and the *Warehouse Worker Protection Act* would rewrite labor and employment law, impose onerous new regulations and mandates on small businesses, lead to frivolous litigation, and only harm small businesses and the American workers who work for these small businesses.

¹⁴ Major L. Clark, Deputy Chief Counsel, Office of Advocacy, U.S. Small Business Administration, *Comment Letter to the Heat Injury and Illness Prevention in Work Settings*, January, 13, 2025, <https://advocacy.sba.gov/wp-content/uploads/2025/01/Comment-Letter-Heat-Injury-and-Illness-Prevention-in-Work-Settings-011325.pdf>.

¹⁵ Major L. Clark, Deputy Chief Counsel, Office of Advocacy, U.S. Small Business Administration, *Comment Letter to the Worker Walkaround Rule*, November 13, 2023, <https://advocacy.sba.gov/wp-content/uploads/2023/11/Comment-Letter-Worker-Walkaround-Rule-508.pdf>.

Specifically, the *Warehouse Worker Protection Act* is a major threat to small businesses. Far from being legislation targeting large, publicly traded businesses, this major federal expansion would also ensnare small businesses. We urge Congress to reject the *Warehouse Worker Protection Act*.

Further, Congress should reject the *LET'S Protect Workers Act*, which would drastically increase fines for labor and employment law violations, even for accidental and first-time violations. Minimum wage and overtime violations currently operate under a strict liability standard, meaning the law does not account for employers who have an honest misinterpretation of the law or make an isolated mistake. This legislation could force small businesses to close their doors forever for making a simple and innocent accounting error, leaving American workers worse off and out of a job altogether.

Instead, Congress and the Administration should reestablish the payroll audit independent determination program, which would allow employers to self-report and correct minor minimum wage and overtime violations before incurring a penalty, as proposed by the *Ensuring Workers Get PAID Act*. This program could also be expanded or recreated to include first-time Occupational Safety and Health Administration violations for small businesses.

The Administration should rescind or withdraw many of the burdensome rulemakings of the Biden Administration, including those that were listed in the section above and return to the more business-friendly approach of the first Trump Administration. For example, the Administration could rescind the Biden Administration's Independent Contractor Classification rule and return to the first Trump Administration's Independent Contractor rule that provided a simplified and flexible employee or independent contractor classification test and allowed workers the flexibility to work independently.

Lastly, Congress should proactively prevent future burdensome labor and employment regulations by clarifying that the Occupational Safety and Health Administration does not have the authority to regulate business operations solely based on the temperature in the workplace and by passing the *Save Local Business Act*, which would codify the traditional understanding of joint employment and prevent a future burdensome joint employer rulemaking.

Conclusion

Small businesses are optimistic that the Trump Administration and 119th Congress will implement pro-growth tax, labor, regulatory, and economic policies. However, major threats loom on the horizon. Congress and the Administration can deliver pro-business policies for small businesses, but they must reject policies that increase uncertainty, regulatory burdens, and red tape.