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**TESTIMONY BEFORE THE U.S. HOUSE SUBCOMMITTEE ON
HEALTH, EMPLOYMENT, LABOR, AND PENSIONS**

**HEARING ON “PROTECTING WORKERS AND SMALL
BUSINESSES FROM BIDEN'S ATTACK ON WORKER
FREE CHOICE AND ECONOMIC GROWTH”**

OCTOBER 18, 2023

Chairman Good, Ranking Member DeSaulnier, and distinguished members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Matt Haller, and I am the President and CEO of the International Franchise Association (IFA).

IFA is the world's oldest and largest organization representing franchising worldwide. IFA represents all aspects of the franchise business model, with more than 1,200 franchise brands, more than 10,000 franchise business owners, and 600 industry suppliers who support the franchise sector. For over 60 years, IFA has worked through its government relations, public policy, media relations and educational programs to advocate for the protection, promotion and enhancement of franchising and the approximately 790,000 franchise establishments that support nearly 8.4 million direct jobs, \$825.4 billion of economic output for the U.S. economy, and almost 3 percent of the Gross Domestic Product. IFA members include franchise companies in over 300 different industries, individual franchisees, and companies that support franchising in marketing, technology solutions, development, operations, and more.

Relevant to this hearing, IFA leads the Coalition to Save Local Businesses, which is comprised of locally owned, independent businesses, associations, and organizations seeking a clear and fair “joint employer” standard that allows our economy to flourish. To that end, the coalition supports the Save Local Business Act, and opposes the National Labor Relations Board’s (NLRB) 2022 proposed joint employer rule that threatens local businesses and has received diverse, bipartisan opposition.

This testimony has four sections. First, it will describe the distinctiveness of the franchise business model. Second, it will discuss the current state of the U.S. economy and how franchisors provide support to ensure their franchisees’ success and overcome post-COVID challenges. Third, it will describe the current state of the franchise relationship between franchisors and franchisees. Finally, it will address the unnecessary costs and threats posed to franchising by the NLRB’s proposed joint employer rule. I will demonstrate these consequences from both the macroeconomic level through IFA and other franchise research, as well as through specific examples cited by franchisors and franchisees which demonstrate the real-world impact of this proposed rule.

1. The Unique Attributes of the Franchise Business Model

Franchising is arguably the most important business growth strategy in American history. The first “franchises” were launched by Benjamin Franklin, and over the centuries, this system has served as a core American model of opportunity and entrepreneurship. In 1731, Franklin entered a partnership with Thomas Whitmarsh, who franchised his printing business, *The Pennsylvania Gazette*. Later, Whitmarsh would introduce the first “franchised” newspaper of South Carolina, the *South Carolina Gazette*.

At its core, franchising is the relationship that the franchisor has with its franchisees—how the franchisor supports its franchisees, how the franchisee meets its obligations to deliver the products and services to the system’s brand standards, and the brand’s value. In franchising, we say, “You go into business for yourself, but not by yourself.”

Franchising is often confused with “big business” when it is in fact the exact opposite. According to market research and advisory firm FRANdata, most franchise owners (81.6% or 191,685) own and operate one location. FRANdata reports that franchisees pay an average of a 6 percent royalty to a brand for the right to operate a business under its trademark and sell the

brand's products or services. This means franchisees retain an average of 94 percent of their business revenue. Indeed, franchising requires a symbiotic relationship between two business entities (franchisors and franchisees) whose interests are inextricably linked, yet different in their roles and their responsibilities to maximize success.

A franchisee is first a local business, distinguished from other local businesses because it licenses the branding and operational processes of a franchisor, or brand company, while operating independently in a set location. The local owner, or franchisee, is responsible for hiring staff, organizing schedules, managing payroll and all daily operational tasks—and critically, creating a distinct company culture and direct relationship with employees—as well as local sales and marketing. The value of franchising lies in a strategic balance in the relationship between a franchisor and franchisee: the independence of a franchisee to manage its day-to-day operations and connections with its employees, consumers, and the local community. The franchise system gives aspiring small business owners head starts toward becoming their own boss, with a proven business model that can set up new business owners for success and easier access to lines of credit than a traditional business.

The immense value of franchising to business owners, employees and their communities is supported by empirical data. Oxford Economics finds that franchising offers a path to entrepreneurship for all Americans, but especially to underrepresented communities, including people of color, women, and veterans. Around 26% of franchises are owned by people of color, compared with 17% of independent businesses overall. For employees, franchised businesses perform better and provide better pay and benefits than their non-franchised counterparts. On average, franchises pay 2.2 – 3.4% higher wages than their non-franchised counterparts and offer greater benefits, including health care and paid leave. Franchises report sales 1.8 times greater than non-franchised businesses and provide 2.3 times as many jobs as their non-franchised counterparts. Furthermore, Black-owned franchise firms generate 2.2 times higher sales compared to Black-owned non-franchise businesses, on average.¹

There are multiple public misconceptions about franchising. First, this testimony has already revealed that the vast majority of franchises are far from big businesses, but rather single-unit small businesses. Second, franchising itself is not an industry, but rather a business growth strategy used *within* nearly every industry. More than 300 different sectors are represented in franchising. Franchise companies offer a vast range of products and services from lodging to fitness, home services to health care, plumbing, pest control, restaurants, security, and lawn care. Furthermore, franchising goes well beyond the “fast food” industry. In fact, 63% of companies that franchise are not in the food services at all, and 83% are not in fast food².

There are two principal explanations behind the popularity of franchising as a method of distribution. One is that it “was developed in response to the massive amounts of capital required to establish and operate a national or international network of uniform product or service vendors, as demanded by an increasingly mobile consuming public³.” The second explanation is that franchising affords the franchisee to be physically removed from the franchisor, giving autonomy to the franchisee to run their own day-to-day business operations. These two

¹ The Value of Franchising. (2021). Oxford Economics. Retrieved from: <https://openforopportunity.com/wp-content/uploads/2022/05/IFA-The-Value-of-Franchising-Sep2021.pdf>

² FRANdata research. (2021).

³ Shelley, Kevin M. and Susan H. Morton. (2000). “Control” in Franchising and the Common Law, 19 Fran. L. J. 119, 121

motivations are consistent with a business model in which the licensing and protection of the trademark rests with the franchisor, and the capital investment and direct management of day-to-day operations of each franchise unit is the responsibility of the franchisee who owns, and receives the net profits from, its individually owned franchise unit.

It is typical in franchising that a franchisor will license, among other things, the use of its name, its products or services, and its operational processes and systems to its franchisees. The systems developed by the franchisor and executed successfully by other franchisees with a proven record of performance is why many franchisees purchase a franchise. Franchisees look to the franchisor to promote and protect the trade names, trademarks, and service marks (collectively the “Marks”) and brand by establishing and enforcing standards on all franchisees in a system. Such standards are essential for the protection of franchisees’ equity in their businesses and consumers of the brand. These standards allow franchisors to maintain the uniformity and quality of product and service offerings and, in doing so, to protect their Marks, the goodwill associated with those Marks, and most importantly, consumer confidence in the Marks and brand. Because a core principle of franchising is the collective use by franchisees and franchisors of Marks that represent the source and quality of their goods and services to the consuming public, action taken to control the uniformity and quality of product and service offerings under those Marks is not merely an essential element of franchising – it is an explicit requirement of federal trademark law under the Lanham Act.

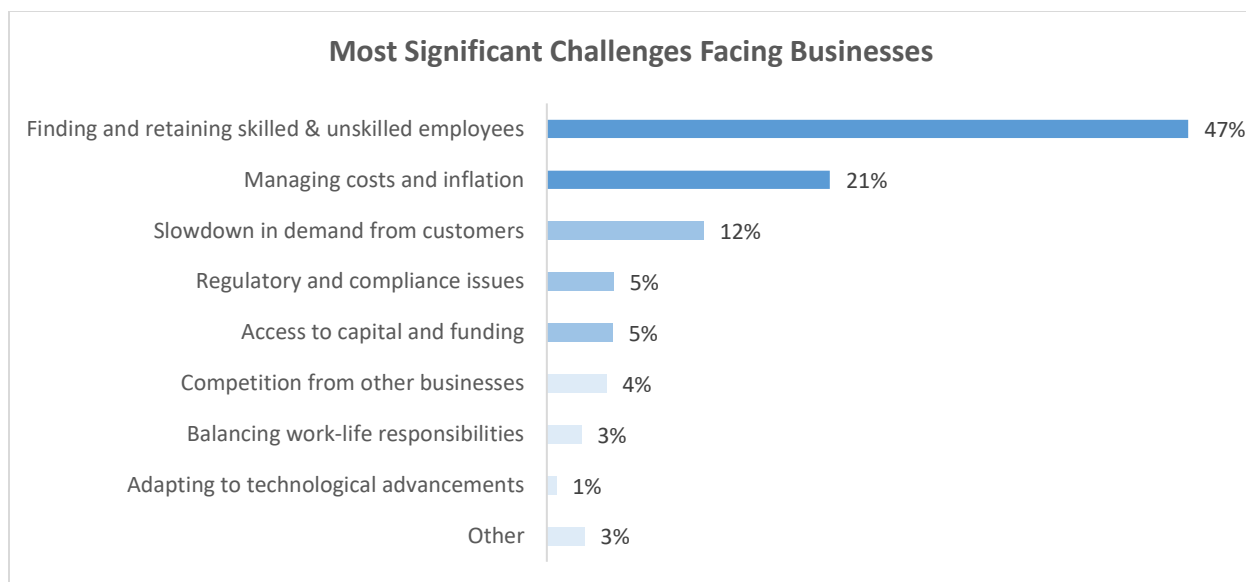
2. The State of Franchise Business Economic Recovery and Growth

The COVID-19 pandemic battered small businesses in historic ways. From March 2020 to August 2020, an estimated 32,700 franchised businesses closed. Of those, 10,875 did not reopen. Franchise business owners are grateful to policymakers for the federal response. Members of Congress recognized franchisees and franchisors were independent businesses and that franchisees needed to be recognized as the small businesses that they are, regardless of their trademark affiliation with a brand. Ultimately, Congress made franchisees eligible to receive direct financial support through these programs, providing \$525 billion in emergency funds extended through the Paycheck Protection Program and \$194 billion through the Economic Injury Disaster Loan program, which was essential in keeping businesses afloat.

As a result, coming out of the pandemic, franchising experienced an explosion of growth in 2021, outpacing growth in other methods of business. While this growth has moderated since the initial rebound, franchise businesses remain on a path to recovery. Like all small businesses—franchises are still navigating economic headwinds, such as high inflation, labor shortages, and supply chain disruption.

In September 2023, IFA in partnership with FRANdata released our second annual Franchisee Survey. The survey showed that, while price increases have marginally slowed compared to 2022, inflation is still having a significant impact on franchised businesses across all sectors, with the cost of labor being the most significant inflation problem for franchisees. The chart below shows the most significant challenges facing franchised businesses in today’s economic environment, as identified in the survey. Finding and retaining both skilled and unskilled workers remains by far the biggest problem facing franchisees today.⁴

⁴ 2023 Annual Franchisee Survey. (2023). International Franchise Association. Retrieved from: <https://www.franchise.org/franchise-information/franchise-economy/2023-annual-franchisee-survey>

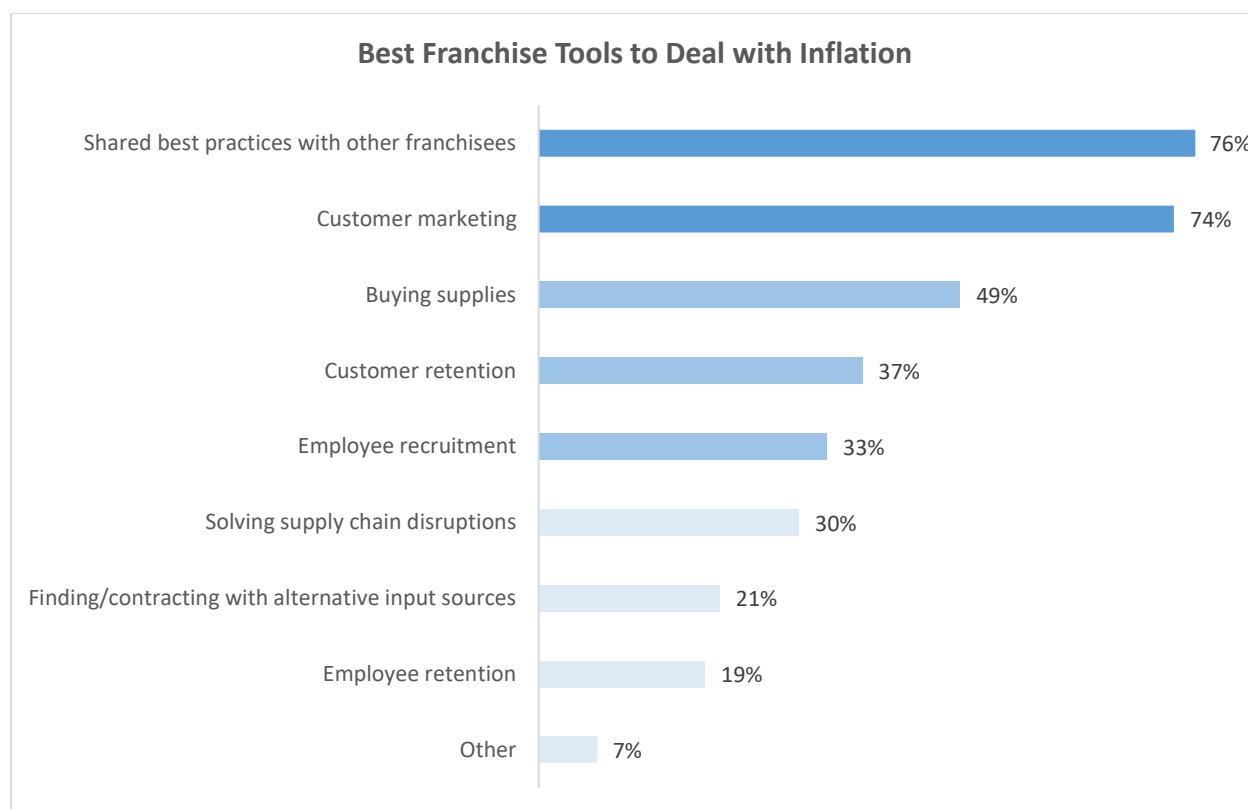


Source: 2023 Annual Franchisee Survey.

Other key findings from the report include:

- 86 percent of franchisees reported feeling the effects of increasing costs on their operations, a marginal decline from the prior year.
- Nine out of ten business units reported having to raise their prices to combat cost increases.
- Labor remains the most significant challenge for rising costs, followed by insurance costs and cost of inventory.
- 64 percent of franchisees are seeing reduced earnings attributable to inflation.
- 51 percent of franchisees expect inflation to get worse.

The good news is the Franchisee Survey also allowed franchisees to volunteer the ways that being part of a franchise system provides advantages for navigating rising costs. The support that brands can offer their franchisees, and that franchisees are able to offer each other, is invaluable. The survey found, as illustrated below, that being part of a franchise network provides these local business owners with a range of tools to cope with inflation, with shared best practices and customer marketing support topping the list. This support is key to the success of the franchise business model and unlocks the opportunity for small business ownership in communities across the United States and the world.



Source: 2023 Annual Franchisee Survey.

Beyond the economic concerns expressed by franchisees in this survey, which are similar across the small business landscape, franchising faces a unique and fundamental threat – the NLRB’s proposed joint employer rule – that could undermine the support that franchisees rely on to maintain their small businesses and serve their customers, employees, and communities. Below this testimony outlines IFA’s concerns with the joint employer rule and the unpredictable regulatory climate that franchising is facing.

3. Franchise Relationships in Today’s Economy

The current state of franchise relationships is extraordinarily strong. According to the most recent biannual Franchisee Satisfaction Report published by research firm *Franchise Business Review*, based on information obtained from over 30,000 franchisees across more than 300 franchise systems, 85% of franchisees enjoy being part of their franchise organization, 82% of franchisees respect their franchisor and are supportive of the brand, and 78% of franchisees would recommend their franchise system to others.⁵ Franchise Business Review reported that its data reflected an all-time high in franchisee satisfaction, representing an increase of 3% over pre-pandemic satisfaction metrics.⁶

Franchisee satisfaction is further demonstrated by the continued viability and growth of franchised businesses described above. Despite supply chain disruptions, labor shortages, and high inflation,

⁵ *Franchisee Satisfaction a Key Consideration Among Potential Franchise Buyers*, FRANCHISE BUS. REV. (Dec. 28, 2022), Retrieved from: <https://franchisebusinessreview.com/post/franchisee-satisfaction-a-key-consideration-among-potential-franchise-buyers/>

⁶ *Id.*

sales of goods and services by franchised business grew by 4.8% from the previous year, and the total number of U.S. franchised units grew by 2% from the previous year.⁷ This growth was fueled by the rise of franchisees with multiple units (or “multi-unit franchisees”), with over 50% of the franchise units controlled by multi-unit franchisees.⁸ The continued investment in franchise brands by multi-unit franchisees provides practical evidence of franchisee satisfaction with their franchise systems, with an increase in multi-unit operators of 23% from 2010 to 2018.⁹ Multi-unit growth was observed across industries, with the most significant increases in quick-service restaurants, beauty/wellness services, full-service dining, real estate, automotive, clothing and accessories, and retail food.¹⁰

Although the data reflect that franchise relationships are strong, the Federal Trade Commission (FTC) nevertheless seems poised to meddle in the private contracts between thousands of franchisees and franchisors. Earlier this year, the FTC issued a request for information (RFI) on the “imbalance of power in franchisor-franchisee relationships.” The RFI was comprised of over 75 questions that sought responses on the adverse consequences of certain franchise practices without first seeking to determine whether those franchise practices are commonplace in franchising. Moreover, many of the RFI questions relate to labor practices not within the purview of the FTC’s role of protecting competition and consumers, further evidence of this FTC’s demonstrated pattern of exceeding the boundaries of its statutory authority to advance an agenda documented in the FTC’s memoranda of understanding with the NLRB and Department of Labor (DOL) that provides collaboration—or collusion—amongst the agencies. The RFI is yet another example of the current FTC failing to gather empirical data through its available resources, such as the Bureau of Economics, to advise its policymaking. In fact, when asked at an April 2023 hearing of a U.S. House Appropriations Subcommittee about the justification for the franchise RFI, FTC Chair Lina Khan presented no evidence, but she noted the FTC had merely heard a handful of franchisee anecdotes at open commission meetings.

IFA and its members continue to believe the FTC can best bolster the franchise relationship by enhancing disclosure requirements as part of its ongoing review of the Franchise Rule, rather than attempting to regulate private contracts between franchisor and franchisee. IFA has long supported the FTC’s Franchise Rule, and lawmakers do too; U.S. House members sent bipartisan [October 2022](#) and [July 2023](#) letters to the FTC, and U.S. senators sent a bipartisan [December 2022](#) letter to the FTC, encouraging the preservation and strengthening of the Franchise Rule. Further, the Government Accountability Office has repeatedly encouraged the FTC to make common sense changes to the Franchise Rule, including improved presale disclosures with greater transparency of franchise terms and conditions, modernization of the disclosure document itself, and more regular dialogue with the franchise community.

⁷ 2023 ECONOMIC OUTLOOK, *supra* note 1. The strength of the franchise model is further supported by a study conducted by Oxford Economics in September 2019, *The Value of Franchising*, attached to this Comment as [Schedule 1](#). The analysis completed by Oxford Economics in its study demonstrates that franchised businesses on average report sales 1.8 times larger than their non-franchise counterparts and provide 2.3 times as many jobs. Oxford Economics, *The Value of Franchising* 24 (Sept. 2019). Additionally, franchised businesses pay 2.2%-3.4% higher wages than their non-franchise counterparts. *Id.* at 36.

⁸ See *2023 Mega 99 Rankings*, MULTI-UNIT FRANCHISEE MAGAZINE ISSUE 1 (2023), https://www.franchising.com/articles/2023_mega_99_rankings.html [hereinafter, the 2023 MEGA 99 RANKINGS].

⁹ Cheatham, Jeff. (Jan. 26, 2022). *5 Encouraging Facts to Know About Multi-Unit Franchising*, ENTREPRENEUR. Retrieved from: <https://www.entrepreneur.com/franchises/5-encouraging-facts-to-know-about-multi-unit-franchising/414553>.

¹⁰ 2023 MEGA 99 RANKINGS, *supra* note 7.

4. The Impact of Joint Employer on Franchising

Without question, the biggest threat to IFA members and the entire franchising community is the NLRB's looming final joint employer rule, which was expected to be finalized in August 2023. The proposed rule was released in September 2022, and we believe – based on empirical data from the previous expansive joint employer standard from 2015-2017 – that it will again disrupt the franchise model by undermining the independence of franchisees as business owners, making them merely employees of and/or co-employers with their franchisor. This will significantly diminish the value of the businesses that they have spent their careers building and the hard-earned equity they have put into them.

We are confident the NLRB's proposed joint employer rule will harm small businesses in every district and state because that is what happened the last time the NLRB manufactured a harmful joint employer standard. In 2015, the NLRB broadened the scope of joint employment in its *Browning-Ferris Industries of California, Inc.* decision to include employers who *indirectly* or reserve the right to control terms and conditions for employees. This change of employment rules in the middle of the game fundamentally and unnecessarily altered the franchisor-franchisee relationship. According to a 2019 report, the 2015 joint employer standard caused the following economic effects during the 2015-2017 period:

- **Lost jobs.** The 2015 NLRB standard cost an estimated 376,000 job opportunities among franchise businesses.
- **Increased litigation.** The Board's similar standard from 2015-2017 led to a staggering 93% increase in joint employment-related charges or petitions being filed at the NLRB, and a sharp increase in litigation costs for small businesses.
- **Restricted support to franchise small business owners.** To protect themselves from frivolous litigation, the 2015 standard compelled franchisors to limit their communication on employment-related matters, including compliance education, HR, and legal resources previously offered to franchisees. These changes negatively affected the value of proposition of going into business alongside a brand partner.¹¹

Despite the data confirming the harm of the previous *Browning-Ferris* joint employer standard, the NLRB seems poised to needlessly update the merely three-year-old joint employer rulemaking. The NLRB's proposed rule would greatly expand the joint-employer standard beyond what franchisees have come to expect. The joint employer standard that was in place for three decades from 1984-2015 required a putative joint employer to exercise "direct and immediate control" over an employee's essential terms and conditions of employment in more than a "limited and routine" manner. Now, the proposed rule unnecessarily departs from that standard and specifies that (1) indirect control and retained control would be sufficient on their own to establish a joint employer relationship, (2) any exercise of control—not just "substantial" control—is sufficient to establish a joint employer relationship, and (3) while control must be exercised over "essential terms and conditions of employment," there is no clarity on what the "essential terms and conditions" are.

¹¹ The Economic Impact of an Expanded Joint Employer Standard (2019). International Franchise Association. Retrieved from: <https://www.franchise.org/sites/default/files/2019-05/IE%20Econ%20Impact%200128.pdf>

As described previously, a successful franchise system (and federal trademark law) requires its franchisees to maintain brand standards and ensure uniformity of operations from unit to unit. To achieve these aims, franchisors must train franchisees on brand standards and operational methods, expect franchisees to teach their employees those standards and methods, and periodically confirm through inspection that their franchisees and their employees are doing so. The proposed rule threatens to make a franchisor a joint employer merely for adhering to the basics of such a franchise system. For example, because the proposed rule's definition of "essential terms and conditions" is vague and unbounded, it is unclear whether a franchisor's efforts to maintain brand standards and ensure uniform operations will be deemed "indirect" or "reserved" control over an "essential term and condition of employment." Further, it is unclear whether a franchisor that provides optional tools and resources to its franchisees to use in running their business would be deemed to exert "indirect" or "reserved" control over employees of a franchisee who chose to use such tools and resources.

In effect, the NLRB has created a catch-22 situation for franchisors that will ultimately harm franchisees. Under any scenario, there are no winners at the franchisor, franchisee, employee, or customer level. Practically speaking, franchisees and their employees are left with at least three different negative consequences based on the actions a franchisor will be required to take under the NLRB's expanded rule:

1. Franchisors may need to increase their involvement in the operations of franchisees to reduce the likelihood of legal liability as a joint employer. Under this scenario, franchisees are essentially "converted" to employees of the franchisors by government dictate. As independent small business owners, franchisees did not get into business, nor put their own equity into that business, to be employees of their brands. The independent nature of franchising, coupled with the ability to leverage a brand and a playbook, is the essence of what makes the franchise model successful, and allows a franchisee to monetize their equity value over years or decades. With the stroke of a pen, a government agency will be wiping out billions of dollars in value creation of franchisee equity under this proposed rule.
2. Franchisors would likely be compelled to increase franchise fees to offset losses or potential losses associated with joint employment liability. If franchisors now have shared liabilities of costs with their franchisees (such as the costs of the employment of thousands or hundreds of thousands of employees they don't currently employ), they will undoubtedly increase the fees they charge their franchisees to operate a business under their brand, and these costs will also get passed on to consumers. For a franchisee, the higher fees mean there are fewer resources available to pay employees, or that they must reduce their overall number of employees. Worse yet, franchisors might ultimately decide the cost of joint employer liability is too great altogether and may simply abandon the franchise business model, opting for a corporate model instead, eliminating the ability for future franchisees to go into business for themselves.
3. Franchisors might attempt to distance themselves from franchisees to minimize the risk of a joint employer finding, which could be viewed as the worst alternative. For example, a franchisor might reduce or eliminate the optional tools and resources it historically provided to franchisees, such as sharing template employee handbooks or hosting a job board platform to assist with recruitment of employees. As cited in the 2019 IFA study noted above, the impacts of the NLRB's 2015 *Browning-Ferris* decision "created an incentive for

franchisors and other core businesses to back away from earlier business arrangements and interactions with franchisees, suppliers and support contractors." The result of this "distancing" behavior by franchisors was between \$17.2 billion and \$33.3 billion per year lost output equivalent to the franchise sector and between 194,000 and 376,000 lost job opportunities in 2016.

In September 2023, Oxford Economics released a survey report confirming that franchisees are concerned about any of these outcomes of the proposed NLRB rule. The report revealed the NLRB rule will increase uncertainty among franchisees, increase costs for franchisees, franchisors and their consumers, and decrease access to business ownership in franchising. The specific findings in the report include:

- Seventy-four percent of franchisees expressed a high level of concern at the prospect of increased franchisor control due to the forthcoming NLRB rule, and 55 percent a high level of concern with reduced franchisor support.
- Forty-three percent of franchisees expected some change in the franchisor/franchisee relationship as a consequence of the NLRB rule. Twenty-two percent of respondents expected franchisors to increase control over their operations, whereas 21 percent expected franchisors to distance and reduce operations and compliance support, and 38 percent did not know what to expect.
- Sixty-six percent of franchisee respondents expected the new NLRB standard to raise barriers to entry into franchising with women and entrepreneurs of color being disproportionately harmed.
- Seventy percent of franchisees expected increased litigation and the costs associated with it, as consistent with the results of the 2015 standard.
- Franchisees anticipate additional costs including increases in legal and advisory fees as franchisees and franchisors navigate compliance under the new rule, in addition to greater insurance and operational costs.¹²

As I have discussed, franchising provides a pathway to ownership for women and people of color at disproportionately greater rates. As seen in comments submitted to the NLRB last year, this rule would jeopardize all future franchise growth and progress. Some of the comments filed with the NLRB in response to their joint employer rule are below:

- According to the National Asian/Pacific Islander American Chamber of Commerce, "Many AAPI small business owners are franchisees. We are concerned that franchisors, in an effort to protect themselves against more liability and financial obligations under the proposed rule—which will expand new responsibility for employees they do not employ and workplaces they do not control—would move to end or limit their support of franchisees. This would ultimately stifle entrepreneurship, business innovation, and flexibility. The proposed rule is likely to disproportionately impact women, minorities, and disadvantaged communities who may need alternatives to traditional business models and financing to start-up or scale their businesses. The rule could disincentivize programs like McDonald's current franchisee recruitment initiative, which has committed \$250 million in the U.S. over

¹² Potential Consequences of the NLRB Joint Employer Rule. (2023). Oxford Economics. Retrieved from: <https://www.franchise.org/sites/default/files/2023-09/Oxford%20Economics%20Report%20for%20IFA%20on%20Joint%20Employer%20Rule.pdf>

five years to provide alternatives to help those facing socio-economic barriers to accessing traditional financing.”

- According to the U.S. Black Chambers, “The proposed rule places barriers to entrepreneurial and business development and lack of control over their own business. Black entrepreneurs face greater risks under the proposed rule than ever before, especially if they plan to utilize contract models, contract workers, or temporary workers and vendors to fulfill the day-to-day operations of their firms. Increased liability for both the small business owner and outside vendors reduces the likelihood of business opportunity across all industries. The U.S. Black Chambers firmly believes that the entrepreneur who takes on the risk of starting and operating their business should be allowed to maintain full control over all employees, contracted labor, and use of third-party vendors without sharing control with an ambiguous joint employer as defined by the proposed rule. While we recognize that the rule is well-intended, we caution against the significant harm that will come to Black firms under the implementation of a final rule. We ask that the NLRB take into account the position of Black firms when formulating the final rule by clarifying responsibility, compliance costs, and expectations of firms to reduce unnecessary legal costs, liabilities, or malpractice.”
- According to the Association of Women’s Business Centers, “The rule in its current form would diminish the controls of franchisees and impede the pathway to ownership, ultimately driving women away from franchising...The impact on the franchisee-franchisor relationships would significantly change and create a barrier to entry for women entering the franchisee industry – especially considering that women on average are more risk-adverse in nature. With more women coming through women’s business centers (WBCs) across the nation that are utilizing franchising or contracting, many are considering succession planning if this rule becomes law.”
- According to the Asian American Hotel Owners Association (AAHOA), “This proposed rule could cloud the employment status of many workers. Like any business, hotels are often dependent on outside vendors. Linen suppliers, landscapers, food and beverage deliverers, and construction workers are just a few examples. Hotels, by their very nature, are asset-heavy businesses. This combined with the uncertainty of the proposed rule could make AAHOA Members targets for litigation.”
- According to the National LGBT Chamber of Commerce, “Current legal uncertainty will discourage franchise business operations. Franchisors will be forced to forfeit their free space of operation. The new joint employer rules also put at risk workforce development and apprenticeship training programs that make franchised companies attractive to entrepreneurs. Enforcement of stringent conditions without any legitimate cause will also impede upon the crucial business opportunities afforded to diverse and marginalized business communities, and in turn, reduce their opportunities to build and sustain generational wealth.”

Even the U.S. Small Business Administration’s Office of Advocacy wrote how the NLRB rule will be a barrier to entry for small businesses seeking federal contracts; how it will add thousands of dollars

a year in compliance costs; and how it will harm women-owned, Black-owned, Latino-owned, and other minority-owned small businesses.¹³

The NLRB and Congress should listen to the thousands of opposing comments against the proposed rule. The NLRB and Congress should look again at the macroeconomic impact of the previous, harmful joint employer standard. While this opposition and data should be sufficient evidence of the problems created by the NLRB's previous actions, it is also useful to examine the record of specific examples from both franchisors and franchisees about how an expanded joint employer rule negatively impacts their real-life businesses and their employees. Below are a few testimonials drawn from more than a dozen franchise business witnesses who have testified before Congress in the past several years and in comments to the NLRB's recent request for public comment on its proposed rule:

- *"Countless people in the franchise industry start out in administrative roles like mine – or as busboys, line cooks or cashiers – and move up to become multi-unit owners. Stories like ours are celebrated as some of the greatest American success stories there are, and the franchise structure is, in large part, responsible. It has provided each of us with so many opportunities to succeed, and I am hopeful that it will remain intact so that it can continue to afford other hardworking employees similar paths to success.... As a local business owner, I am very fortunate to have the platform to provide job opportunities for my neighbors seeking employment."* – **Tamra Kennedy, Taco John's franchise owner.**
- *"Our small business is named after New York City's Ellis Island, through which my family members entered America to pursue a better life... My parents then immigrated to the U.S. in 1967. In order for the family to grow their business, they called upon other family members to also join them in the business so they too could live their American Dream... As a franchise business owner, I have worked so hard to provide for my family, employees, customers and stakeholders in my community. But along the way, franchising has afforded me every opportunity to succeed, no matter where I came from, my background, my gender, color of my skin, or any other personal characteristic. It is a business format every policymaker should support. An expansive joint employer standard would undoubtedly rid franchise business owners like myself of the hard-earned equity and effort we have invested into our hotels and other establishments."* – **Jyoti Sarolia, Principal & Managing Partner, Ellis Hospitality.**
- *"After serving in the military, my father's entrepreneurial spirit and desire for financial security led him and my mother to purchase their first McDonald's-brand restaurant in 1984. In the ensuing decades, our family business grew to include many more restaurants, and I became an approved owner-operator working alongside my parents...At the same time, our business's success has benefited our employees ("team members") and the communities where we operate as well. We are proud to have created extensive job opportunities that offered better wages, benefits, and experiences than our competitors. We provide our teammates with opportunities for advancement, basic to advance work experience, career opportunities and, for those who choose to pursue opportunities elsewhere, transferable skills that will serve them well in future endeavors. And beyond our significant contributions as an employer of choice in our communities, we have consistently focused our philanthropic efforts on the institutions*

¹³ Clark, Major L. and Janis C. Reyes. (November 29, 2022). [Letter from U.S. Small Business Administration Office of Advocacy to National Labor Relations Board]. Retrieved from: <https://advocacy.sba.gov/wp-content/uploads/2022/11/Comment-Letter-NLRB-Joint-Employer-Rule-508c.pdf>

that we believe are central to our communities' future success: one example is our over \$100,000 donations made for the purpose of benefiting local schools. The proposed joint employer rule threatens to undermine our business's success and, in turn, irreparably harm our team members and local communities." – **Courtney Escalante, McDonald's franchise owner.**

Taken alone, each of these consequences warrants the NLRB abandoning its joint employer rule – and we urge the Board to do so. Taken together, they illustrate how Congress must act to stop this harmful rule.

For the past decade, the franchise business model and many of our member companies and franchisees have been the target of a corporate campaign led by the Service Employees International Union (SEIU). The objective of this campaign is to make it easier for workers to unionize across a large franchise business by declaring the franchisor to be a joint employer with its franchisees. Despite spending hundreds of millions of dollars toward this aim over the last decade, to date the union has failed to achieve this objective and resorted to changing the underlying rules that have been in place for decades until 2015. While declaring a franchisor and its franchisees to be joint employers might ease unionization across franchise systems, it would have the devastating consequence of taking away the opportunity to own a franchise business and simultaneously destroying the franchise business model that powers the U.S. economy.

Congress has a choice to make: should the NLRB be allowed to proceed with its proposed rule and break the franchise model or should Congress step in and preserve this business model that has helped thousands of brands provide the American Dream of small business ownership to people from all walks of life? We urge Congress to examine the forthcoming NLRB rule and strike it down.

We applaud the Committee for considering H.R. 2826, the *Save Local Business Act*, introduced by Congressman James Comer. This bill would codify a permanent joint employer standard based on direct and immediate control of a business; not based on vague, unworkable standards proposed by the NLRB. The *Save Local Businesses Act* is also part of Congressman Rick Allen's H.R. 2700, the *Employee Rights Act*, another topic of today's hearing. IFA is proud to support both the *Save Local Businesses Act* and the *Employee Rights Act* because they protect franchise businesses from the NLRB's harmful joint employer rule. We urge all members of the Committee to support these important bills.

In addition to these bills, IFA supports bipartisan efforts to overturn the NLRB's inevitably harmful rule using the Congressional Review Act, and we are grateful for the bipartisan support this effort has already attracted in Congress. IFA also supports language in the House Appropriations Committee's FY 2024 Labor, Health and Human Services and Education Appropriations bill to prohibit funding for finalization/implementation of the joint employer rule. Each of these efforts would protect local small businesses from the NLRB's unworkable and unwanted joint employer standard. Congress should stand up for its constituents, rather than the evidence-less actions of regulatory agencies.

Thank you again for the opportunity to testify, and I look forward to working together to protect, enhance, and promote franchised businesses across the United States.