



May 29, 2024

The Honorable Roger Williams
Chairman
House Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Williams:

On behalf of the National Small Business Association¹ (NSBA) and its more than 65,000 members, we write to express our support and gratitude for the recent investigation conducted by the House Small Business Committee into the compliance of federal agencies with the Regulatory Flexibility Act (RFA). We commend the Committee's diligent efforts in identifying and addressing the shortcomings of federal agencies in adhering to the mandates of the RFA, which are crucial in protecting small businesses from undue regulatory burdens.

Providing a voice for small businesses in the federal rulemaking process is of the utmost importance. Enacted more than four decades ago, the RFA was explicitly designed to accomplish this objective by mandating that federal regulators consider the effect new rules will have on small entities and, when appropriate, explore less burdensome alternatives.

However, as your report makes clear, all too often federal agencies skirt these requirements by certifying that a new regulation has no significant effect on a substantial number of small entities, despite failing to provide sufficient justification for their findings. Even more concerning are instances of agencies willfully violating both the spirit and letter of the RFA, treating the small business community as merely an afterthought.

Unfortunately, NSBA and our members have long experienced firsthand the negative consequences these tactics have on the small business community. Just three months ago, NSBA voiced its concern over a new rule promulgated by the Consumer Financial Protection Bureau (CFPB) regarding credit card late fees and highlighted the staggering lack of due diligence the agency conducted in determining its proposal would not substantially burden small entities. In a rare public statement made at the time, the Small Business Administration's (SBA) Office of Advocacy concurred, ultimately criticizing the CFPB's certification process and recommending that the "CFPB maintain the status quo until it has sufficient data to ascertain the economic impact of this action on small entities."

Small businesses are the backbone of the American economy, and are the primary drivers of innovation, job creation, and economic growth in every community nationwide, representing over 99 percent of all private firms in the nation, and employing roughly half of the private sector workforce. Ensuring that these businesses are not disproportionately affected by federal

¹ Founded in 1937, NSBA is the nation's oldest small-business advocacy organization. We operate on a bipartisan basis to represent the interests of all American small businesses. We have 65,000+ members in every state and every industry across the country, including our numerous state affiliates. More information about NSBA and our priorities can be found on our website at: www.nsba.biz.

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regulations is not only a legal requirement, but also a practical necessity for maintaining a vibrant and dynamic economic environment. However, the findings of the Committee's report reveal a troubling and persistent trend of disregard both for the RFA and the small business community as a whole, while underscoring the continued challenges that small businesses face when federal agencies fail to fully comply with the RFA.

In addition, NSBA wholeheartedly agrees with the Committee's recommendations regarding enhanced compliance with the RFA. We welcome proposals to amend and otherwise modernize the existing statute to enhance its requirements, ensuring more rigorous analysis and consideration of impacts on small businesses; the establishment of stronger enforcement mechanisms that require agencies to provide detailed justifications for determinations that the RFA does not apply to certain regulations; mandating that agencies improve their outreach efforts to small businesses to ensure greater transparency in the rulemaking process; and further empowering the SBA's Office of Advocacy to engender more effective oversight and assistance to small businesses.

NSBA appreciates the Committee's thorough analysis and recommendations for improving agency compliance with the RFA. Your efforts in highlighting these issues and advocating for stronger enforcement mechanisms are vital steps toward creating a more equitable regulatory landscape for small businesses. We believe that full compliance with the RFA will lead to more thoughtful and balanced regulatory approaches—ultimately fostering a more conducive environment for small business growth and sustainability—and look forward to continuing to work with you in this critical space.

Should you have any questions or comments, please do not hesitate to reach out to Reed Westcott, Senior Director of Federal Policy, at westcott@nsba.biz.

Thank you,



Todd McCracken
President & CEO
National Small Business Association



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