

Congress of the United States

U.S. House of Representatives

Committee on Small Business

2361 Rayburn House Office Building

Washington, DC 20515-6515

June 3, 2021

Ms. Sharon Block
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
715 17th Street, NW
Washington, DC 20503

Dear Ms. Block:

Under Rule X of the Rules of the House of Representatives, the Committee on Small Business has jurisdiction to examine the assistance to and protection of small businesses, including financial aid; regulatory flexibility; and paperwork reduction.¹ In addition, the Committee is required to study and investigate on a continuing basis the problems of all types of small businesses.² Pursuant to that authority, and as Ranking Member of the Committee on Small Business, I request that you carefully evaluate the effect of any new and existing rules to minimize any potential burden on small businesses.

Your office, the Office of Information and Regulatory Affairs (OIRA), is responsible for reviewing draft and final federal regulations; overseeing the implementation of federal government-wide policies in information policy, privacy, and statistical policy; and minimizing the federal paperwork burden for individuals and small businesses.³ For small businesses, the regulatory landscape has never been more important.

On January 20, 2021, President Biden issued a Memorandum titled “Modernizing Regulatory Review.”⁴ This Memorandum reaffirms the principles in Executive Order 12,866,⁵ which requires that significant regulatory actions⁶ be submitted for review by the OIRA, and

¹ Rule X (1)(q)(1), Organization of Committees, United States House of Representatives (117th Congress).

² Rule X (3)(l), Special Oversight Functions, United States House of Representatives (117th Congress).

³ 44 U.S.C. § 3501 and Exec. Order No. 12,866, 58 Fed. Reg. 51835 (Oct. 4, 1983), *available at* <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

⁴ Memorandum from The Honorable Joseph R. Biden, Jr., President of the United States, to the Heads of Executive Departments and Agencies (Jan. 20, 2021), *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>, [hereinafter *Biden Memorandum*].

⁵ Exec. Order No. 12,866.

⁶ Exec. Order No. 12,866 defines “significant regulatory action” as one that: 1) has an annual effect on the economy of \$100 million or more or adversely affects in a material way the economy, a sector of the

Executive Order 13563,⁷ which urges agencies to coordinate their regulatory activities and to consider regulatory schemes that reduce the burden of regulation while retaining flexibility and freedom of choice for the public.⁸ The Biden Memorandum also directs agencies and OIRA to make recommendations for improving and modernizing regulatory review⁹ while taking into account quantitative or qualitative analysis of the costs and benefits of regulations and identifying reforms that promote the efficiency, transparency, and inclusiveness of the interagency review process.¹⁰ In addition, the Memorandum acknowledges that this is a unique time in history, as our nation continues to recover from the COVID-19 global pandemic, and our nation's regulatory review process must act to help speed that recovery.¹¹

At this critical juncture, that recovery depends on whether we encourage small business growth or defeat it. Even before the pandemic, small businesses paid on average \$11,700 per year per employee in regulatory costs, and the costs of regulation to smaller businesses with 50 employees or less are nearly 20% higher than they are for the average firm.¹² The compliance costs of federal economically significant rules to small businesses in 2017 was estimated to exceed \$40 billion *per year*,¹³ and the total cost of federal regulations in 2014 was estimated to be \$2.028 trillion.¹⁴ Eighty eight percent of those surveyed said federal regulations were a top challenge for their firm then.¹⁵ They are even more of a challenge now.

At a time when small businesses are still struggling to recover from the pandemic, regardless of the industry, they continue to be burdened by the skyrocketing cost of regulatory compliance. In an April 2021 NFIB study, small and independent business owners ranked government regulation as their third most important problem. Only taxes and finding workers ranked higher.¹⁶ And regulatory compliance is not getting easier. In a recent survey, 51% of respondents said in the last two or three years, the number of regulations affecting their business

economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; 2) creates a serious inconsistency, or otherwise interferes with an action taken or planned at another agency; 3) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients; or 4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in the Executive Order. *Biden Memorandum* at 1.

⁷ Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 18, 2011), *available at* <https://www.govinfo.gov/content/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

⁸ *Id.*

⁹ *Biden Memorandum* at 1.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² W.M. CRAIN, NATIONAL ASSOCIATION OF MANUFACTURERS, THE COST OF FEDERAL REGULATION TO THE U.S. ECONOMY, MANUFACTURING AND SMALL BUSINESS (2014), *available at* <https://www.nam.org/wp-content/uploads/2019/05/Federal-Regulation-Full-Study.pdf>.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ NFIB, 18 SMALL BUSINESS ECONOMIC TRENDS (Apr. 2021), *available at* <https://assets.nfib.com/nfibcom/SBET-Apr-2021.pdf>.

had increased, and 45% said the number had stayed the same.¹⁷ Two percent said there were fewer.¹⁸

This is critical because small firms are truly America's economic engine, and when they prosper, Americans and their families prosper. Research for the Small Business Administration's (SBA) Office of Advocacy found that small firms generate 44% of U.S. economic activity.¹⁹ They have continued to drive innovation, jobs and robust economic growth. In recent years, the most productive sectors have been real estate and leasing; wholesale and retail; and manufacturing and mining.²⁰ Economic progress and growth, in fact, are driven by prudent risk taking and innovation.

Small businesses are our economy's best innovators and job creators, and employ half of all private-sector workers.²¹ According to the SBA, America's almost 30 million small companies²² create 1.5 million jobs annually and account for 64% of new jobs created in the United States.²³ Some studies have shown that small businesses accounted for virtually all U.S. job growth.²⁴ In the current pandemic economic downturn, America needs its 30 million small businesses to retain the 56 million jobs and the families they support.²⁵

Although new business formation has fallen over the last twenty years, cities with higher rates of entrepreneurship are economically stronger.²⁶ A new body of research is focused on the importance of entrepreneurship and small firms in growing strong communities. In addition to creating and sustaining jobs, independent, locally-owned small businesses also help to nurture families. Economists with the Federal Reserve Bank of Atlanta have found that areas with higher shares of local small businesses outperform their economic indicators. They have

¹⁷ NFIB, POLL, VOL. 13, ISSUE 3 (2013), *available at* http://www.411sbfacts.com/pollresults_g.php?QID=00000002604&KT_back=1.

¹⁸ *Id.*

¹⁹ KATHRYN KOBE, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, SMALL BUSINESS GDP 1998-2014, *available at* <https://cdn.advocacy.sba.gov/wp-content/uploads/2018/12/21060437/Small-Business-GDP-1998-2014.pdf>.

²⁰ *Id.*

²¹ U.S. CHAMBER OF COMMERCE FOUNDATION, UNDERSTANDING SMALL BUSINESS IN AMERICA (2016), *available at* <https://www.uschamberfoundation.org/smallbizregs/>.

²² U.S. SMALL BUSINESS ADMINISTRATION, FY 2021 CONGRESSIONAL BUDGET JUSTIFICATION AND ANNUAL PERFORMANCE REPORT, *available at* https://www.sba.gov/sites/default/files/2019-04/SBA%20FY%202020%20Congressional%20Justification_final%20508%20%204%2023%202019.pdf

²³ OFFICE OF ADVOCACY, 2 U.S. SMALL BUSINESS ADMINISTRATION, SMALL BUSINESS ECONOMIC BULLETIN (Apr. 2020), *available at* <https://advocacy.sba.gov/2020/04/30/small-business-economic-bulletin-april-2020/>.

²⁴ CHARLES BROWN, JAMES HAMILTON, AND JAMES MEDOFF, EMPLOYERS LARGE AND SMALL (HARVARD UNIVERSITY PRESS, 1990).

²⁵ *Id.*

²⁶ INSTITUTE FOR LOCAL SELF-RELIANCE, WHY CARE ABOUT INDEPENDENT, LOCALLY-OWNED BUSINESSES? (Jul. 2018), *available at* <https://ilsr.org/why-care-about-independent-locally-owned-businesses/>.

stronger per capita income growth, faster employment growth, and lower poverty rates.²⁷ Beyond impacting the tangible economic factors, entrepreneurs help to solve local problems, generate a strong social fabric, cohesiveness, and general health and well-being.²⁸

Surprisingly, entrepreneurship in the United States increased during the pandemic, and did so at a faster pace than any other advanced economy²⁹-- the fastest rate in more than a decade.³⁰ Despite the global health crisis and a severe economic downturn, startups grew from 3.5 million in 2019 to 4.4 million in 2020, a 24% increase.³¹ Although 9.1 million small businesses permanently closed and 9 million jobs were lost, many new businesses and jobs were created by greater reliance on technology or the acceleration of it.³² Some startups have been formed through entrepreneurship creativity, where entrepreneurs see opportunity in crises and respond to changing consumer preferences, a niche void, or better ways to do business.³³ Unemployment or limited opportunities may have forced what some have called entrepreneurship by necessity.³⁴ Even now, our innovators are generating economic gains, but more than ever need a conducive environment.

America unquestionably needs the strong economic boost that small firms can provide, so we must ensure that they have the environment that allows them to grow, flourish, and support their workers and communities. Studies have shown that small business have been disproportionately affected across all industries during the pandemic,³⁵ they need an environment that provides them with independence – and one that is free from burdensome regulations.

I have introduced legislation to help those who must comply with regulations to better understand their requirements. H.R. 1507, the Providing Accountability Through Transparency Act of 2021, would require each agency, in providing notice of a rulemaking, to include a link to

²⁷ ANIL RUPSINGHA, FEDERAL RESERVE BANK OF ATLANTA, *LOCALLY OWNED: DO LOCAL BUSINESS OWNERSHIP AND SIZE MATTER FOR LOCAL ECONOMIC WELL-BEING?* (2013), available at <https://www.microbiz.org/wp-content/uploads/2013/10/Local-Ownership-and-Ec-Well-Being.pdf>.

²⁸ TROY C. BLANCHARD, C. TOLBERT & CARSON MENCKEN, *THE HEALTH AND WEALTH OF U.S. COUNTIES: HOW THE SMALL BUSINESS ENVIRONMENT IMPACTS ALTERNATIVE MEASURES OF DEVELOPMENT*, CAMBRIDGE JOURNAL OF REGIONS, ECONOMY, AND SOCIETY (Mar. 2012), available at <https://academic.oup.com/cjres/article-abstract/5/1/149/326109?redirectedFrom=fulltext>.

²⁹ SIMEON DJANKOV AND EVA ZHANG, I PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS, *STARTUPS BOOM IN THE UNITED STATES DURING COVID-19* (Feb. 2021), available at <https://www.piie.com/blogs/realtime-economic-issues-watch/startups-boom-united-states-during-covid-19> [hereinafter *Startup Boom*].

³⁰ Gwynn Guilford and Charity L. Scott, *Is it Insane to Start a Business During Coronavirus? Millions Don't Think So*, WALL ST. J., Sept. 26, 2020, available at <https://www.wsj.com/articles/is-it-insane-to-start-a-business-during-coronavirus-millions-of-americans-dont-think-so-11601092841>.

³¹ *Startup Boom*, supra note 29.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 3.

³⁵ *Id.*

a 100-word plain language summary of the proposed rule.³⁶ H.R. 1508, the Guidance Clarity Act of 2021, would require federal agencies to state on the first page of guidance documents that such guidance: (1) does not have the force and effect of law, and (2) is intended only to provide clarity to the public about existing legal requirements or agency policies.³⁷ These commonsense changes would help to clarify the thousands of pages of often obscure and complicated regulations that are finalized every year.

Small business owners are working hard simply to stay afloat and adjust to operating in the post-pandemic world. As you examine the regulatory landscape, I respectfully urge you to carefully consider the needs of small firms and reject regulations that will impose additional burdens as they work to keep our economy moving.

Sincerely,

A handwritten signature in black ink, appearing to read "Blaine Luetkemeyer", followed by a horizontal line.

Blaine Luetkemeyer
Ranking Member

³⁶ H.R. 1507, The Providing Guidance through Transparency Act of 2021, 117th Cong. (2021), *available at* <https://www.congress.gov/bill/117th-congress/house-bill/1507>.

³⁷ H.R. 1508, The Guidance Clarity Act of 2021, 117th Cong. (2021), *available at* <https://www.congress.gov/bill/117th-congress/house-bill/1508>.