



**NSBA**

National Small Business Association

**AMERICA'S SMALL BUSINESS ADVOCATE**

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**Environment &  
Regulatory Affairs**

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**Issue Brief Booklet**

## Regulatory Reform & Paperwork Reduction

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### Problem:

America's small businesses are facing the ever-growing financial and time burden of dealing with federal regulations. Despite the vital importance of small businesses to the U.S. economy, federal laws and unnecessary regulations have often disproportionately burdened them relative to large firms, leaving many small businesses struggling to survive. New and even antiquated and obsolete regulations continue to make it more difficult for small businesses to obtain financing to get started, sustain their operations, make payroll, and continue to grow and create new, good-paying jobs. Thus, streamlining and updating old or outdated rules will provide entrepreneurs with flexibility in today's fast-changing world.

- The average small-business owner spends at least \$12,000 every year dealing with regulations, and nearly one-in-three spends more than 80 hours each year dealing with federal regulation, according to NSBA data.
- The small-business owner is the number one regulatory expert in most business and handles the bulk of federal regulatory compliance. In one-quarter of small firms, the owner is spending more than 10 hours per month on federal regulatory compliance.
- Regulatory worries represent a major hurdle to would-be small-business owners and have a stifling effect on innovation and small-business growth.

### Solution:

Relief from the massive federal regulatory burden can be achieved through proposals such as establishing a national regulatory budget and requiring a cost-benefit analysis of new regulations. Congress should:

- Require that agencies consider indirect costs and detailed alternatives to minimize any significant adverse impact.
- Require Regulatory Flexibility analyses as a prerequisite to a final rule being issued.
- Require increased economic analyses and the Office of Information and Regulatory Affairs (OIRA) to enhance its oversight efforts.
- Require that agencies use plain writing when revising or drafting new regulations.
- Allow for increased enforcement flexibility and the ability to grant common-sense exemptions for first-time offenders.
- Streamline paperwork, consolidate forms, and harmonize data and due dates.
- Perform and submit cost-benefit analysis on proposed regulations and paperwork.
- Improve information collection by strengthening the *Paperwork Reduction Act* requirement that agencies' chief information officers review and certify information collection requests, require OIRA to develop stricter approval criteria, and limit the number of information requests an agency can issue per year.

## Strengthen SBA Office of Advocacy

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### Problem:

The considerable free rein federal agencies have over how to interpret and enforce laws passed by Congress is too often done in a way that harms America's small businesses. While various regulatory reform initiatives have prohibited the enactment of a range of onerous rules and alleviated some of the federal regulatory burden, those reforms are only as strong as the agency dedicated to their enforcement.

- The Office of Advocacy's efforts at monitoring federal agency compliance with the Regulatory Flexibility Act (RFA) resulted in changes to 10 specific rules in 2019 that led to \$773 million in quantifiable small-business regulatory compliance cost savings in FY2019.
- In FY2019—the most recent data available—Advocacy hosted 17 issue roundtables to provide a forum for small businesses to express their concerns with federal regulations. They also held 10 regional roundtables, and 16 small business visits in four states to gain a better understanding of the practical issues small businesses face with regulatory compliance. Throughout 2020, despite the COVID-19 pandemic, Advocacy continued holding virtual events.
- During President Trump's term, the Chief Counsel for Advocacy position at the SBA remained vacant. President Trump's nominee was named in Oct. 2017 but never received a Senate confirmation vote.
- President Biden has nominated Isabel Guzman to lead the SBA and on Feb. 3, 2020 she participated in her confirmation hearing. The Chief Counsel for Advocacy should receive the same expediency.

### Solution:

Congress must ensure that it allocates the financial resources required for Advocacy, an office devoted solely to serving America's small businesses, to achieve its far-reaching objectives: providing reliable information about the status and role of small business in the U.S. economy; advocating for small businesses within the federal government's agencies and rule-making processes; and fostering public awareness of small-business contributions and concerns.

- It is critical that Advocacy is fully staffed with a strong and capable leader at its helm—the Chief Counsel for Advocacy plays an invaluable role in guiding Advocacy's operations. This position is especially crucial now, while small businesses are struggling under the ongoing weight of the pandemic.
- Advocacy must be fully funded and afforded appropriate strength within the Administration to ensure that agencies adhere to the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and the Plain Language Act in determining the true cost of regulations for America's small businesses, as well as ensuring small businesses can understand regulations.
- The Office of Management and Budget and Office of Information and Regulatory Affairs should maintain close contact with the Office of Advocacy and provide strong support in their efforts to ease regulatory burdens.

## Repeal Beneficial Ownership Law

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### Problem:

The Corporate Transparency Act (Beneficial Ownership) was passed and signed into law as part of the National Defense Authorization Act in Dec. 2020. The new law requires certain LLCs and small companies to inform the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) of their beneficial owners and establishes a database of those names. It requires businesses to submit annual paperwork, which includes personally identifiable information of each business owner, upon the creation of the business and periodically throughout its life. Failure to comply would be a federal crime with civil penalties of \$500 per day up to \$10,000 and criminal penalties of up to three years in prison. Furthermore, the legislation grants broad access to the information to federal, state, local, or tribal law enforcement agencies without having to obtain a subpoena.

- Large companies are mostly exempt from the Corporate Transparency Act—only those with 20 or fewer employees and \$5 million or less in annual sales need to report ownership information to FinCEN.
- As a result of this law, millions of small-business owners will be faced with an additional \$5.7 billion in regulatory paperwork. It imposes burdensome, duplicative reporting on the smallest businesses in the U.S. and it threatens the privacy of law-abiding, legitimate small-business owners.
- More than 4.9 million businesses would be required to provide personal ownership information to FinCEN on an annual basis. The Treasury Department would be required to retain the information for the life of the business plus five years.
- Recently, Sec. Yellen told the Senate Finance Committee that anonymous shell companies present an “important problem,” and that creating a beneficial ownership database at FinCEN is a “very high priority.” It seems that new rules are not too far off.

### Solution:

Efforts to stem money laundering are important, but this is the wrong way to do it, especially since the information is already being collected. Treasury has a one-year window to craft corresponding rules—it should use this opportunity to address the concerns of small-business owners regarding the Corporate Transparency Act.

- Congress and regulators should require information sharing between FinCEN and the IRS, which is already permitted for certain law enforcement purposes.
- Policymakers must seek an exemption for small businesses that already disclose this type of information.
- Treasury should use existing forms and databases for collecting ownership information.

## Close the Partisan Divide and Reform Politics

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### Problem:

As a result of growing partisanship, Congress is not doing the job it was elected to do: passing budgets, responsibly managing the nation's finances, and making the decisions necessary to ensure that government functions at a basic level of efficiency.

- Political dysfunction has real costs: it is preventing policymakers from solving very serious problems. Throughout last year, we have seen policymakers fight over the details of COVID-19 relief packages, while citizens, including small-business owners, awaited critical economic aid.
- Discontent among small-business owners with their elected officials and the overall U.S. political machine remains high, with 86 percent of small-business owners saying politics have become more partisan in the last 10 years.
- The constant drive to raise money for reelection campaigns is a major problem, as the time spent legislating suffers when too much time is spent seeking campaign funds.
- Across-the-aisle member interaction has diminished greatly, inhibiting collaboration and an ability to find commonalities in shared interests.
- Communication between the legislative and executive branches must be open and regular regardless of which party controls the White House, Senate, or House.

### Solution:

In today's hyper-partisan era, when citizens are more politically divided and get more of their news and information from ideologically driven sources, we must find ways to work together for the common good. Reducing the partisanship in Congress and transforming it into a higher-performing institution will not happen overnight—but some steps can be taken.

- Political contributions, including those made to outside and independent groups, should be disclosed so that citizens have full information about who is paying for the political messages they see.
- Congress should pass legislation requiring detailed disclosure of spending by congressional leadership PACs and mandating that leadership PAC funds be used solely for political activities and not for personal use.
- States should move to a more open process for redistricting and use neutral line-drawers in their redistricting process with opportunities for public comment.
- Additional opportunities for members to interact, especially with their counterparts across the aisle, will help defuse the increasingly toxic discourse on Capitol Hill.
- A strong committee process is necessary: committees should conduct legislative and oversight hearings, marking-up legislation after receiving input from both sides and issuing committee reports.
- Fair and robust floor debate in the House and Senate must be reinstated to allow for debate, amendments and open discourse, followed by conference committee negotiations and final compromise language on legislation.

## Tort Reform

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### Problem:

Excessive litigation in the U.S. limits job creation, stymies innovation, and increases costs of goods and services. In 2018, small businesses faced \$182 billion in commercial tort costs, even though they brought it only 19 percent of the revenue. The entire commercial tort liability bill for 2018 was \$343 billion – which means that small businesses paid more than half of the commercial liability costs in the tort system. It is clear that common sense must be returned to our system of civil litigation.

- *Punitive Damages*: The difficulty of predicting whether punitive damages will be awarded by a jury in any particular case, and the marked trend toward astronomically large amounts when they are awarded, have seriously distorted settlement and litigation processes and have led to wildly inconsistent outcomes in similar cases.
- *Product Liability*: The inconsistent and often contradictory product liability regulations that exist across the country impose widely varying statutes of limitations, create uncertainty for businesses selling in a national marketplace, and too often allow for absurdly large awards.
- *Frivolous Lawsuits*: Given the exorbitant legal and court fees associated with a typical lawsuit, individuals and businesses must spend huge sums of money to defend themselves in court. Faced with such debilitating fees and bad publicity of a trial, many small businesses must settle out of court, even when they have done nothing wrong.
- *COVID-19 Liability*: Small businesses can be subject to frivolous lawsuits that try to exploit the COVID-19 crisis. Businesses should be protected from liability unless the plaintiffs can prove the business willfully failed to put in place a plan to reduce the risk of COVID-19 exposure.

### Solution:

The present tort system is an expensive and inefficient way to compensate those injured. The current system stifles innovation and other economically stimulating activity—Congress needs to boost transparency, restore fairness and properly address excessive regulations as a way to deal with these frivolous lawsuits and unfair liability regulations that are imperiling America’s small businesses.

- Lawmakers must embrace balanced liability relief provisions similar to last Congress’ *SAFE TO WORK ACT (S. 4317)* in any future COVID-19 relief legislation. Legislation should ensure that unfair lawsuits will not hamper those who work to comply with applicable government guidelines.
- There should be a reasonable cap on the awarding of punitive damages.
- Policymakers should promote the creation of a federal product liability reform law, which would create nationally uniform statutes of limitations and “standards of repose,” which would disallow lawsuits over products over a certain age.
- Individuals and attorneys who file frivolous lawsuits should be held accountable for their actions.