

**LIFTING THE WEIGHT OF REGULATIONS:
GROWING JOBS BY REDUCING REGULATORY
BURDENS**

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WEDNESDAY, JUNE 15, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 1:00 p.m., in room 2360, Rayburn House Office Building. Hon. Sam Graves (chairman of the Committee) presiding.

Present: Representatives Graves, Herrera Beutler, Coffman, Ellmers, Hanna, Chabot, Landry, West, Tipton, Velázquez, Chu, Schrader, Owens, Altmire.

Chairman GRAVES. Good afternoon. We will call this hearing to order. I appreciate all of our witnesses being here.

Regulations can have benefits. They can protect our food supply, ensure that drugs work, keep financial markets transparent, but regulations also have costs by erecting barriers to entry, destroying markets, and diverting scarce capital away from job creation. These costs are compounded for small businesses because a disproportionate impact of federal rules falls on their operations. Reasonable regulation requires agencies to balance the intended benefits against the economic costs for the new rules that they impose.

Historically, federal agencies appear to be much better at uncovering the benefits of regulations than calculating the costs. Of course, this makes selecting the appropriate balance needed to protect the public much more difficult, particularly since most businesses subject to regulation are small businesses.

In 1980, Congress decided to realign this agency's balancing effort. It enacted the Regulatory Flexibility Act or RFA which requires agencies to consider the effects of their rules on small businesses and other small entities.

Since the RFA's enactment, President Clinton, President George W. Bush, and President Obama all have restated the importance of the RFA and the need to unburden small businesses from unnecessary and duplicative programs. And each president required federal agencies to perform a retrospective examination of federal rules even though such an examination already is mandated by the RFA. Despite these remonstrances from the head of the entire Executive Branch of government, federal agencies continue to ignore both the letter and the spirit of the RFA.

Given the current state of the economy and the vital role that small businesses play in job creation, the time for words is now

over. For too long, the RFA has been ignored by the federal agencies and that has got to stop. The legislation that is the subject of this hearing, H.R. 527, the Regulatory Flexibility Improvement Act of 2011 and H.R. 585, the Small Business Size Standard Act of 2011, are both designed to make sure that agencies will care that the RFA is on the books. The bills will close loopholes used by agencies to avoid compliance with the RFA, require a better assessment of the impacts that regulations will have on small businesses and other small entities, force agencies to perform better periodic review of rules, and grant the Chief Counsel for Advocacy at the Small Business Administration greater powers for enforcement of the RFA also.

Again, I want to thank all the witnesses for taking the time to provide their insights into these bills and what changes, if any, might be necessary to make the agencies care that this law is on the books and most importantly that they follow the law.

With that, I will recognize the ranking member and then we will go to our witnesses and introduce them.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

With the economic recovery proceeding in a very uneven manner, the contributions of small businesses are more important than ever. For us, that means making sure entrepreneurs are able to do what they do best—innovate, create, and grow without government getting in the way. Unfortunately for many small firms, the cost of regulatory compliance remains high. Businesses with less than 20 employees pay more than \$10,500 per employee in compliance costs, an amount that is 36 percent higher than their larger counterparts.

To address this, the Regulatory Flexibility Act was enacted in 1980, to give small businesses a louder voice in the regulatory process. It is apparent that it has been successful as regulatory costs were reduced by \$15 billion in 2010. In the last three years, the EPA and OSHA also convened seven small business advocacy review panels providing small firms with greater participation and important environmental and occupational safety matters.

Even though RFA has been successful, it could do better. The time has come for agencies to more broadly measure the effect of regulations on small businesses. After all, many regulations are aimed at states which means that agencies can ignore the downstream impact on small businesses. This has to stop. Steps must be taken to make RegFlex analysis more detailed so that they cannot ignore the RFA and simply certify that a rule has no significant economic impact on small businesses. Addressing this matter will ensure agencies are required to provide a more factual basis for such certifications, rather than just a sentence that dismisses the concerns of small firms.

It is also important to give real teeth to section 610, which requires an agency to review outdated regulations that remain on the books yet continue costing small businesses money. While the RFA requires agencies to periodically review existing rules, these requirements are ambiguous and agencies often do not apply them consistently. As a result, these reviews have been much less effective than they should be. In addition, and as I have said before, any expansion of the panel process must be closely examined.

I wholeheartedly support efforts to reign in agencies that are insensitive to small businesses, but we cannot simply flip a switch and add 50 new agencies to the panel process. Therefore, it is prudent for this Committee to fully examine the needs, costs, and appropriateness of such an expansion.

While these types of changes can reduce their regulatory burden for small businesses, we should not box ourselves in and think that expanding RegFlex is the only means to accomplish these goals. There are other ways outside of RegFlex that can achieve these ends without eviscerating the very regulatory processes necessary to implement the laws passed by Congress. This includes providing higher quality education and technical assistance to businesses regarding regulatory compliance. In addition, broader reforms could raise size agency enforcement policies which could help ease this burden. By doing so, we can reduce the impact on small businesses without the costs and risks of wholesale regulatory restricting.

Regardless of how we move forward, it is important to do so with one eye on the fiscal environment we are working within. While the SBA's Office of Advocacy plays a critical role, it has a budget of \$9 million and 46 employees. It is already taxing with meeting its current role and expanding its powers significantly should be carefully considered. Given the current conditions, such statutory lifts may not be prudent. Smaller steps might prove more appropriate and effective. Doing so can yield many other positive benefits I think all of us on this Committee seek to provide but without the undue expense and bureaucratic upheaval.

With this in mind, I look forward to today's discussion on how RFA can be modernized to better meet small businesses' needs. Since being signed into law more than three decades before, it has played an essential part in reducing regulatory burden. As we consider ways to improve it, we must move forward in a manner that is responsive to both small businesses and taxpayers. By doing so we can best ensure that entrepreneurs will be the job creating catalysts that our economy needs at this moment.

I yield back. Thank you, Mr. Chairman.

Chairman GRAVES. Thank you. If other Committee members have an opening statement I would ask that they submit it for the record.

And I will take a real quick moment to explain the lights to you if you do not understand. You each have five minutes to give testimony. When it comes down to one minute left, the light will turn yellow and then red when you are over. If you go over a little bit it does not bother me.

STATEMENTS OF FRANK S. SWAIN, PARTNER, BAKER AND DANIELS; JANE C. LUXTON, PARTNER, PEPPER HAMILTON; HARRY J. KATRICHIS, PARTNER, THE ADVOCACY GROUP; ADAM M. FINKEL, EXECUTIVE DIRECTOR, PENN PROGRAM ON REGULATION AND SENIOR FELLOW, PENN LAW SCHOOL

Chairman GRAVES. So with that I will make my first introduction, which is Mr. Frank Swain. He is a partner in the Washington, D.C. office of the law firm of Baker and Daniels. During the Reagan administration, Mr. Swain served as the Chief Counsel for Advocacy.

Mr. Swain, I appreciate you being here and I look forward to hearing your testimony.

STATEMENT OF FRANK S. SWAIN

Mr. SWAIN. Thank you very much, Mr. Chairman. It is a pleasure to be here in front of you and Ms. Velázquez and the other members of the Committee.

I must say that I was greatly cheered when I came in the room about 12:45 and there was a line out the door for a hearing on regulatory flexibility, declaring an importance that I had forgotten that it had in the public eye. But it is really important that you are holding this hearing. It is really important that you are considering these two bills.

I had the opportunity to participate when I worked for the NFIB years and years ago in the original congressional discussions about regulatory flexibility in 1980. I want to emphasize some of the points that were made by Ms. Velázquez because in 1980, the Senate and the House were both controlled by the Democrats. This was a bill that was passed with strong support from both sides of the aisle, strong support from the chairman of the Senate Administrative Law Subcommittee, then Senator John Culver from Iowa. But it was a bit of a walk into the unknown. There was really only one other bill that was slightly like it and that was the National Environmental Policy Act, which had been passed in 1970. That law said when we make rules, when we take actions as a government, we have to think about what the impact of those actions is on the environment.

So this was really the first time that they tried to take that principle of regulatory review and twist it to a different focus. And that focus is when we make rules for all sorts of important reasons—safety of the food system, protection of the environment, whatever—we have to take a look at the impact of those rules on small business and—and I think this is the real virtue of the regulatory flexibility—and we have to go further. We have to think about whether there are other ways of getting to the same regulatory goal, more flexible ways besides the one size fits all approach, which is typically the starting approach for most agencies.

Again, as the opening statement suggests, the problem with regulation is a particular problem for small business because small business does not have the broad economic or employee base to spread the relatively fixed costs of regulation. So it is important to attempt to tailor the regulation to small businesses.

My statement mostly addresses issues relating to the regulatory flexibility analysis, which is what was the state of the law when I served as chief counsel. I do not have personally as much experience with the panel review process and so I will defer to others on the panel that are more experienced with that. But it is really important to note that we do achieve a balance between a better Regulatory Flexibility Act that is less easily avoided by agencies and the very real dynamics of getting regulatory decisions made in some sort of prompt and efficient way. That is becoming an issue, particularly an issue involving science and technology, drug and medical device development.

And so we do have to maintain a balance but I think that if we can swing the balance of the current law more towards tightening up some of the ambiguities that were inevitable 30 years ago when we were sort of guessing at what might work, that that will make a real difference as far as small business is concerned.

I detailed in my statement five or six specific issues. This is a complex subject and I would be happy to take questions or submit comments on any other specific issues that the Committee may want my perspective on. But the need for these reforms after three decades of experience with the regulatory flexibility is very plain. Small businesses continue to be under any economic assessment the job creator, and we have to do our best as a society and as a government to eliminate or lessen to the extent possible to fix costs of regulation which is such a serious drag on that job creation process.

I ask that my statement be received in the record, and I would be happy to submit any further comments and respond to questions. Thank you very much.

[The statement of Mr. Swain follows on page 31.]

Chairman GRAVES. Thank you, Mr. Swain.

The next witness is Ms. Jane Luxton, who is a partner in the Washington, D.C. office of the law firm, Pepper Hamilton. Prior to this, Ms. Luxton served as the general counsel of the National Oceanic and Atmospheric Administration regularly dealing with that agency's implementation of the RFA.

So Ms. Luxton, I appreciate you being here. Thanks for coming.

STATEMENT OF JANE C. LUXTON

Ms. LUXTON. Thank you very much. I appreciate the opportunity to testify regarding H.R. 527 and 585.

As you mentioned, and I appreciate that introduction, my legal career has included public service and also private sector experience. And during the course of both of those types of experience, I have had a fair amount of exposure to small business issues, the Office of Advocacy, and the workings of the RegFlex Act and also SBREFA, which is another—the panel process that Mr. Swain referred to.

Although my government service does not include having worked—like some others here—for the Office of Advocacy, I am one of its biggest fans and I support the proposed bill's efforts to strengthen the role and ability of that office in protecting small business in the regulatory arena. In particular, H.R. 527 addresses some of the major concerns that have gotten in the way of effective help to small business entities.

In discussion after discussion on the RFA, including SBREFA, the one problem that comes up most often is the lack of consideration of indirect effects. And you mentioned that, Ms. Velázquez, in your introduction as well. It is probably no accident that H.R. 527 tackles this issue in the first substantive section of the bill. The clear statement that indirect effects must be taken into account is necessary to overcome an interpretation in the case law that unfortunately cut this type of real-world, substantial impacts on small business out of the equation. To get an accurate gauge of

the actual effects of regulation, those indirect effects must be restored to the analysis.

Similarly, in today's difficult economic times, many have spoken out strongly about the unacknowledged cost of cumulative regulatory burden. Small businesses are most likely to feel and least able to afford these extra burdens. Section three of the bill requires rulemaking agencies to conduct more detailed analysis of several important factors, but among the most needed are the requirements for greater consideration of other rules that may overlap or conflict with and add cumulative economic impact to small entities.

Section 5 of the bill would expand the SBREFA panel process to all agencies proposing rules that would have a significant economic impact on a substantial number of small entities, which is the key phrase, or would trip the threshold of a major rule under the Congressional Review Act. In my experience, SBREFA panels have proven time and again that they improve rules, make them more cost-effective, and substantively stronger and lessen the adverse impacts on small business. They provide a unique opportunity for small business representatives to become involved at the formative stage of the rule before positions harden. I have seen the positive contribution of SBREFA panels in numerous EPA rules. I have also been engaged in discussions relating to the development of the SBREFA panel process for the new Consumer Financial Protection Bureau created under last year's Dodd-Frank Act. And I am aware that bringing a new agency within the SBREFA panel process can be a large undertaking. There are helps that can make this transition easier, including the Office of Advocacy's training programs and I strongly believe there are significant benefits to bringing more of the big impact rules within the SBREFA panel process.

Section 5 of the act—of the bill rather—would also require agencies subject to the SBREFA panel process to do a better job of making available as much information as possible about a proposed rule as early as possible. I think this is another point Ms. Velázquez made and it is very important. This would address problems with inadequate information that have arisen in some rules, especially recently, and they have undermined the ability of the small entity representatives or SERs to offer effective suggestions to the rulemaking agency for minimizing burden on small business while still achieving the agency's goals.

The final section I would like to highlight today is the bill's requirement in Section 6 for periodic review of the rules. As I have previously said, the cumulative impact—and we have all recognized this—the cumulative impact of each new rule adds heavy burdens to small businesses. Those are the least equipped to absorb an unending flow of extra costs. Requiring agencies to review existing regulation is one idea on which the Obama administration and Congress seem to agree. This legislation would ensure that this beneficial process continues in periodic reviews of impacts on small business, by imposing mechanisms to ensure the job gets done.

These bills serve the important purpose of addressing some shortcomings of previous legislation that have come into focus over time. They will strengthen the ability of the Office of Advocacy to fulfill its mission of serving as the voice of small business in the regulatory process in ways that are particularly needed in our cur-

rent era of serious economic challenges. The RegFlex Act and SBREFA offer a strong foundation for protecting small business against excessive regulatory burden, but as I think we can probably all agree, they could still use a little improvement.

I appreciate the opportunity to offer these comments and hope that my written testimony can be put into the record. I look forward to your questions.

[The statement of Ms. Luxton follows on page 38.]

Chairman GRAVES. Absolutely, without objection. Thank you, Ms. Luxton.

Our next witness is Mr. Harry Katrichis, who is a partner at the Advocacy Group here in Washington, D.C. Mr. Katrichis was a former chief counsel of this Committee and was instrumental in shepherding the amendments to the RFA through the Small Business Regulatory Enforcement Fairness Act, which Ms. Luxton referred to, or SBREFA, shepherding that through the House of Representatives in 1995.

Mr. Katrichis, I appreciate you being here and I know you have got about as much expertise on this as anybody does. And I look forward to hearing what you have to say.

STATEMENT OF HARRY J. KATRICHIS

Mr. KATRICHIS. Chairman Graves, Ranking Member Velázquez, and members of the Committee. My name is Harry Katrichis and I appear here today—

Chairman GRAVES. We have got mics now. I know. I know.

Mr. KATRICHIS. Motor vehicles, too.

I appear here today to discuss my experience in several regulatory reform efforts that have been undertaken by this Committee over more than a quarter century and to lend my strong support for Committee and Congressional action on H.R. 527 and H.R. 585.

First of all, I want to thank the Committee for inviting me to testify today. As you mentioned, for me this is like old-home week. For approximately 10 years, or about one-sixth of my life, I had the privilege and honor of serving as the Republican chief counsel of this Committee. I served under three different chairmen and two different ranking members during the 1990s. I look back on my time with this Committee as a true high point in my career.

For the freshman members of this Committee, I want you to know that your time on this Committee will prove to be some of the best time you will have as a member of the House. This has always been a committee where partisan acrimony has been mostly left at the front door. Throughout the 1990s and continuing to this day, I enjoy excellent working relationships with my peers and former peers on the Democratic staff of this Committee and with the Committee's Democratic members.

This rich history of bipartisanship stands out most in the area of the many regulatory reform efforts undertaken by this Committee going back to its very creation as a standing Committee of the House in the 1970s.

Former members of this Committee make up a virtual who's who of the legislative branch. Several current and former U.S. senators have served on this Committee when they were in the House, such as Rob Portman, Ron Wyden, and John Thune, just to name a few.

House Speaker Boehner was a member of this Committee. John Dingell was a member of this Committee for several years, and Dave Camp, currently the chairman of the Ways and Means Committee, served on this Committee during his early years in the House.

While several regulatory reform efforts were undertaken by this Committee's historical predecessor—the Select Committee on Small Business which existed from 1941 to 1974, the real heavy work of regulatory reform began with those Committee members that were first elected in 1976. Two freshman members of that class stand out in my memory as two of the hardest working advocates for true regulatory reform. They are Andy Ireland, then a democratic member from Florida, who later switched parties, and Ike Skelton, a democratic member from Missouri. Andy Ireland is actually here today and I am very, very pleased that he could attend.

These two members, along with many others, were the driving force behind what came to be the Regulatory Flexibility Act of 1980. Another driving force that has been mentioned in this effort was Senator John Culver. As a member of the Senate Judiciary Committee, Senator Culver was instrumental in pushing the RFA to eventual passage. I am proud to say that John Culver is a friend of mine also and we actually worked together for over six years at Arent Fox. I still see him regularly. He is a great human being.

H.R. 527 is the closest thing I have seen to addressing the gaps in true regulatory oversight that were left after the passage of the original Regulatory Flexibility Act and the efforts to improve the RFA with the passage of SBREFA and I commend the Committee for having this hearing on this important issue.

While I was not involved in the early work that led to the passage of the original Regulatory Flexibility Act, I was involved in the early efforts to implement while working with Frank Swain at the Office of Advocacy in the 1980s. Back then, many regulatory agencies paid only lip service to the requirements. For many agencies, the automatic default was to certify that a pending rule would not affect small entities. They learned very early in the day that to do so held no downside for them. The Office for Advocacy had no meaningful recourse.

By the time the White House Conference on Small Business came about in 1986, the small business community had come to realize that we needed some genuine “beefing up” of the RFA. Legislation to amend and strengthen the RFA during the late 1980s and early 1990s came and went without final action. In the early 1990s, the 102nd and 103rd Congresses to be exact, we had several Small Business Committee Hearings on regulatory reform efforts. In addition to official Committee and Subcommittee hearings, the House Republican Policy Committee, through its subcommittee on small business, held hearings on reforming and strengthening the RFA. These hearings were chaired by Susan Molinari, the Subcommittee's chairman.

One of the truly memorable hearings of the Small Business Committee during that timeframe was a Subcommittee hearing by the Subcommittee on Regulation of this Committee, which was then chaired by Ron Wyden. This hearing focused on OSHA and its apparent inability to understand what the RFA required it to do.

Back then, OSHA was probably one of the worst actors on the regulatory front as far as small businesses were concerned. Part of what was revealed in that hearing ultimately led to the creation of regulatory review panels that were included in SBREFA some four years later.

Speaking of SBREFA, let us take another short stroll down memory lane. Upon the change in control of the House in the 1994 election, much of the information that was gleaned from hearings of this Committee and other sources was placed in legislative form for quick congressional action. The amendments to the RFA would eventually find their way into SBREFA a year later, move swiftly through this Committee, and the Judiciary committee, and were passed by the full House in March of 1995.

While some of the congressional champions of small business regulatory reform have changed since the efforts of the 1970s, some were still here fighting on. Andy Ireland retired in 1992; John Culver lost his reelection bid in 1980; but some of the "old guard" remained. Ike Skelton was still in the House and Ron Wyden was a brand new Senator. Others that joined the fray included Jim Talent, first elected in 1992; Norm Sisisky, first elected in 1980; and Tom Ewing, who took the torch of RFA reform from Andy Ireland as Andy was headed toward retirement.

As often happens, the other body took a little longer to get through their legislation for meaningful regulatory reform for small business. But those efforts, led in large part by the Chairman of the Small Business Committee in the Senate and its ranking member, Senators Kit Bond and Dale Bumpers, resulted in what came to be SBREFA. The passage of SBREFA not only gave us most of the reforms and enhancements to the RFA, it also gave us pre-regulatory review panels for OSHA and EPA rulemakings and it also gave us the Congressional Review Act. These and other components were great enhancements to what the House had already done a year earlier.

The bad news is that regulators oftentimes make a few adjustments and find new or some of the old ways to obviate compliance with the letter and spirit of both the RFA and the amendments to the RFA contained in SBREFA. While many in this town refer to the press as the 4th Estate, I have always believed that regulatory agencies are the true 4th Estate of Federal Government.

I firmly believe that the improvements to the RFA and SBREFA contained in H.R. 527 will go a long way in taming the 4th Estate of the Federal Government to the benefit of small businesses.

As for H.R. 585, I completely support it. While professionally I have never been involved in the ebb and flow of the size standards, I do believe that the Office of Advocacy needs to be the final arbiter of what a small business is for purposes of Federal regulatory action.

Thank you again for allowing me to be part of this hearing, and I look forward to your questions.

[The statement of Mr. Katrichis follows on page 42.]

Chairman GRAVES. Thank you, Mr. Katrichis. Ranking member. Ms. VELÁZQUEZ. Thank you, Mr. Chairman. It is my pleasure to introduce Mr. Adam Finkel and I want you to know, Mr. Finkel, that Harry did not use your time. So you still have five minutes.

Mr. Finkel is the executive director of the University of Pennsylvania program on regulation. He is one of the nation's leading experts in the field of risk assessment and cost benefit analysis regarding occupational safety and environmental hazards. From 1995 to 2000, he was director of Health and Standards programs at the U.S. Occupational Safety and Health Administration and was responsible for promulgating and evaluating regulations to protect the nation's workers or chemical, radiological, and biological hazards. Welcome.

STATEMENT OF ADAM M. FINKEL

Mr. FINKEL. Thank you very much. I am glad to be here. As you said, I am a big supporter of analysis, particularly cost-benefit analysis to look at regulations. I had the pleasure of co-chairing, I think, the very first SBREFA panel in 1996 on our ill-fated tuberculosis standard. And as I said in my testimony, I owe all of my educational opportunities to my dad who worked for 47 years in a small furniture company.

I do think we need to do better than to clash about these subjective and very overbroad and I think some factually suspect accusations about the whole regulatory system as it affects small business. If we cannot get past that we are not going to save lives, create jobs, and save money.

In this hearing, and I read some of the testimony from the March 30 hearing, a litany of complaints that I have heard as an academic and a regulator for many years is still front and center, about the yoke of regulation, the stringency and exaggeration of regulation, the lack of access to the process by small business, and the cavalier attitude of agencies to dismiss their concerns. And I have to say again as an academic and a former regulator I just do not recognize those complaints. I think if I had more than five or six minutes I could convince you that these premises are just not factually correct.

If there is legitimate groaning, and I do not profess that there is not some out there, but we have to remember these are in some part the groans of those who bear the costs that are returned to society in the form of larger benefits. Now, my own research career has had a lot to do with this claim that risk assessment exaggerates risk. And I think my colleagues and I have pretty much demolished that. It was invented by people who had no training in the field many years ago. What we are learning, however, is that the track record of regulatory economics in estimating costs is really the weak link and that is where the exaggeration is endemic and rampant.

As far as adequacy of small business access, in my experience at OSHA and working around EPA, on their own and with, of course, very enthusiastic prodding from OIRA, they take very seriously suggestions that can reduce small business costs without foregoing even more societal benefits.

Two examples from my own experience. After I left OSHA but I have followed the rule and read up on it, the chromium standard that OSHA issued in 2006, by my count there were 38 recommendations from the SBREFA panel and 34 of them were accepted. But I hasten to add I was involved in a grandfathered rule

in the mid-90s, right after SBREFA passed, OSHA's methylene chloride rule and even though we were exempt from SBREFA at that point, we made some very creative and I think very successful accommodations to small business just by directly working with them. And I am not suggesting that we should abandon these panels. I am concerned about expanding them to other agencies, but they work well. But also things worked well occasionally even before that.

So my basic message is that there are many other more pressing needs in regulatory analysis and risk management than these attempts, however well meaning they are, to do yet more for one of the most favored constituencies in the process.

I think my main concerns about H.R. 527 are really twofold. One is that I am an analyst but analyses cost money and they take time. And I think a bill like this which requires some very ambitious, very vague and very difficult analyses, some of which I might in theory support but in practice, if I am being asked to support them intellectually knowing there will be no resources to carry them out, I think that is a set up. I think that is a bad idea.

I also think that any good idea can be ruined by fixating on one little piece of it. So through these statutes and through executive orders the agencies are now supposed to think hard in each rule-making about roughly 30 different ways in which over-regulation or under-regulation can disproportionately affect some part of society. And it is not just small business out there at the tail of the cost distribution. There are local governments, property holders, energy suppliers. They all have their own statute or executive order. And then at the tail of the risk distribution there are orders and statutes about children's health, environmental justice, and lots of other very important issues on the benefits side.

The GAO report from 2000, I think, very convincingly looked at the empirical record and said that of all of these ancillary analyses, the agencies are doing much more on small business than on any others.

Again, as an analyst, I would like to see more done on the others but as a realist with fiscal restraint, I think we should be very careful about increasing the best part of this at the expense of the others.

I want to make two quick points about analysis and then close with one more point if I could have an extra minute or so.

Indirect effects. Costs come in two flavors. Positive and negative. And Congress seems to be instructing the agencies here to look only at one and not the other. What about the existing small businesses that would profit from regulation or gain revenue? What about the small businesses that do not exist and are waiting for markets to be created by regulation? These are important indirect effects and it expands the analysis even further. But I think if the analyses were done right they would show more need for some regulation.

Secondly, I think we have to be very careful about treating different risks differently. I will give an example from my testimony. Greenhouse gas emissions, well-mixed in the world's atmosphere, I have a real sympathetic point of view about small businesses contributing a very small amount of that huge, well-mixed problem.

But if you think about hotspots, like mercury emissions or the worker risks that I am so concerned about, these are real people and you cannot trade one for the other. If a small business is employing five people, I think those people have as much right to safety and health as in a large business. If we can give them that at less burden, that is fine. But I do not think we should be under the illusion that the small companies are a small part of the problem. In fact, in the OSHA context, they are a large part of the problem.

And then so I made a few suggestions for some process improvement but I just want to close for a second with a real concern I have from my days as a regulator. I think the agencies have to be cautioned by Congress not to give small business relief to all business. And again, I go back to the OSHA chromium standard that I have talked about as one of the most shameful standards ever issued by a federal agency. It is tragically weak. And the reason it is weak is that a couple of thousand small businesses out of half a million establishments needed some relief. And rather than giving it targeted to them, OSHA let the exposure limit go up from the proposal by a factor of five, and from what I thought as a risk assessor it should have been by a factor of 20. Two sizes sometimes fit all and we ought to be creative enough to give small business relief where it is due.

Thank you.

[The statement of Mr. Finkel follows on page 48.]

Chairman GRAVES. We will now move into questions. And I will start with Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman.

I have a question for each member of the panel. And that is how much responsibility do you give Congress versus the agencies with rulemaking authority in terms of placing the burdens on small business? Do you think it is poorly written legislation? Too broad directives given to the regulatory authorities? You know, obviously when we look at the recent Health Care Affordability Act, it had a 1099 provision in it that we found was incredibly burdensome to small businesses but the Congress then stepped in and repealed that particular provision. Talk about that line of responsibility between Congress in terms of writing legislation and the rulemaking authority. Can the Congress of the United States do a better job? Are we giving far too much discretion?

Mr. Swain.

Mr. SWAIN. That is a key question, Congressman. And I do not have a single answer on it. I think it is almost inevitable given some of the complexity of some of the subjects that the Congress is dealing with that you have to essentially kick the can over to the agencies and say come up with the specific details. It is very hard as you would know much better than I, to achieve closure sometimes on merely general principles, let alone the highly specific details.

That said, I think that the Congress can give direction, can through Committee reports and other mechanisms advise the agency of its general intentions as to what it would like the agency to do and what it wants the agency to be aware of. And Congress could probably do more along those lines. I will not get into the de-

tails about whether courts pay attention to that sort of non-legislative direction. Sometimes they do, sometimes they do not. But I think to the extent that in the real world we have complex problems and the Congress cannot inevitably make every detailed decision on every issue, you will have to always give some discretion to agencies but you can certainly always give them your intentions as to how they should exercise that discretion.

Mr. COFFMAN. Thank you.

Ms. Luxton.

Ms. LUXTON. Thank you, Congressman.

It is by its nature an iterative process. When a problem comes up and requires a solution, you only have the information available at that time. The legislation we are looking at today is an example of this. Problems have emerged over time partly through just the natural way the statute and regulations have been implemented. So I think we just have to assume it is going to be imperfect. It is easier to do iterations in regulation than it is to pass a new act, but occasionally it will be necessary to pause and look at new legislation to cure some of the problems that could not have been anticipated.

Mr. COFFMAN. Thank you.

Mr. KATRICHIS. One of the things that we kicked around in the early '90s was whether or not Congress should have something similar to the Regulatory Flexibility Act applied to them. And a good example of how it would look is what we have now in committee reports where there has to be a statement that there are no unfunded mandates, you know, in the particular piece of legislation. You cannot do that on the cheap though. I mean, we have the Congressional Budget Office. We have GAO. And trying to have that kind of assessment before you actually move legislation would slow down the legislative process, I think.

But it has been something that has been discussed. A former member of this Committee, Sue Kelly from New York, came up with an idea back in the mid to late '90s of having a regulatory review mechanism in-house, I think, over at the Library of Congress that would serve a parallel function to the Congressional Budget Office to look at what kind of regulations would flow from particular kinds of legislation. And this is something that is worth exploring and worth exploring with, I guess, the Rules Committee about whether or not you could have that kind of requirement before you go forward.

Mr. COFFMAN. Thank you.

Mr. FINKEL. As a regulator, I always thought that, and I worked at an agency, OSHA, that had an old statute that has not been subsequently amended in many years and EPA has many more. But they are broad, discretionary statutes. I always felt that between the statutes, the appropriations riders, the reports, and the judicial review, we had the right kind of circumscribed discretion. I think ultimately you want agencies to be subjected to judicial review but to have the discretion to do some of the things that you are asking them to do today, which is to look carefully at more nuanced impacts than the broad statutes really allow them to do.

Mr. KATRICHIS. Another final point, one of the problems historically has been the IRS calling everything that they have an inter-

pretive rule. If you have some mechanism within the legislative process that would lay out the regulatory balancing, I think that would cut off the ability of the IRS to go to that default of everything is an interpretative role.

Mr. COFFMAN. Thank you, Mr. Chairman. I yield back.

Chairman GRAVES. Ranking Member Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Let me take this opportunity to thank all the witnesses for your testimony.

Mr. Swain, in 2004, this Committee had a hearing on similar legislation and at that time a former chief counsel said that it will cost between \$2.5 and \$3 million per year. We also received a letter from the then current chief counsel stating that external consultants and additional economists will need to be hired at a potential cost of more than \$400,000 a year.

Now, if we expand the panel process government-wide, we will bring in more than 50 new agencies, not just the three that were contemplated in 2004. At that time he said that it would cost between \$2.5 and \$3 million. Given this, bringing in 50 new agencies, what is your rough estimate of the annual costs for applying the panel process government-wide?

Mr. SWAIN. Congresswoman, I am not trying to be coy but I do not think I was any of those people that you quoted because I have not had—

Ms. VELÁZQUEZ. No, you were not.

Mr. SWAIN. I have not had any direct personal experience with the panel process. It did not begin until after my tenure was up.

There will be significant costs. Obviously, if you extend it to all agencies, and there is a fixed cost for doing the panel, but not all agencies have such a busy legislative regulatory agenda as OSHA and EPA. There may be agencies that theoretically it could be extended to that only issue one or two rules a year that are significant to small business.

Ms. VELÁZQUEZ. But what about IRS, CMS? They issue rules.

Mr. SWAIN. They most certainly do. And I think that IRS is, as I stated in my written statement, and as I stated in the hearings in 2004, I think IRS is a special issue—

Ms. VELÁZQUEZ. Let me ask. Given the legislation that we have in front of us, considering today in this hearing, and the budget that the chief—the Advocacy office has of only \$9 million and 46 employees, do you think, and this legislation does not provide for more money, how do you think it will undertake the new responsibilities that are given?

Mr. SWAIN. I cannot speak to how the agencies are going to fund it. They would have to find the money somewhere. And I am confident that although agencies will not like this answer, that there is room in agency administrative budgets to put on an important process to bring greater sunlight to the regulatory process. Maybe not on all conceivable rulemakings.

But as far as the Office of Advocacy is concerned, my perspective when I was chief counsel in the Reagan administration, is that you worked—I worked with what I had. And if I had X millions of dollars, I had to triage and work on what was most important. And every chief counsel going forward will have to do that.

Ms. VELÁZQUEZ. To the other three witnesses, given the new expansion, along with rulemaking authority and the new power that the Office of Advocacy is going to have, do you think that \$9 million, because none of those agencies will have to provide money. The money has to come out of the Office of Advocacy.

Mr. KATRICHIS. I think that—

Ms. VELÁZQUEZ. Do you think it is sufficient with the current budget? Because this does not provide for new money.

Mr. KATRICHIS. I do not think you necessarily have to take the panel review process to all federal agencies. We can start down that road and try to get there eventually. There are certain agencies that really do not write a lot of rules as Frank said. There are more adjudicatory agencies and an example would be the Federal Trade Commission. It is much more of an adjudicatory agency. Yes, they do have some rules but I do not think people are going to be kept up at night by whether or not the mattress labeling, you know, regulation is—

Ms. VELÁZQUEZ. Harry, you were here for a long time.

Mr. KATRICHIS. A long time. Yeah.

Ms. VELÁZQUEZ. You know how this institution works.

Mr. KATRICHIS. Yes.

Ms. VELÁZQUEZ. My question is simple, and you know how much respect I have for you. And let me just say as chief counsel of this Committee you were not only the chief counsel for the Republicans, you provided counsel for everyone. And you were fair and we really appreciated that and we welcome you back.

But if we are going to give—we are going to create a superpower agency here with all this new authority that is given to the Office of Advocacy. And bringing all these new agencies into the panel review process, my question to you is if 46 employees and \$9 million will do it.

Mr. KATRICHIS. I do not think 46 employees and \$9 million will do it.

Ms. VELÁZQUEZ. Okay. Thank you.

Mr. FINKEL. Yeah, I think it is clear—

Ms. VELÁZQUEZ. Mr. Finkel.

Mr. FINKEL [continuing]. That Advocacy would have to provide more staff and more money if they were going to do it well. As far as what Mr. Swain said, I agree, yeah, there are little bits of wiggle room in all budgets. The question is what should those little extra bits be used for? When I hear 46 employees, I cannot help but think of the staff I used to have, which was just about that much. And we, in our heart of hearts and with a lot of scientific evidence, believed that our mission involved the premature mortality of about 60,000 Americans a year in the workplace from chronic exposures. And we worked with what we had. I wish as a citizen that that office had more. I do not think there is going to be new money but if there is I would not put it in Small Business Advocacy. I think the panels themselves can be done selectively and each marginal panel would not be that expensive. But wholesale expansion is going to cost the agencies money and SBA money.

Ms. VELÁZQUEZ. H.R. 527 effectively expands upon the process government-wide. And some have recommended expanding the panel process in a more incremental manner. Doing so could reduce

costs while focusing initially on the agencies that have the greatest track record of burdening small businesses. If we took such an approach, which three agencies would you at first?

Mr. KATRICHIS. I would probably start with the IRS. We tried to add them in 1998, I believe, to the panel review process. It was mostly a fight between this Committee and the Ways and Means Committee. And we all know how that usually turns out. And possibly some of the component agencies at the Department of the Interior just in terms of, you know, water issues and land use issues. Those are two that come to mind off the top of my head.

Ms. VELÁZQUEZ. Mr. Finkel, you work at OSHA on some of the review panels. What do you think works and what missed the mark?

Mr. FINKEL. Again, my experience was that whether it was through a panel, through notice and comment, which the agencies always have. The agencies always have. It is a second bite of the apple as it were. You know, or through pre-settlement discussions after litigation has been filed. It was always frustrating to be accused of not listening when the reality was once in a while we simply just did not agree.

And I think one of the things that did not work well from both sides was the insistence of the small entity reps in turning these panels into sort of a science court where they would argue about a chemical being carcinogenic or not. And there is plenty of room for that in notice and comment. It was frustrating for me as a regulator to have that time spent arguing about biochemistry when we could have been working together creatively to talk about reducing burden.

Ms. VELÁZQUEZ. Thank you. Thank you, Mr. Chairman.

Chairman GRAVES. Ms. Ellmers.

Ms. ELLMERS. Thank you, Mr. Chairman.

Mr. Finkel, my questions are for you, and I would like to thank the entire panel for being here today for this.

I am a little confused, Mr. Finkel, about where we are at and where your position is. I mean, I think you are stating wholeheartedly that you believe in regulation as it is. Is that correct? In that the opportunity to try to fine tune some of that is not necessarily what you think of. Is that correct?

Mr. FINKEL. No. I think, I mean, I believe in smart regulation. I believe we have a lot of unfinished business to do to protect consumers and workers and the environment. But I believe that—I am an analyst so I believe that we ought to be looking more carefully and harder at not just total cost and total benefit but at real people who are affected both economically and—

Ms. ELLMERS. Are you aware that we have had an unemployment rate of 9.1 percent that has been sustained for about 23 months now?

Mr. FINKEL. I know where you are going with that and I think the evidence that at any significant amount that rate has anything whatsoever to do with health, safety, and environmental regulation is thinner than thin ice.

Ms. ELLMERS. Well, let me just tell you my own experience then. Over and over again we have heard from our small business owners, businesses across the country, regardless. I say small business

because that is the Committee we are on. But all business alone is saying that government regulation is the number one problem that they are faced with and that the fear of the unknown, the fear of more regulation, the fear of the taxes going up, the fear of all the uncertainty that is out there is keeping them from hiring right now.

Now, this is the position that we are faced with and we are obtaining that information over and over again and it is just compiling. But what you are telling me is that you think more along the line of, for instance, let me just see if I pulled out a quote from your opening statement that small businesses—that you feel that there will be small businesses that will be created because of regulation and that they are just waiting to be created. So in other words, you know, we are creating a problem which then might actually spark a business growth environment? Is that what I am understanding you to say?

Mr. FINKEL. Yeah, I am surprised that would be at all controversial. The problems that are created through what economists call externalities, the pollution, the safety hazards, when you solve those sometimes businesses who create the problems are hurt economically, and very often other businesses come in and take advantage of the market to provide the safe equipment, the pollution control technology. All I am saying is if you want to think about indirect effects far upstream, those come in two flavors. And there are some positive and indirect effects as well.

Ms. ELLMERS. That is true. That is true. But basically what you are saying is there is a winner and then there is a loser. I personally do not believe that that is true in business. I think that the innovation in this country is outstanding and that we all grow as we move along.

I also—I have a question, too. You had said that you did not necessarily feel that it was just large corporations, that small businesses are sometimes the bigger culprit of some of these. Can you expand on that?

Mr. FINKEL. Well, again, in my area there are studies that suggest that in a lot of industrial sectors the occupational fatality rate is six or eight times higher in small establishments than in large ones. That does not say we should come down like a ton of bricks on small establishments, but the reality is these are dangerous places to work. In some cases they are contributing to pollution in others and I just tried to distinguish between yes, efficiency is a great idea and you go for the big sources. But it is a different problem if everybody is putting CO₂ in the atmosphere, you go after the big first because you get most of your benefit there. But if everybody is causing grave risk to their employees, you do not necessarily only care about big employees—employers.

Ms. ELLMERS. Last question. Do you believe in global warming?

Mr. FINKEL. I am not a climate scientist but I have worked among them for many years. And yes, of course I do.

Ms. ELLMERS. Okay. Thank you. Thank you. I yield back, Mr. Chairman.

Chairman GRAVES. Mr. Owens.

Mr. OWENS. Thank you, Mr. Chairman.

We have had some discussion about the Internal Revenue Service today and the regulations that it generates. And in a former life I had some experience with that.

Is not the solution there a revamping of the Tax Code and a lessening and potentially the removal of the various tax expenditures which probably results in substantial amount of regulation issuance? And if we did that we would both simplify the Tax Code and reduce the number of regulations? I will throw that out to whoever would like to take the opportunity to answer that.

Mr. SWAIN. Congressman, I would be a fan of simplification of the Tax Code. And you are correct that a lot of the regulatory issues come up because the particular interpretations of all of the statutes, and as you know, the IRS actually makes most of its decisions in a slightly less formal way involving so-called private letter rulings and other mechanisms that are not even regulatory in the legal nature but still are a pretty clear indication of what the IRS thinks. And there is absolutely no public review process on that mechanism.

So if Congress were to make a very simplified tax code, it should be followed up with clear, small business analytic requirements for the minimal regulations that would be necessary under that new tax code.

Mr. OWENS. Thank you. When we talk about small business and we talk about size, determination of what represents or is a small business, do we not also have another factor and that goes to whether or not that business may be located in a rural or an urban setting in terms of its impact on the local economy, on the local ecology? And if you—I would be interested to hear the thoughts about how we deal with that breakdown as well as the size of the businesses.

Mr. KATRICHIS. I do not think there are any distinctions in the rulemaking process for rural-based businesses versus urban-based businesses.

Mr. OWENS. Should there be?

Mr. KATRICHIS. Well, one might suggest that, you know, in certain rule settings, trying to get the expertise engaged to respond to a rulemaking might be a little bit more difficult.

Mr. OWENS. As you might guess, I come from a rural community.

Mr. KATRICHIS. Yes.

Mr. OWENS. And that is a big issue for us.

Mr. KATRICHIS. Yes.

Mr. OWENS. And I do see a distinction between a small business located in an urban setting and a small business located in a rural setting. We have this issue ongoing all the time on many levels.

The last question maybe is more of a statement than a question. But Mr. Finkel stated that sometimes business grows as the result of regulation. One example that I would ask if you concur with is whether or not when we moved to a best abatement, that that did not, in fact, grow in industry.

Mr. FINKEL. Boy, that is a controversial, touchy example, that I have written about a little bit. I think it did create some winners and losers, both, I think, on the economic front and on the health and safety front. That was not a star-studded effort and I think we

have learned from some of the overreaction and some of the overreaching on that.

I do want to say I think you have got a really good point about the urban rule distinctions. I mean, lots of other distinctions. I am not sure. I think that SBA should not necessarily get involved in creating subcategories alongside their size standards. But I think it gets to what I was saying earlier about these 29 other things that ADs are supposed to think about and there is environmental justice and there are lots of other executive orders. And maybe there should even be more to encourage agencies to think about not just this one constituency who everyone here is very interested in, but there are lots of others.

Mr. OWENS. I will finish with this. Do you think it is possible to create a body of analytics that in fact would permit an in-depth analysis of each regulation that would give you a truly accurate cost-benefit analysis?

Mr. FINKEL. Well, I certainly hope so. And I think I have seen the field get a lot better, and of course, a lot of that needs to come from outside the government but limited governmental resources. That is what a lot of people are trying to do. The signs and the economics only take you so far and it should not be determinative. But we have gotten an awful lot better in 30 years and their ways to go. Especially, I think, on the call side where we just wait until the end of the process and come up with numbers.

Mr. OWENS. Thank you very much. I yield back.

Chairman GRAVES. Mr. Landry.

Mr. LANDRY. Mr. Chairman.

Dr. Finkel, let me tell you about a conversation I had last week with a very successful business owner in my district. He had sold his business. He had created hundreds of jobs and he was under a non-compete. When that non-compete ended, him and his partner decided to go back in the drilling business. And when they sat down and put their profile together on how they wanted to put their business and move it forward, they decided that they were going to build the largest shallow water drilling barge in the world and one of the most advanced. And when they looked at the cost—because we have a lot of fab yards in my district—at the cost and amount of regulations and red tape that they had to do to build that barge, they decided that they were going to build that barge in Singapore. And while they were contemplating the construction of this barge and then where they were going to implement this barge, where they were going to put it out for contract, they got a proposal to purchase a drilling company, an American drilling company, for about 60 percent of the cost of the drilling barge that they were going to build. And they made a determination that they did not want to do business in America anymore. That they were going to build this barge in Singapore and they were going to float it and send it to Nigeria to drill because it is more business friendly in Nigeria than it is in this country.

And I can tell you that the OSHA regulations are destroying our fabrication yards down there. So we are not on thin ice; we are on thick ice. In fact, it is so ridiculous that during the BP oil spill, they would make the shrimpers come in during the daytime because it was too hot for them to collect oil on the water. And when

the shrimpers said, you know, it makes more sense for us to collect this oil at night, they said regulations do not allow that.

Now, tell me how regulations are not smothering our economy. I have got to tell you. We just have to agree to disagree but you are going to have to put more real life examples in front of me as how those OSHA regs are trumping the unemployment or not causing the unemployment rate to be nine percent or greater, which is really not nine percent. It is really 14 percent or greater. It is just that those people are not looking for work anymore.

Mr. FINKEL. Look, there is no way that—look, I know you do not want me to respond with anecdotal cherry picked examples on the other side because that is not my role as a witness to tell you of all the stories I used to hear and still hear of people who have lost their loved ones because of lapses, negligences, mistakes. It is a balance. Of course, there are going to be poignant stories of businesses who have had difficulty complying with what—

Mr. LANDRY. But is not that the role of the legal system? Is that not the role of the legal system to determine whether or not businesses are operating in a fair, safe environment for their workers? If people are getting injured and deaths are being caused, is not that what the plaintiffs' lawyers do? And when they go in and they impact those small businesses, those small businesses have a choice of whether they want to pay those types of fines and settlements or whether or not they want to make their work environment safer.

I mean, look, OSHA just issued a regulation where our welders are now going to have to wear long sleeve, Nomex outfits that do not breathe, and it is 110 degrees in the shade in Louisiana. How do we keep working under those conditions? There is no waiver for that. What do we do?

Mr. FINKEL. If I were still there I could look into that for you. And there are always really difficult things that government has to do where they cannot satisfy both one risk and another. But again, I have got to say the plaintiffs' bar and the tort system, that is after the fact. And there are agencies that exist—

Mr. LANDRY. But wait a minute. I have got—

Mr. FINKEL [continuing]. In order to prevent that from happening.

Mr. LANDRY. Three people have passed out this summer in one yard complying with OSHA regs. Now, tell me how is there any—what is the safety there?

Mr. FINKEL. I know that OSHA just put out last week—I do not follow them week to week, but this week or two weeks ago they put out a whole set of interpretations and guidance on heat stress. They are very aware that it is hard to be safe and cool at the same time. It is hard to be wearing a respirator to protect your lungs and have to breathe through a dusty respirator. There are all kinds of very difficult choices where if we had a little more technological innovation we could solve some of these problems. But again—

Mr. LANDRY. It is hard to work and earn a living under those regulations. That is what it is hard to do.

Mr. FINKEL. And it is hard to earn a living if you have been amputated or passed away, too.

Chairman GRAVES. Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman. And I would like to thank our panel for being here as well.

I guess I would like to start out with a little more of a generic sort of a question. You know, when we look at the RFA it was supposed to be supported by sound economic analysis in terms of impacts on businesses. Mr. Swain, have the bureaucracies, the regulatory agencies, have they complied with that mandate?

Mr. SWAIN. I think in too many cases, Congressman, they have not because they have attempted to define away their obligation to do so by stating that a particular proposed rule does not or would not have a significant economic impact on a substantial number of small businesses. Those are the words in the law. And now to be sure they are doing it more than they were 30 years ago and I think one of the factors was alluded to by Mr. Finkel. There is more economic data out there now that allows people to do analysis. But if an agency does not want to do an analysis, even though all the data in the world is there, they do not have to do it in the sense that the downside, the legal downside for not doing the analysis is not very significant. And that is one of the reasons that the law needs to be strengthened. If they essentially thumb their nose at their obligation to do an analysis, it is very difficult to get that decision to not do an analysis challenged through court.

Mr. TIPTON. Well, now, you know, I think that that is an excellent point. In fact, we have just heard testimony that we are able to observe over at Energy and Commerce when the EPA was specifically asked have you done cost benefit analysis and the answer is no, ultimately.

Mr. Finkel, I am kind of curious. You had had an experience with OSHA. Can you give me some examples where OSHA went in to help rather than fine and punish? Or did it always be accompanied by a fine?

Mr. FINKEL. No. In addition to being in charge of health rule-making, I was out in Denver for three years as a regional enforcement administrator. And our staff always went out with a dual mission—to see to it that problems, especially imminent danger ones were corrected, but also to provide information, compliance assistance, consultation. Those programs have grown by leaps and bounds and a lot of us think that they are taking too much attention away from enforcement. But the fact of the matter is in this climate and the climate that existed when I was there 10 years ago there was a tremendous perceived need to provide good information. I think in many cases that information—

Mr. TIPTON. So there are no examples where it was not accompanied by a fine?

Mr. FINKEL. Oh, there are plenty of examples where OSHA has an entire consultation program that is not permitted to levy fines.

Mr. TIPTON. That is voluntary to come in. When they do an inspection, is that always accompanied by a fine?

Mr. FINKEL. No, consultation is separate and it is employer driven.

Mr. TIPTON. It is separate.

Mr. FINKEL. And they can ask for it for free anytime they want. And there is—not only can they not fine but they cannot pick up the phone and call OSHA and say—

Mr. TIPTON. No, I am talking about when they actually come in to do an inspection, not with voluntary compliance when you invite them.

Mr. FINKEL. Well, about 25 percent of OSHA inspections now result in no fines. Now, that should be because there are no problems. But if you are asking me are there places where OSHA looks the other way? No, I hope not. There are instances where fines are reduced by 90 percent for small business, where fines are extended off in time, where willful citations are reclassified as non-willful in order to get some abatement and get some cooperation.

Mr. TIPTON. Okay. Can you give me an example where an OSHA regulation has helped a business grow?

Mr. FINKEL. I think every one of them has in some way. The vinyl chloride rule way back in the '80s caused pollution control technology.

Mr. TIPTON. Did it help those businesses grow?

Mr. FINKEL. Well, actually, in that case it actually, you know, you want to talk about how wrong economic analyses can be. Not only did that regulation and others like it help other businesses, it actually helped the affected entities grow because they were so wrong about whether it would cost them money. They saved money in recovered product that was greater than the installation of the equipment to recover the product. Sometimes business needs a little wake up call. I mean, once in awhile it works out that there are \$20 bills lying around that people are not picking up.

Mr. TIPTON. I will tell you, just kind of personal experience, when OSHA came into my business we had a tipping hazard, pallets were stacked one on top of another, and the regulator had said that they were stacked 15 feet high and she was the expert. Unfortunately, the ceiling was eight foot high, so that was some of the actual experience that we have had.

You know, really when we are looking at some of the regulatory process, and I guess I would open this up to anyone on the panel, do you think Congress needs to be more hands-on? That we see the regulatory process exceeding the legislative intent of Congress overreaching and that we need to be able to roll up our sleeves as Congress and get far more engaged, making the regulatory bodies responsive to that legislative intent?

Mr. FINKEL. I would like to say yes, Congressman, and let me also mention while you are on OSHA, one of the problems in my view that typifies OSHA and it is not the only agency, is that many of the regulatory actions that we sort of think of as regulatory in the big picture sense are determined by OSHA not to be regulatory but to be enforcement actions and enforcement protocols. They will put out a statement saying we are going to enforce this kind of violation and we are not going to enforce this kind of violation. Those statements are completely exempt from any analytic requirement. And in fact, I read a case, a federal case involving the steel foundry business in which the court probably accurately from a legal perspective said this particular practice by OSHA is not challengeable in court because it is not a regulatory challenge; it is simply an enforcement practice so go complain to the agency or go complain to the Congress.

Chairman GRAVES. Before I move to Mr. West I want to clarify one thing. This question is for Mr. Finkel and then I would like for Mr. Katrichis to follow up.

We talk or you talk as if implementing this legislation and requiring the agencies to follow the Regulatory Flexibility Act and examine how this is going to examine small business, that somehow this is going to prevent the regulation from going into effect. My question to you is does this in any way prevent an agency from implementing a rule or regulation as a result of studying it?

Mr. FINKEL. Well, again, I think, you know, with all due respect, I think a lot of this is a solution in search of a problem. I do not see the thumbing of the nose at the RegFlex Act the way other people do but that is just a matter of interpretation. Again, as an analyst, I cannot sit here and say that I do not silently applaud the idea of looking more carefully at some of these—I do not want to say nuance but effects that will otherwise be given short shrift. But the idea of judicial review of some of these things, you know, the Chief Counsel for Advocacy picking the panelists and writing the report, I have got to say I have read the hearing memo that you put out and I do not begrudge at all your view about the dynamics here but it struck me as a punitive—you have said it yourself, the reining in of the agencies. So as a former regulator reading that I think this is a recipe for delay, and delay in the service of something is not a problem. Delay needlessly is a problem and I think that some of the analyses could proliferate and cause enormous delay in a process that is already, of course, people say ossified. I do not see it quite that dire a situation but, you know, things are stretched very thin. And indirect effects that are highly speculative, you know, the economists are having enough trouble in the agencies getting good estimates of total cost and benefit. I wish it were better but it is the way it is.

Chairman GRAVES. I will go to Mr. Katrichis again. It is a simple question. Does it prevent an agency from implementing a regulation whatsoever?

Mr. FINKEL. Yes.

Mr. KATRICHIS. I do not think it does. I think that it may slow things down.

Chairman GRAVES. Hit your mic, would you?

Mr. KATRICHIS. I think it might slow things down. We have had executive orders, regulatory executive orders issued by every president going back to Gerry Ford. The president is the head of all these departments where all these executive branch agencies are. I mean, they have not paid attention. That is why RegFlex was needed in 1980. That is why SBREFA was needed in 1996. I think small businesses want some certainty out there. And certainty does not necessarily come with the hand of a new regulatory regime. Sometimes the not regulating is more scary than the regulating.

I will give a couple of examples of that. For the longest time, EPA was considering regulating milk spillage in dairies as something that would be covered as an oil spill because there is a small percentage of animal fat in milk. And it was not until some serious prodding by both authorizers and the appropriators that now a few weeks ago EPA has finally said, well, we are not going to do that.

We have this other thing on the horizon, and that is something that is already regulated in California under their Clean Air Act, and that is, you know, bovine gas. I mean, you know, we are going to have a situation where EPA may go in. In California, if you are running a dairy, you get a bill every month which is determined by some mad scientist that sits in a windowless office and calculates how many, you know, cows you have and what your assessment is for that month. And there is no science that goes into this. There is no comment. But if this is pushed to other parts of the country behind California, I mean, how are, you know, dairy folks supposed to deal with that uncertainty?

Chairman GRAVES. Mr. West.

Mr. WEST. Thank you, Mr. Chairman, and also ranking member. Thank you panel for being here today.

I am going to try to have the simple man approach here. Yesterday was the Army birthday, 236 years for the United States Army, a little gang that I spent a few days with in my life, 22 years to be matter of fact. In that time of 22 years I was a paratrooper and I was also an artilleryman. And one of the things that we had in our military was that if something were to come down from the institution of the Airborne School or the Artillery School, a new regulation, a new piece of doctrine, what have you, before it was implemented they would send it out into the field as we would call it to make sure that the people who would have to implement this new regulation, new doctrine, new piece of equipment, what was their assessment of it? I mean, would this be something that would work?

Now, my question is simple. Is that the type of process that we have here with regulation whereby we send these things out to the field to get a bottom-up assessment before we implement it?

Mr. KATRICHIS. The whole notion of the SBREFA review panels was so that we could have a conversation with a regulatory agency before pen was put to paper. The concern was that there would be some pride of authorship once we went to a preliminary rule stage or proposal of a rulemaking. And I think that that is similar to what you are suggesting here.

Mr. WEST. But are we doing that?

Mr. KATRICHIS. We are doing it—

Mr. WEST. Yes or no?

Mr. KATRICHIS. We are doing it at OSHA and EPA because it is required of them.

Ms. VELÁZQUEZ. Will the gentleman yield?

Mr. WEST. I certainly will. You are the ranking member.

Ms. VELÁZQUEZ. Yes.

Mr. WEST. I follow chain of command.

Ms. VELÁZQUEZ. I am glad to hear that.

Mr. WEST. I take orders well, ma'am.

Ms. VELÁZQUEZ. Yes, there is communication once a regulation is going to be an agency. It is known as notice and comment, is it not?

Mr. KATRICHIS. Right.

Ms. VELÁZQUEZ. Thank you. Thank you for yielding.

Mr. WEST. Thank you. So this is once this regulation is identified or is it going to be implemented?

Mr. KATRICHIS. There are different ways. There could be an advanced notice of proposed rulemaking which occurs in very large undertakings. It can just be a notice of changes we are making. You know, for people that are in, you know, law firms, accounting firms, et cetera, they have the resources to see these things coming. Your average small business, they do not have the resources to see these things coming. They might belong to a trade association that does, et cetera. I mean, the gentleman on the other side of the aisle, his suggestion of some distinction between rural-based businesses and urban-based businesses is a good one in that regard because somebody out there in a rural community is not going to have, unless they have access to the Internet, et cetera, they are not going to have access necessarily to a library where they can go look at the Federal Register and see what is being contemplated.

Mr. WEST. Well, and I think that the gentleman brought up a good point. I mean, is there an evaluative criteria that is out there? Because not all things are alike or equal. I mean, a rural community is different from an urban community or, you know, you do have these trade associations. Or what are some of the economic impacts? So, I mean, do we have these type of things out there that preclude this preponderance of, you know, top-down driven edicts and mandates that come down on small business? The next thing to know, once it hits there is nothing they can do. And I think it comes back to this, you know, predictability, uncertainty-thing that you talked about.

Ms. LUXTON. If I may address that. The distinction, I think, is very important between what a SBREFA panel does and the later time when a rule is proposed. The distinction, and I had it in my testimony, is by that time positions have hardened. The value of a SBREFA panel is that the small entity representatives are selected from all of the diverse areas that would be affected—rural, urban—of any kind of effect that would be felt. And the whole point of it is to bring those people in early to explain what the impacts would be on them. The agency is required and this bill would strengthen the requirement that the rule alternatives be laid out.

And the whole point of this is not to evade the rule or prevent a rule from becoming effective but to find ways to tailor it so that the impacts on small business could be less. And it by no means is always the case that the only answer is “do not do the rule” or “do not let it apply to small business.”

Mr. WEST. So my final question because I just had a small business forum back in my district last week, where is the breakdown? Because the small businesses are hurting. So somewhere there is a breakdown and I think that is what we have to identify. We have all these systems and panels and organizations and things in place. There is a breakdown somewhere and the people that are being affected are the economic engine that will drive a turnaround in this country, and those are the small business owners.

Ms. LUXTON. I could not agree more. My point, I guess, would be that there are only three agencies currently subject to the SBREFA panel process, so the others never get the benefit of that early input from those small entities.

Mr. WEST. Thank you. And I yield back.
Chairman GRAVES. Ms. Chu.

Ms. CHU. Dr. Finkel, you developed several product stewardship partnerships involving government large manufacturers and small businesses who purchase a hazardous product and expose their workers to it. And you also talked about how when you were at OSHA you partnered with the Insulation Manufacturers Association so a rule on fiberglass insulation was not necessary. I think it is really great when the public and private sector can work together like that. How do we promote more of these product stewardship partnerships so that government and businesses can work together?

Mr. FINKEL. You know, I wish I knew the answer to that. I was very frustrated that some of the ideas that my colleagues and I had at that period of time, frankly, they seemed a little—were viewed with some suspicion by—I was a career person but they were viewed with some suspicion by the political appointees in the Clinton administration, but I was involved and I survived the transition, of course, to George W. Bush, and immediately the same ideas were seen as way too aggressive. So they never really got, I think, their due. That particular partnership with the fiberglass people lasted for six or seven years and basically fizzled out because government did not give it the respect and support that I think the industry deserved by having come to us at that time with a really good idea that I think saved money and saved lives. And they are still doing some of that stuff but without—at one point they even came into our offices. This was actually—I should correct—a different partnership but one of the user groups came into our OSHA offices and said we are doing pretty well with this voluntary code of practice but we have some recalcitrant users who are clearly flouting this. Could you do some enforcement there? And our own lawyers were a little nervous about enforcing something that we thought was, in fact, the general duty of these employers to do. So it is an idea maybe whose time will come again.

Ms. CHU. And what elements would be needed to make it successful?

Mr. FINKEL. I think a more aggressive, more enthusiastic participation by government. And this was a unique set of three or four circumstances at work but there are plenty of others where the manufacturers know well that it is in their best interest to help the small users of their products use them properly. And sometimes they do that just through informal means but in this case with government as a partner saying we enthusiastically support what you are doing, maybe we do not have to do rulemaking because the problem is being solved through business relationships that we can sit back and watch work.

Ms. CHU. You also mentioned in your testimony that government agencies already analyze how regulations affect small businesses and you suggest that there is an adequate analysis available for small businesses. In your opinion, would this bill add another layer of government bureaucracy?

Mr. FINKEL. Yeah, I am concerned about the delay and the bureaucratization if that is a word, of the process. But I am also concerned about, again, two things. Some analyses are simply not value-added. They are make-work analyses. Not that, again, as an analyst you cannot come up with a little bit extra to do but just

as a sense of perspective, again, I understand I am in a room talking to the Small Business Committee but it is not the only constituency out there that has disparate effects, both economic and health and safety, from regulation. And I do think objectively of all these constituencies—children’s health, environmental injustice, other economic actors—it is this one that has been getting the most attention. And maybe it is time to give them a little more attention but also look at the rest of the whole pallette and see where the agencies are falling down in terms of analyzing the real world impacts of these things.

Mr. SWAIN. Congresswoman, if I could just comment. I fundamentally disagree with Mr. Finkel’s response to that question. This law would not add another layer of bureaucracy. The Congress, led by Senator Culver and Congressman Ireland in 1980 added another layer of bureaucracy. This law would make sure that that 1980 law works better but this layer of bureaucracy has been here for 30 years. It has worked sometimes and sometimes not so well. So this is basically a remedial statute to a process that has been in place for 30 years.

Mr. FINKEL. Well, I have got to say it is a very broad bill and there are certainly sections that do exactly what you say. But expanding it from three agencies to 50 is a new layer of something for those 47. Changing who picks the panelists and who writes the report is a change. You can’t argue whether it causes delay or causes more analyses to be done.

Ms. CHU. I see my time is up. I yield back.

Chairman GRAVES. Mr. Hanna.

Mr. HANNA. No, sir.

Chairman GRAVES. Ms. Velázquez.

Ms. VELÁZQUEZ. I just would like to make a comment about the comment made by the gentlelady from North Carolina. And I am sorry she is not here but I just would like to ask her where does she see that regulations are the number one issue for small businesses? Because the last I checked, NFIB, every week they measure, they survey, they poll their members. And the latest poll coming out from NFIB has the number one issue for small businesses is not regulations. And it is sales. Okay? That is the number one issue from NFIB. And then the U.S. Chamber of Commerce’s later survey showed that also regulations come in three. And for NFIB, number three. So if we are going to come here and say that the number one issue for small businesses is regulation, based on the facts I do not think that it really reflects the reality.

Two weeks ago, members were saying that CDFI is—FDIC is an office under the jurisdiction and responsibility of the Department of Treasury. It is an independent agency and that should be on the record.

I would like to ask unanimous consent to enter into the record the two surveys conducted by NFIB and U.S. Chamber of Commerce.

Chairman GRAVES. Without objection.

Ms. VELÁZQUEZ. Thank you.

Mr. Finkel, the legislation gives Chevron deference to Advocacy’s rulemaking regarding RegFlex and this will likely extend to Advocacy’s opinion as to whether an agency has, in fact, complied.

Are there any drawbacks to giving such immense power to Advocacy?

Mr. FINKEL. With the caveat that I hope you are not confused by my being—that I have a law degree or know anything particularly about the law. But since you asked me I cannot resist. What troubles me really about this idea is that I guess I may be ignorant but I do not know of other parts of government where there—not to say there is not—was not and is not a need for a person whose job title is the chief counsel for advocacy for small business granted but to have that person in that office clearly delineated as only caring about one side of a complicated issue. Having Chevron deference, it just strikes me as not good government to say someone who is paid to be in an advocacy role, you know, should have any special deference. There is no chief counsel for Children’s Health and maybe there should be. But I think the idea of letting that person have access, have panels, have input to the process that he or she does, you know, ought to be sufficient if, as Frank Swain says, the agencies are complying with the law. In my experience they are more than they are not but it is old experience at this point.

Ms. VELÁZQUEZ. Mr. Finkel, what are the more significant indirect costs to small businesses? And most importantly, the economic benefits to small businesses from regulations?

Mr. FINKEL. Well, this gets back to what the congressperson from North Carolina seemed so quizzical about but I think when you—there have not been such studies done recently. But when you look at studies of all business and people look at the effects of regulation, when you only look at half of the cost, the costs that accrue to people who pay versus when you look at the whole change in the economy pre- and post-regulation, when you do not count the job creation, the new markets that are created by regulation, sometimes those are small and do not make much difference in the total costs. Sometimes they are huge and turn something that was supposed to be a net loss for the economy into something that was a net gain for the economy. Am I in favor of agencies having to look at those impacts on balance? I think not, because it is, you know, they are not doing a good job when they have infinite time and sometimes sources of money. For free and quickly you are not going to get good answers.

Ms. VELÁZQUEZ. Thank you.

Mr. Swain, in 2004, the chief counsel, and you were not—I want to make it clear—testified before this Committee saying, and I quote, “that vesting the authority to determine size standards to advocacy may cause confusion over which SBA office determines size standards.” He followed by saying that he did not, and I quote, “believe the proposed language will benefit small entities.” As a former chief counsel yourself, do you agree or disagree with these concerns?

Mr. SWAIN. There is no issue that I have met in Washington that has so many people on so many different sides than size standards. And, you know, it is like giving somebody a job. For every one person you make happy, you make 10 mad. And the same is true with size standards.

I think I agree with the chief counsel’s statement. I think that, and I should say that I am not personally aware of—I am not per-

sonally acquainted with how this dilemma arises in the real world. I accept that it does but I do not have any personal knowledge of experience. But in theory, I think the chief counsel has plenty to do without being in the size standard business. I think that they ought to be consultative with the SBA Size Standards office when these issues come up. But to give the chief counsel this authority is not the most important part of this bill.

Ms. VELÁZQUEZ. Thank you. Thank you.

Mr. SWAIN. Could I make one brief statement on the Chevron deference issue?

Ms. VELÁZQUEZ. Yes.

Mr. SWAIN. Because I think it is a very important issue and I understand the hesitancy on it. I think it is really important that I point out that as I understand it, and better lawyers on the panel than me can correct me, the Chevron deference would be the court could defer to the chief counsel's opinion as to whether the proper small business regulatory analysis has taken place, but the court can still say whether it is an OSHA case or an EPA case, we are going to find that this rule should go into effect because it is an important rule and it is not arbitrary. The only thing that they have to say is, well, the chief counsel said they did not do a good job so maybe they did not do a good job. But even though—the court can say even though they did not do a good job we still will allow this rule to go into effect. So it is a deference as to the procedural step; it is not deference about the chief counsel's position as to what finally should happen to the rule.

Ms. VELÁZQUEZ. Okay. Mr. Finkel, my last question to you is should agencies be encouraged to seek input during the panel review process from those affected workers and consumers by those proposed regulations?

Mr. FINKEL. Yeah. I mean, my agency friends will not be happy because they will see it as one more being stretched thin. But fundamentally, yeah, I believe that it was a good idea to have these SBREFA panels. I think they have worked well. They have added good value in my experience. But it just seems fundamentally not fair and symmetric to me that we invite in one constituency who has some built-in hope that the regulations will not get promulgated or will get promulgated differently and the constituency who is out there waiting to be protected do not get in. I mean, they get in the notice and comment, obviously, but the whole point of this is an early bite at the apple.

Ms. VELÁZQUEZ. Thank you.

Ms. LUXTON. If I could just add, I believe the way it works now is it is small entity representatives. It is not entirely small business. So there have been recent panels at EPA where environmental groups have been brought forward for this. Communities, small governments. So it is not exclusively small business.

Ms. VELÁZQUEZ. Okay. Thank you, Mr. Chairman.

Chairman GRAVES. Thank you. This has been a very interesting hearing. I am very frustrated by some of the aspects of what was said today and obviously some of that being that one of the benefits of regulation is that it creates new industries and the idea that we are going to create regulation that could put industries out of business and create new industries is engineering that I think is wrong

for a government to be doing that. And it could be interpreted that way very, very easily.

My number one goal in this legislation is to make darn sure that the government determines and evaluates what it is doing to small business and how it is affecting small business. And there is absolutely nothing in this legislation that prevents an agency from implementing any one of the regulations that they put forth. Not one single thing. It will slow down the process and I darn sure hope it slows down the process. And that is exactly what I am trying to go through here.

So with that I would ask that all members have five legislative days to extend and revise their remarks. And with that this hearing is adjourned.

[Whereupon, at 2:41 p.m., the Committee hearing was adjourned.]

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**Testimony of
Frank S. Swain**

before the

**Committee on Small Business
U.S. House of Representatives**

June 15, 2011

on

**Regulatory Flexibility: Creating Jobs by Reducing
Unnecessary Costs to Small Businesses**

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Chairman Graves, Ranking Member Velazquez and Members of the Committee.

Thank you for inviting me to participate in this hearing on HR 527, the Regulatory Flexibility Improvements Act of 2011 and HR 585, the Small Business Size Flexibility Act. Millions of businesses are daily impacted by federal government regulations. My tenure in the Reagan Administration as SBA Chief Council for Advocacy and experience in private law practice confirm that regulatory problems continue to be a major negative factor for small business.

I had the opportunity to participate in the original Congressional consideration of the Regulatory Flexibility Act (RFA), as legislative counsel to the NFIB in 1980. At that time there was broad support for the concept of regulatory reform. Several regulatory agencies with broad portfolios, including the Environmental Protection Agency, Occupational Safety and Health Administration, and the Federal Trade Commission, were zealously making and enforcing rules impacting small business, and small business was increasingly frustrated by these new and often unnecessary or excessively burdensome requirements.

The Regulatory Flexibility Act was, in 1980, one of several proposals which the Congress was considering which would require the government to reform itself, essentially by creating administrative and review screens through which regulations would have to pass. There were many in the Congress, and even in the Carter administration, who believed that getting some regulatory coordination and review outside the immediate agencies was essential to overall rational regulation. There were proposals for creating regulatory review panels and requirements which would apply cost benefit and other criteria.

Thirty years later, there is only one regulatory review statute that impacts all agencies, and that is the Regulatory Flexibility Act. The Congress did give some important statutory underpinnings to OMB's Office of Information and Regulatory Affairs, (OIRA), and every recent President has issued Executive Orders attempting to impose regulatory reform standards, which have included linking the review authority of the Office of Management and Budget to SBA Advocacy efforts at enforcement of Regulatory Flexibility.

It bears noting that we may be now in a similar time of concern and focus over regulatory technique. The advances of technology are enabling and challenging all of us to ensure that innovation and entrepreneurship are not stymied by regulation which is unnecessary or too slow. And that is a dilemma – because the regulatory process, especially in fields of science and advancing technology, is already too slow. Indeed the Food and Drug Administration last year initiated a program to advance "regulatory science" to keep up with the accelerated scientific developments in drugs and devices given critical public health needs. It is useful and important that the Congress drive regulators to do their jobs more carefully and more efficiently. With careful statutory changes in the Regulatory Flexibility Act and agencies committed to smart and informed regulation, the two goals are absolutely consistent.

The approach of the Regulatory Flexibility Act was simple and still wise – if agencies take a careful look at the impact their rules have on small business, it may be possible to alter those rules to be less burdensome without compromising the overall regulatory goal. The approach recognizes that agencies have programmatic regulatory responsibilities, and the RFA does not dictate any particular substantive result which would adjust those principles or mandates. However, it does require transparency and analysis – if regulations impact small business, there must be a public description of that impact and disclosure of the analyses. Only with that disclosure can interested businesses, the SBA, the OMB and any other observer can offer meaningful comments and work with the agency to reach a more finely tuned less burdensome result.

That is the theory of Regulatory Flexibility. The results have not been so clear. In any regulatory review process, a balance must be struck between substantive regulatory goals and the review process. To be an effective statute for small business and for the jobs and investment they make, the RFA needs to be strengthened to restore the balance originally intended, but because of statutory ambiguities and administrative and judicial decisions, not yet achieved. With thirty years experience, the Congress should now, through HR 527, address the following core issues:

Eliminate the ability of agencies to completely avoid addressing any "indirect" effects of regulatory proposals (Section 2 b of HR 527).

Clarify the IRS obligation to analyze the impact of their legislative and interpretive rules, regardless of connection to an existing tax form. (Section 2 f)

Strengthen and clarify requirements for the Initial Regulatory Flexibility Analysis (IRFA) to require more detail and clearer attempts at assessing cumulative impact. (Section 3 a)

Authorize the SBA Chief Counsel to issue rules defining various RFA terms and processes to be used by Federal agencies (Section 4) and speak to such issues in an amicus filing (section 7 d). This would clarify some existing ambiguities as well as signal that courts should show deference to appropriate Chief Counsel views on the RFA.

Make the periodic review of RFA Section 610 more thorough, transparent and publicly available through internet dissemination. (Section 6)

The Regulatory Flexibility Act was a compromise in 1980 between small business interests who desperately wanted the government to somehow get a handle on small business regulation, and "pro-regulatory" interests who were concerned that businesses not have a tool to slow otherwise important health or safety regulation. During my tenure as SBA Chief Counsel for Advocacy, commenting in nearly 400 rulemakings, I observed examples of good intentions and compliance, but also regulatory situations in which agencies inappropriately avoided the RFA requirements. Such issues have been amply described by a series of GAO and Congressional Research Service reports, court decisions attempting to apply unclear statutory language, and less than aggressive compliance by regulatory agencies. Thirty years later the Congress must recalibrate several Regulatory Flexibility Act principles and terms for the reality of today's regulatory dynamics.

Eliminate the ability of agencies to completely avoid addressing any "indirect" effects of regulatory proposals (Section 2 b of HR 527).

There are obvious problems "at the front end," of the regulatory process, at the point at which agencies make a threshold decision which of their rules will undergo the analysis required by the Regulatory Flexibility Act. The temptation for mission-driven agencies to define away certain Regulatory Flexibility analytic requirements in order to get their rules out is often irresistible. For example, the EPA regulates refrigerants under authority it maintains it has through the Clean Air Act to regulate greenhouse gases. EPA has imposed a cap and trade system for

manufacturers of refrigerants, in order, over time, to drive down the use of such substances. Although lessening greenhouse gases is a laudable goal, what has resulted not surprisingly is a cap and no trade system, in which the large firms which have been the historic producers of refrigerants have no incentive to share any product with smaller or new entrant firms. The indirect result of this regulatory system has been to discourage innovation and competition by small firms in this field. The direct impact, less refrigerant contributing to greenhouse gases, is clear. The indirect impact, a heavy regulatory tax on innovative small business, could be avoided by alternative and more flexible regulatory approaches and analysis.

Clarify the IRS obligation to analyze the impact of their legislative and interpretive rules, regardless of connection to an existing tax form. (Section 2 f)

The Internal Revenue Service plainly considers its mission of administering the tax laws often to be beyond the Regulatory Flexibility Act requirements. Implementation of the laws through regulatory decisions often has a very direct impact on smaller firms. The IRS makes most tax regulation policies without the formal Administrative Procedures Act rulemaking process which normally triggers the Regulatory Flexibility Act. The Service and the Treasury Department have, made many arguments, almost theological in their complexity, as to why the IRS need not regularly perform analyses of the small business impacts of their decisions. Congress clearly has the right and the obligation to clarify the situation, and it attempted to do so in SBREFA. The IRS countered with an interpretation of the coverage of RFA which the Congress should clarify.

But the Congress should consider an additional approach to breaking this IRS regulatory analysis log jam. Anyone who has ever practiced before the IRS on regulatory issues knows that the IRS has, over the years, relied less and less on formal notice and comment regulations, and more on not only interpretive rules but other IRS-specific techniques such as private letter rulings, Technical Advice Memoranda and other means to achieve interpretations of the tax law without full notice and comment. With the complexity of the tax law, this trend may be inevitable, but it is not good for a public which needs to better understand the tax rules and how IRS makes decisions. It is beyond the scope of this legislation to completely address this important issue, but this bill should consider one small step in this direction. I recommend the bill call for establishment of a senior level group, with representatives from not only Treasury and IRS, but

also the OMB and the small business community, possibly convened by the Administrative Conference of the US or other neutral party committed to action. The purpose of the group would be to get a grip on what can practically be done to extend IRS regulatory analysis to one or more categories of rules which have a direct impact on small firms, and be able to be accomplished in our collective lifetimes. IRS should do more under the requirements of the existing RFA. But why not define what more can be done now, even if it involves not all interpretive rules or decisions, focusing on those with the greatest impact on small business.

Strengthen and clarify requirements for the Initial Regulatory Flexibility Analysis (IRFA) to require more detail and clearer attempts at assessing cumulative impact. (Section 3 a).

The current law requires a "succinct" description of the objectives of a rule. Agencies have slavishly followed this adjective. Analyses are inevitably succinct, and rarely attempt to look at a larger picture of cumulative regulatory impacts. In the past 30 years, the methodology and knowledge of measuring impact and alternative means has greatly advanced. Agencies can and often do more internal analysis now. Those analyses and their methodological and source basis should be referenced in the IRFA. The ability of economists and policy analysts to measure and quantify regulatory impact has advanced greatly, as has data availability and other tools which facilitate these analyses. What might have been a good guess years ago can be precisely analyzed today. Further, a specific regulatory action may simply be the latest iteration of a major regulatory scheme. Agencies should not use blinders, assessing narrowly a seemingly minor proposal which has a major impact because of its significance in a larger regulatory plan.

Authorize the SBA Chief Counsel to issue rules defining various RFA terms and processes to be used by Federal agencies (Section 4) and speak to such issues in an amicus filing (section 7 d). This would clarify some existing ambiguities as well as signal that courts should show deference to appropriate Chief Counsel views on the RFA.

The SBA Chief Counsel is not an expert on the substance of OSHA or Clean Air, but is an expert on the procedural requirements of small business regulatory analyses. GAO and other observers have confirmed what is common knowledge, that certain RFA terms are ambiguous or their meaning is subject to debate. If the Chief Counsel had authority to issue regulatory guidance on RFA procedures, that would provide some needed certainty, as well as establish the guidance as

entitled in certain situations to judicial deference. The Council on Environmental Quality under the National Environmental Policy Act (NEPA) issues procedural regulations defining the process for performing analysis of the environmental effects of Federal actions. NEPA was very much in the minds of the RFA sponsors in 1980 as a model for regulatory review. The SBA should be able to play a role for Regulatory Flexibility similar to the role CEQ plays for NEPA.

Make the periodic review of RFA Section 610 more thorough, transparent and publicly available through internet dissemination. (Section 6)

This welcome change might result in better performance under what is probably the least effective section of the RFA. As our government inexorably piles regulation on regulation, despite the best intentions of individual administrations, there must be some mechanism for reviewing cumulative impact and identifying existing rules which should be rethought or set aside. Indeed, President Obama's Executive Order 13563 is aimed at exactly the same problem, requiring retroactive reviews of existing rules. This principle should be strengthened in statute.

HR 527 includes many other positive reforms of the process, including a further attempt to define the specific grounds under which the chief counsel, a Presidential appointee, may appear in court as an amicus commenting, inevitably negatively, on a regulatory action being taken by another agency led by a Presidential appointee. This is a tough needle to thread, but notwithstanding the traditional reluctance of the Department of Justice to tolerate any other Federal official in court outside their representation, the circumstances in which such an important step can be taken can be more constructively defined.

The need for many of these reforms is apparent after two decades of experience with a very important law. The success of the Regulatory Flexibility Act is a tribute to the Congress and to this Committee's continuing interest in small business regulatory reform, as well as the SBA Chief Counsel for Advocacy's monitoring efforts. It also reflects the increasingly effective interest of the OMB Office of Information and Regulatory Affairs and some thoughtful agency and office leaders in the science and methodology of making good regulatory decisions. Small business has been saved billions of dollars in unnecessary regulatory costs because of this law. The proposed set of improvements will ensure that this record continues and is improved.

**Testimony of
Jane C. Luxton**

before the

**Committee on Small Business
U.S. House of Representatives**

June 15, 2011

on

**“Lifting the Weight of Regulations:
Growing Jobs by Reducing Regulatory Burdens”**

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STATEMENT OF JANE C. LUXTON
BEFORE THE COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

Hearing on "Lifting the Weight of Regulations:
Growing Jobs by Reducing Regulatory Burdens"

June 15, 2011

Good afternoon, and thank you for the opportunity to testify regarding H.R. 527 and 585. I am Jane Luxton, a partner in the environmental law practice of the law firm of Pepper Hamilton LLP, resident in its Washington, DC, office. My legal career has included both public and private sector experience, and over the course of that time, I have had considerable exposure to small business issues, the Office of Advocacy of the Small Business Administration, and the workings of the Regulatory Flexibility Act (RFA). My testimony is given on my own behalf as a private citizen, but it is based on my years of practice and experience with these issues.

Although my government service does not include working for the Office of Advocacy, I am one of its biggest fans and support the proposed bills' efforts to strengthen the role and ability of that Office in protecting small business in the regulatory arena. In particular, H.R. 527 addresses some of the major concerns that have gotten in the way of effective help to small business entities.

In discussion after discussion on the RFA, including the amendments added in the Small Business Regulatory Enforcement Fairness Act (SBREFA), the one problem that comes up most often is the lack of consideration of the impact of indirect effects in rulemaking efforts. It is probably no accident that H.R. 527 tackles this issue in the first substantive section of the bill. The clear statement that indirect effects must be taken into account is necessary to overcome an interpretation in the case law that unfortunately cut this type of real-world,

substantial impacts on small business out of the equation. To get an accurate gauge of the actual effects of regulation, indirect impacts must be restored to the analysis.

Similarly, in today's difficult economic times, many have spoken out strongly about the unacknowledged cost of cumulative regulatory burden. Small businesses are most likely to feel and least able to afford these extra burdens. Section 3 of the bill requires rulemaking agencies to conduct more detailed analysis of several important factors, but among the most needed are the requirements for greater consideration of other rules that may overlap or conflict with a proposed rule and add cumulative economic impact to small entities.

Section 5 of the bill would expand the SBREFA panel process to all agencies when they are proposing rules that will have a significant economic impact on a substantial number of small entities or trip the threshold of a major rule under the Congressional Review Act. In my experience, SBREFA panels have proven time and again that they improve rules, making them more cost-effective and substantively stronger and lessening adverse impacts on small business. They provide a unique opportunity for small business representatives to become involved at the formative stage of a rule, before positions harden. I have seen the positive contribution of SBREFA panels in numerous EPA rules. I have also been engaged in discussions relating to the development of the SBREFA panel process for the Consumer Financial Protection Bureau created under last year's Dodd-Frank Act and am aware that bringing a new agency within the SBREFA panel process can be a large undertaking. From what I have observed, the Office of Advocacy's training programs and assistance can greatly assist in this kind of transition, and I strongly believe there are significant benefits to bringing more of the big-impact rules within the SBREFA panel process.

Section 5 also would require agencies that are subject to the SBREFA process to do a better job of making available as much information as possible about a proposed rule, as early as possible, for use by SBREFA panelists and small entity representatives (SERs). This change would address problems with inadequate information that have arisen in some rules, which have undermined the ability of SERs to offer effective suggestions to the rulemaking agency for minimizing burden on small business while still achieving the agency's goals.

The final section I would like to highlight today is the bill's requirement in Section 6 for periodic review of rules. As I have previously said, the cumulative impact of each new rule adds heavy burdens to small businesses, which are ill-equipped to absorb an unending flow of extra costs. Requiring agencies to review existing regulation is one idea on which the Administration and Congress seem to agree. This legislation would ensure that this beneficial process continues in periodic reviews of impacts on small business, by imposing mechanisms to ensure the job gets done.

These bills serve the important purpose of addressing some shortcomings of previous legislation that have come into focus over time. They will strengthen the ability of the Office of Advocacy to fulfill its mission of serving as the voice of small business in the regulatory process in ways that are particularly needed in our current era of serious economic challenge. The RFA and SBREFA offer a strong foundation for protecting small business against excessive regulatory burden, but as the title of this hearing indicates, they could still use a little improvement.

I appreciate the opportunity to offer these comments. I look forward to your questions.

**STATEMENT OF
HARRY J. KATRICHIS
BEFORE THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES**

"Lifting the Weight of Regulations: Growing Jobs by Reducing Regulatory Burdens"

June 15, 2011

Chairman Graves, Ranking Member Velazquez and Members of the Committee, my name is Harry Katrichis and I appear here today to discuss my experience in several regulatory reform efforts that have been undertaken by this Committee over more than a quarter century; and to lend my strong support for Committee and Congressional action on H.R. 527 and H.R. 585.

First of all, I want to thank the Committee for inviting me to testify today. For me, this is like old-home week. For approximately 10 years, one-sixth of my life, I had the privilege and honor of serving as the Republican Chief Counsel of this Committee. I served under three different Chairmen and two different Ranking Members during the 1990s. I look back on my time with this Committee as a true high point of my career.

For the Freshman Members of this Committee, I want you to know that your time on this Committee will prove to be some of the best time you will have as a Member of the House. This has always been a Committee where partisan acrimony has been mostly left at the front door. Throughout the 1990's, I enjoyed excellent working relationships with my peers on the Democratic staff of this Committee and with the Committee's Democratic Members.

This rich history of bipartisanship stands out most in the area of the myriad regulatory reform efforts undertaken by this Committee going back to its very creation as a standing Committee of the House in the 1970's.

Former Members of this Committee make up a virtual who's who of the legislative branch. Several current and former U.S. Senators have served on this Committee when they were in the House, such as Rob Portman, Ron Wyden and John Thune just to name a few. House Speaker Boehner was a Member of this Committee. John Dingell was a Member of this Committee for several years. And, Dave Camp, currently the Chairman of the Ways and Means Committee, served on this Committee during his early years in the House.

While several regulatory reform efforts were undertaken by this Committee's historical predecessor - - the Select Committee on Small Business (1941-1974), the real heavy work of regulatory reform began with those Committee Members that were first elected in 1976. Two Freshmen Members of that class stand out in my memory as two of hardest working advocates for true regulatory reform. They are Andy Ireland, then a Democratic Member from Florida (he later switched parties) and Ike Skelton, a Democratic Member from Missouri. I am very proud to say that I know both of these gentlemen. These two Members, along with many others, were the driving force behind what came to be the Regulatory Flexibility Act of 1980. Another driving force behind the effort to get the Regulatory Flexibility Act passed was then Senator John Culver. As a member of the Senate Judiciary Committee, Senator Culver was instrumental in pushing the RFA to eventual passage. I'm proud to say that John Culver and I are friends - - we had the pleasure of working together

for over six years as colleagues at Arent Fox. I still see John regularly; he lives a short distance away from me in Bethesda and we enjoy an occasional cigar on his patio many a Saturday afternoon. But I digress.

H.R. 527 is the closest thing I've ever seen to addressing the gaps in true regulatory oversight that were left after the passage of the original Regulatory Flexibility Act and the efforts to improve the RFA with the passage of SBREFA. I commend the Committee for having this hearing on this important issue.

While I wasn't involved in the early work that led to the passage of the original Regulatory Flexibility Act, I was involved in the early efforts to implement it while working for Frank Swain at the Office of Advocacy in the mid 1980's. Back then, many regulatory agencies paid only lip service to the requirements of the RFA. For many agencies, the automatic default was to certify that a pending rule would not affect small entities. They learned very early in the day that to do so held no downsides for them – the Office of Advocacy had no real meaningful recourse.

By the time the White House Conference on Small Business came about in 1986, the small business community had come to realize that we needed some genuine "beefing up" of the RFA. Legislation to amend and strengthen the RFA during the late 80's and early 90's came and went without final action. In the early 1990's, the 102nd and 103rd Congresses to be exact, we had several Small Business Committee hearings on regulatory reform efforts. In addition to official Committee and Subcommittee hearings, the House Republican Policy Committee, through its Subcommittee on Small Business, held hearings on reforming and strengthening the

RFA. These hearings were chaired by Susan Molinari, the Subcommittee's Chairman.

One of the truly memorable hearings of the Small Business Committee during that time frame was a Subcommittee hearing by the Subcommittee on Regulation, then chaired by Ron Wyden. This hearing focused on OSHA and its apparent inability to understand what the RFA required it to do. Back then, OSHA was probably the worst actor on the regulatory front as far as small business was concerned. Part of what was revealed in that hearing ultimately led to the creation of regulatory review panels that were included in SBREFA some four years later.

Speaking of SBREFA, let's take another short stroll down memory lane. Upon the change in control of the House after the 1994 election, much of the information that was gleaned from hearings of this Committee and other sources (such as the 1986 White House Conference on Small Business) was placed in legislative form for quick Congressional Action. The amendments to the RFA that would eventually find their way into SBREFA a year later, moved swiftly through this Committee and the Judiciary Committee, and were passed by the full House in March of 1995. While some of the Congressional champions of small business regulatory reform had changed since the efforts of the 1970's, some were still here fighting on. Andy Ireland had retired in 1992. Senator John Culver lost his re-election bid in 1980. But some of the "old guard" remained - - Ike Skelton was still in the House and Ron Wyden was a brand new Senator. Others that joined the fray included Jim Talent, first elected in 1992, Norm Sisisky, first elected in 1980, and Tom Ewing, who took the torch of RFA reform from Andy Ireland as Andy was headed toward retirement.

As often happens, the other body (Senate) took a little longer to get through their legislation for meaningful regulatory reform for small business. But those efforts, led in large part by the Senate Small Business Committee and its Chairman Kit Bond and Ranking Member Dale Bumpers, resulting in what came to be SBREFA. The passage of SBREFA not only gave us most of the needed reforms and enhancements to the RFA, it also gave us pre-regulatory review panels for OSHA and EPA rulemakings and it gave us the Congressional Review Act. These and other components were great enhancements to what the House had already done a year earlier.

The bad news is that the regulators made a few adjustments and found both new and some of their old ways to obviate compliance with the letter and spirit of both the RFA and the amendments to the RFA contained in SBREFA. While many in this town refer to the press/media as the 4th Estate, I have always believed that regulatory agencies are the true 4th Estate of the Federal Government.

I firmly believe that the improvements to the RFA and SBREFA contained in H.R. 527 will go a long way in taming the 4th Estate of the Federal Government to the benefit of small businesses.

As for H.R. 585, I completely support it. While professionally I have never been involved in the ebb and flow of size standard disputes (I would tend to view it as akin to learning Medicare reimbursement codes), I do believe that the Office of Advocacy needs to be the final arbiter of what a small business is for purposes of federal regulatory action.

Thank you again for allowing me to be part of this hearing, and I look forward to your questions.

The Regulatory Flexibility Act Improvements Hearing

***Testimony of Adam M. Finkel, Sc.D.
Executive Director, Penn Program on Regulation and Senior Fellow, Penn Law School***

***Before the U.S. House of Representatives
Committee on Small Business***

June 15, 2011

Chairman Graves, Ranking Member Velázquez, and Members of the Committee—thank you for the opportunity to testify on this important topic. I am an environmental health scientist and former government regulator, who currently helps to direct a university-wide program on regulatory law and policy at the University of Pennsylvania. These views are my own and not necessarily those of Penn or Penn Law.

For the past 25 years, I have been immersed in the study of the costs and benefits of regulations and other interventions to protect human health, safety, and the environment. I am a strong supporter of, and a pioneer in developing improved methods for, cost-benefit analysis as an organizing principle to make these regulations as efficient and equitable as possible. From 1995-2000, I directed the health rulemaking divisions at the U.S. Occupational Safety and Health Administration (OSHA), and for several years thereafter was OSHA's Regional Administrator in the six-state Rocky Mountain region—so I have helped write and enforce the kinds of standards we gather to discuss today. In particular, I co-chaired the very first SBREFA panel—for OSHA's ill-fated tuberculosis proposal in late 1996. On a personal note, I owe my educational opportunities to a small business—my father worked for 47 years as a sales rep for Crawford Furniture of Jamestown (N.Y.), which currently has about 160 employees—so my interest in this issue is in finding regulatory solutions that accommodate the special concerns of small businesses, of their workers, and the citizens affected by their products and their environmental footprints.

I hope we can do better than clash about subjective, and hopelessly overbroad, accusations about the entire regulatory system as it affects small business. In this hearing, and certainly in the testimony from your previous hearing on March 30, the familiar litany of complaints is front-and-center: (1) small business is “groaning under the weight of too many regulations;” (2) the regulations are too stringent because risk assessors are determined to exaggerate the dangers we face; (3) small business operators have too little access to the regulatory process; and (4) agencies hold their noses and listen to small-business input, only to go their merry ways and dismiss their concerns or say they can’t possibly be accommodated.

Given enough time and open-minded listeners, I think I could convince you that the opposite of each of these four premises is more correct. According to the most reliable estimates of costs and benefits (produced by the agencies with substantial input from scholars, industry, and public-interest groups, and scrutinized carefully by OIRA), most individual regulations, and certainly all regulations aggregated together, yield benefits far in excess of their costs. If there is any legitimate “groaning,” these are the groans of those who bear some of the costs that are returned to our society in the form of even larger benefits. Next, substantial research over several decades has demonstrated that risk assessments at EPA, OSHA, and elsewhere certainly do not systematically exaggerate risk, but often underestimate it (references 1, 2, 3)—the complaint about risk “conservatism” is in large part a hoax invented by scholars with little or no training in risk science. This is mainstream expert opinion—in 1994 and again in 2009, for example, consensus committees of the National Academy of Sciences (4, 5) recommended that EPA *increase* all its carcinogen risk assessment estimates by a factor of at least ten-fold, to correctly account for the half of the human population whose genetic makeup and environmental histories make them more susceptible than the average person implicitly modeled in all such assessments to date. Equally important, the track record of regulatory economics is clearly one of exaggeration—*ex post* accounting of regulatory costs running systematically (much) lower than the dire pre-regulatory estimates thereof (6, 7, 8). Together, these biases mean that when an agency says that benefits exceed costs, it is probably understating that case, and that we may often reject welfare-increasing rules that only *seem* to be close to the line.

The adequacy of small-business access and the sincerity of agency receptiveness to small-business concerns are of course highly subjective, but in my experience, OSHA and EPA (on their own and with enthusiastic prodding from OIRA) take *very* seriously any suggestions that can reduce small-business costs without foregoing even more societal benefits in the effort to provide targeted relief, as I will elaborate below. We know how important small business is to our overall economy and to our local communities, but the difference between “a needless, job-killing mandate” and a life-saving “wise restraint that makes us free” is partly subjective, and partly what cost-benefit analysis exists to distinguish between. Are automobile drivers “groaning under the weight” of speed limits? Should local, state, and federal agencies provide “small driver compliance guides” to help us get the most from our cars while obeying the law? The answers to questions like these might suggest that the clash between small business and regulatory agencies is becoming one-sided, and could use a dose of perspective.

Indeed, I think the evidence is fairly compelling that providing more small-business access and demanding more obeisance from the agencies is a solution in search of a problem. Let me illustrate with two examples from OSHA. The 2006 hexavalent chromium standard contains a report from the SBREFA panel. By my count, small business made 38 different recommendations to OSHA, and the agency adopted 34 of them. This comports with my recollection of the SBREFA panel for the tuberculosis proposal, which occurred under the Clinton Administration. But I hasten to add that although I think the SBREFA panels serve a useful function, we were quite able to fully accommodate the special concerns of small business *before* SBREFA came into effect. In 1997, we amended the new methylene chloride standard at the request of small business; we provided longer start-up dates for all establishments with fewer than 20 employees (and for establishments in selected industrial sectors with fewer than 150 employees), and made a very important concession where the realities of small-business and the biophysics of methylene chloride came into

conflict.¹ After I left OSHA, the agency did a Section 610 lookback on this standard, and I think there were no complaints from small business, who realized the need for, and the relative ease of, modernizing their controls to waste less product and improve the health of their workforce.

Fortunately, I think there are constructive alternatives to this black-and-white view of whether agencies should be told to “do more to help small businesses.” *My basic message today is that there are other more pressing needs in regulatory analysis and risk management than these Congressional attempts, however well-meaning they might be, to do yet more for the most favored constituency in the process.* I will offer in turn: one general observation about how to make regulations more cost-effective; two analytic points about the relationship between costs and benefits in small businesses; three specific suggestions for improving the small-business regulatory process; and a final important concern.

1. Putting Small Business Analyses in Context:

As someone interested in reducing the needless toll of environmental damage and worker injury and illness caused by too few regulations and too much non-compliance with regulations on the books, I am disappointed that Members of the Committee are advocating for more roadblocks in the way of sensible standards. As an analyst, though, I appreciate that the RFA and SBREFA instruct the agencies to look carefully at the tail of the cost distribution (an issue of equity), rather than just at the total cost. Anything that helps agencies shine a light on those most affected by regulation is in my view a possible high priority as we seek to improve the regulatory process. So then why do I conclude that HR 527 and HR 585 are not credible attempts to improve? For two reasons, one obvious and one perhaps less so:

¹ Respirators with filters and cartridges are largely ineffective against methylene chloride; employers who needed extra time to install engineering controls would have had to install expensive air-supplying equipment to protect their workers, only to abandon this equipment after the permanent controls were in place. OSHA amended the standard to allow small businesses to move directly into engineering controls, increasing worker risk temporarily but funneling all expenditures into permanent controls.

- Analyses cost money – far less than the money we waste by not knowing enough, but they can't be done for free. I testified before House committees five or six times in the 1990s about the opportunities to put hundreds of thousands of dollars into doing better scientific and economic analyses at the agencies, and thereby save billions of dollars in needless private-sector control expenditures and needless illness and environmental damage. Since then, the number of required analyses has proliferated substantially, while agency analytic budgets and staff continue to fall. Pardon my bluntness, but a bill like HR 527, which requires agencies to conduct intricate and highly speculative analyses of specific indirect effects of regulation, while providing no resources to do so, is a set-up.
- Any good idea can be ruined by fixating on the wrong piece of it. Through statutes and Executive Orders, the agencies are now supposed to think in each rulemaking about nearly 30 different ways in which over-regulation or under-regulation can disproportionately affect individuals' economic productivity or their health and safety. Small businesses are not the only constituency in the tail of the cost distribution (there are required analyses of impacts on local governments, on property holders, on energy suppliers), and the agencies are also supposed to care about the tail of the risk distribution (children's health, environmental justice, etc.). *Small business analysis already dominates all these other considerations.* A recent GAO report (9) documented convincingly that agencies spend *far* more effort analyzing small-business impacts than any other special aspect of risk or cost. My colleague Stuart Shapiro (10) has suggested that Congress and the White House might eliminate all ancillary analyses so that agencies can concentrate on doing better cost-benefit analyses. I would prefer the agencies be encouraged (and adequately funded!) to do better analyses of all the forgotten impacts. But no matter what, in the face of all the disparate impacts we ignore, the *last* thing we need is more study of the (small-business) impacts we already know best.

2. Costs and Benefits in Small Business:

Even if for some reason small business deserves much more attention than any other constituency affected by regulation, it is important to analyze those affects even-handedly and in context. As an expert in cost-benefit analysis, let me offer two constructive criticisms of the RFA and SBREFA, which HR 527 only worsens:

- “Costs” come in both positive and negative forms, but Congress has instructed agencies to look at one and not the other. Economists understand that the “general equilibrium” after a rule would come into place is the correct measure of the rule’s net economic impact (11); looking only at the “partial equilibrium” of first-order (negative) economic effects to those businesses that have to incur compliance costs is at best only half the story. The existing small businesses that will profit due to regulatory changes, and the new businesses that will only get off the ground if a regulation creates a new market, are voiceless in the current process – but if we care about entrepreneurship, agencies should seek the whole answer, not just half of it (12).
- Different risks created by small business deserve different treatment. The best case for easing the burden on small business relative to larger firms occurs when the harm is proportional to firm size and can be “pooled.” For example, a ton of carbon dioxide will have the same radiative-forcing effect regardless of who emits it, and so a rule that reduces all 100-ton sources by 90 percent and all 1-ton sources by only 50 percent is better for the environment, and cheaper for the small sources, than one that requires all to reduce by 80 percent.² But other risks are “up close and personal,” and when we trade them, real people can suffer. Substitute mercury for CO₂, and I hope it will be clear that the residents near the small sources of mercury should not be expected on principle to face the full brunt of risk so that larger sources somewhere else can take more of the

² This strategy will backfire, however, when there are so many small sources that collectively they become the lion’s share of the problem, as cogently demonstrated in a forthcoming paper by Stack and Vandenbergh (13).

responsibility for control. I am particularly concerned about the premise that workers employed by small businesses are less important because there are fewer of them in each facility. Many small businesses are exceedingly dangerous places to work. A 2006 RAND Corp. study (14) found that fatality rates in very small establishments averaged eight times higher than in larger establishments in the same industrial sector. Are there ways to slightly decrease protections for these workers in the name of great economic savings to their employers? There often are, and in my experience OSHA is very receptive to good ideas (whether first aired in SBREFA panels or in regular notice-and-comment) of this type. But let's not persist in the illusion that we can make up for regulatory rollbacks to small business by focusing attention on big business – often, the harms are irreversible, and the “efficient” approach of discriminating by firm size leaves us with the kind of statistics that are in fact “people with the tears wiped away.”

3. Suggestions for Improving Regulations Affecting Small Businesses:

In contrast to many of the provisions of HR 527, which I think are unnecessary, gratuitous, and will result in regulations with slightly lower costs but tragically greater risks, let me offer three ideas for constructive change:

- I read the 46-page memorandum dated June 8, 2011, from Chairman Graves explaining HR 527. It paints a picture of the SBREFA panel process as much more adversarial than I remember. But to the extent that regulations do pit the costs to small business against the health and safety of those affected by their operations, why does Congress insist on requiring the agencies to hear only from one side and not the other? I sense no enthusiasm here for eliminating the panels in the name of avoiding delay, so why not add a bit more time and balance the input? EPA could convene panels of citizens who live next door to small businesses, and OSHA could convene panels of workers at small companies, to get *their* suggestions for creative regulatory modification. If the response to this

idea is that “those groups can freely express their views during notice and comment,” one might ask why that same dismissal didn’t apply to small business itself when Congress enacted SBREFA.

- In my experience, both at OSHA and recently as a consultant to a large city trying to accommodate small-business concerns while restricting the use of toxic dry-cleaning solvents, small entity representatives do themselves a disservice by focusing on attacking the science base for regulatory action, rather than concentrating on creative ideas to reduce small-business cost burden without unduly squandering regulatory benefits. These comments are often chock-full of misinterpretations of the science. I don’t think it calls for legislative intervention, but it does dilute the purpose of the RFA to make the agencies explain their risk assessments to the general public, to OIRA, and to SBREFA panelists, especially when any scientific uncertainties do not affect small businesses any differently than they do large ones.
- I realize this is a hearing about regulation, but I’d still like to take the opportunity to encourage more *non-regulatory* solutions of a particular type. When I was at OSHA, we developed several “product stewardship partnerships” involving government, large manufacturers, and small businesses who purchase a hazardous product and expose their workers to it. These arrangements allowed creative groups of manufacturers to in effect pay for, and monitor the effectiveness of, behavioral and technological changes among their small-business customers, and allowed OSHA to monitor voluntary codes of practice rather than having to promulgate a rule. For example, the leading manufacturers of fiberglass insulation material (through their trade association, the North American Insulation Manufacturers Association) provided free training videos, respirators, and industrial hygiene sampling to thousands of installing contractors through the “Health and Safety Partnership Program” (see <http://www.naima.org/about-naima/product-stewardship.html>). The regulatory agencies have put enormous resources into compliance assistance information for small businesses, but there would be less need for such

materials if manufacturers would work more directly with their customers and users in the spirit of product stewardship.

4. *Small Business Relief—for Small Businesses:*

Nothing squanders life-saving benefits any faster than a regulation that is weakened for the wrong reasons. Delay is frustrating, but in many ways a regulation that fails to decrease risks (or worse, one that increases risks) is more disappointing. I believe if Congress insists on amending a statute (the RFA) that already gives ample access and ample deference to small business, it should above all amend it to make clear that agencies should not (with rare exceptions they can explain) routinely extend to all businesses exemptions and shortcuts that small businesses argue they need for reasons of their size. For example, the 2006 OSHA chromium standard features a Permissible Exposure Limit that in my view was shamefully weak. At the new legal limit, by the risk assessment calculations of a well-respected industry consulting firm, workers face an increased chance of roughly 3 in 100 of developing lung cancer over a working lifetime. This extremely high level of risk clearly violates the instructions the Supreme Court gave OSHA in 1980 to strive to lower grave risks to 1 in 1000 or far below, but in the chromium rule OSHA said it could do no better than this, because some firms would have to spend up to 2.7 percent of their revenues to control to a less horrific exposure level (and arguably couldn't raise their prices to cover this cost). But more than 75 percent of all firms clearly could have achieved the lower level ($1 \mu\text{g}/\text{m}^3$ instead of $5 \mu\text{g}/\text{m}^3$), because sampling showed they were already there! It was only concern for a few small establishments that drove the level higher. More than 558,000 entities were affected by the chromium standard, but the most-affected subsector (electroplating job shops) involved only 2,630 firms (all but 32 of them small entities as defined by the SBA size standard). While OSHA did express concern for a few other subsectors' economic feasibility problems, it may in fact have allowed five-fold more risk to half a million workers because of economic issues affecting only *half a percent* of all firms. A "two sizes fit all" standard that gave small businesses the relief they claim they needed would have saved many more lives at essentially no greater cost. *This* is the kind of

regulatory lapse Congress should, in my opinion, be more worried about than reports, exaggerated or not, of too few special accommodations for one favored constituency.

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**Statement of
Chairman Scott Tipton
Subcommittee on Agriculture, Energy and Trade
On Wednesday, June 15, 2011
Before the House Small Business Committee hearing on
Lifting the Weight of Regulations: Growing Jobs by Reducing Regulatory Burdens**

Thank you Chairman Graves and Ranking Member Velázquez for convening today's hearing. I would like to join my colleagues in welcoming our panelists as we continue to examine how reducing regulatory burdens

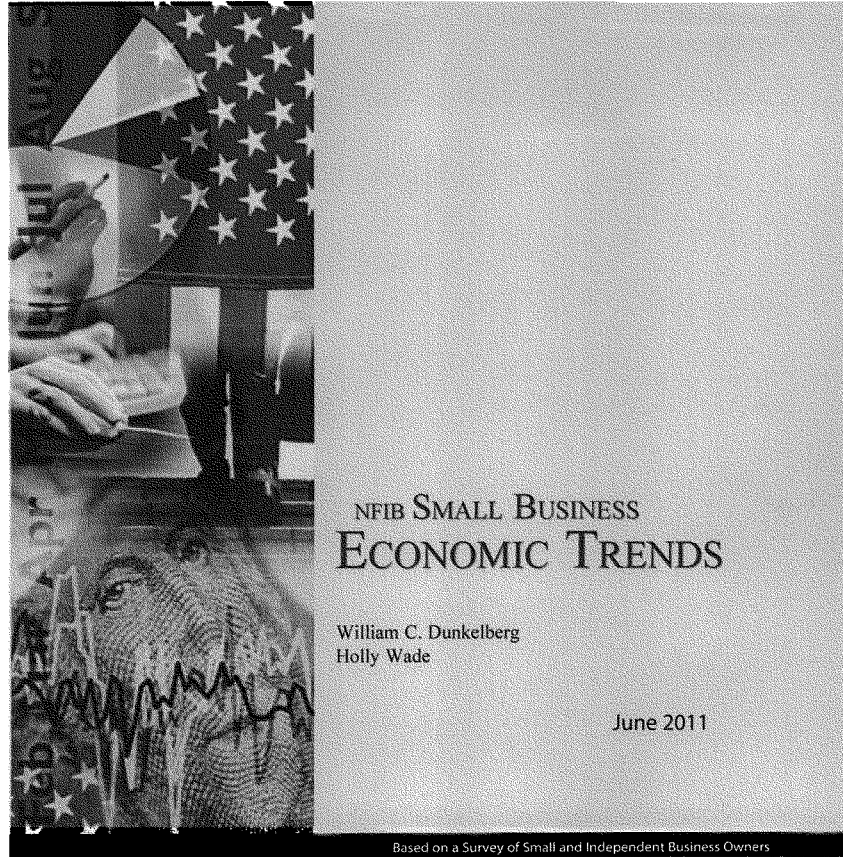
Regulation costs the American people 1.75 trillion dollars annually. And just last year, the Obama Administration unleashed 46 new regulations that will place an additional 26.5 billion drain on the economy. To be clear, not all regulation is unwarranted. Common sense rules play an important role in our economy and in keeping the American people safe. However, common sense has been lost in a regulatory process that has become politicized and wrought with bureaucracy and overlap.

Most of the time I am of the opinion that small businesses are better served by government getting out of the way and providing certainty. When it comes to government regulations on small businesses, this is usually my mentality. As a small business owner, I know firsthand the negative impacts that unnecessary regulations and excessive government involvement can have on entrepreneurs who are already stretching limited budgets.

Economic recovery starts with cutting spending, addressing overregulation, and removing hurdles for small business. As Chairman of the House Small Business Committee Subcommittee on Agriculture, Energy and Trade, I plan to take action. The fact that federal regulation targets small business more than any other sector is not acceptable. It's time we change the way that regulation is enacted and increase Congressional oversight in the regulatory process so that we can act to eliminate overlapping and contradictory regulation, and know the full economic impact of a new regulation before it is passed.

I applaud the premise behind the Regulatory Flexibility Act and the fact that in many instances it has lead to highlighting excessive regulations and the costs they impose on small businesses. In the future I would like to see greater consideration of these factors by implementing agencies. In instances where the RFA has demonstrated a significant impact on small businesses as a result of a particular regulation, I would recommend greater adherence to not adopting these regulations or at minimum adopting regulatory alternatives.

Again, Chairman Graves, thank you for holding today's hearing. I do have a few subsequent questions at this time.



SMALL BUSINESS OPTIMISM INDEX COMPONENTS

Index Component	Seasonally Adjusted Level	Change From Last Month	Contribution Index Change
Plans to Increase Employment	-1%	-3	*
Plans to Make Capital Outlays	20%	-1	*
Plans to Increase Inventories	-3%	-2	*
Expect Economy to Improve	-5%	3	*
Expect Real Sales Higher	3%	-2	*
Current Inventory	-1%	-2	*
Current Job Openings	12%	-2	*
Expected Credit Conditions	-11%	2	*
Now a Good Time to Expand	5%	1	*
Earnings Trend	-24%	2	*
Total Change		-4	*

Column 1 is the current reading; column 2 is the change from the prior month; column 3 the percent of the total change accounted for by each component; * is under 1 percent and not a meaningful calculation.

NFIB SMALL BUSINESS
ECONOMIC TRENDS

The NFIB Research Foundation has collected Small Business Economic Trends Data with Quarterly surveys since 1973 and monthly surveys since 1986. The sample is drawn from the membership files of the National Federation of Independent Business (NFIB). Each was mailed a questionnaire and one reminder. Subscriptions for twelve monthly SBET issues are \$250. Historical and unadjusted data are available, along with a copy of the questionnaire, from the NFIB Research Foundation. You may reproduce Small Business Economic Trends items if you cite the publication name and date and note it is a copyright of the NFIB Research Foundation. © NFIB Research Foundation. ISBS #0940791-24-2. Chief Economist William C. Dunkelberg and Policy Analyst Holly Wade are responsible for the report.

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SUMMARY

OPTIMISM INDEX

The Index of Small Business Optimism fell 0.3 points in May to 90.9. This month marks the third monthly decline in a row. The proximate cause is the fact that 1 in 4 owners still reports weak sales as their top business problem. Consumer spending is weak, especially for “services” a sector dominated by small businesses. Also, inflation is a growing concern now with 1 in 10 citing this as their most serious business problem meaning cost side pressures coming in the “back door”, not rising food prices at home.

LABOR MARKETS

There was no significant job creation on “Main Street”, at least among NFIB’s 350,000 member firms. Twelve percent (seasonally adjusted) reported unfilled job openings, down 2 points and a clear signal that unemployment rates are headed up. Over the next three months, 13 percent plan to increase employment (down 3 points from April) and 8 percent plan to reduce their workforce (up 2 points), yielding a seasonally adjusted net negative 1 percent of owners planning to create new jobs, a very poor reading.

CAPITAL SPENDING

The frequency of reported capital outlays over the past six months was steady at 50 percent of all firms, an historically weak reading. The percent of owners planning capital outlays in the next three to six months fell 1 point to 20 percent, a recession level reading. Money is cheap, but most owners are not interested in a loan to finance equipment they don’t need. Prospects are still uncertain enough to discourage any but the most profitable and promising investments. Five percent characterized the current period as a good time to expand facilities (seasonally adjusted), up 1 point but 3 points lower than January. The net percent of owners expecting better business conditions in six months was a negative 5 percent, 15 percentage points lower than January.

INVENTORIES AND SALES

The net percent of all owners (seasonally adjusted) reporting higher nominal sales over the past 3 months lost 4 percentage points, falling to a net negative 9 percent, more firms with sales trending down than up, but still the second best reading in 38 months. The net percent of owners expecting higher real sales fell 2 points to a net 3 percent of all owners (seasonally adjusted), 10 points below January’s reading. On the inventory front, more small business owners liquidated inventories this month than in April. A net negative 13 percent of all owners reported growth in inventories (seasonally adjusted), a 4 point deterioration. Any increase in inventories at the macro level will be sitting mostly at the large firms, many of whom are producers. There is not much demand for it on Main Street.

This survey was conducted in May 2011. A sample of 3,938 small-business owners/members was drawn. Seven hundred thirty-three (733) usable responses were received – a response rate of 19 percent.



INFLATION

Inflation is showing its face on Main Street. For 25 months, more owners reported cutting average selling prices than raising them. In February, this changed, with a net 5 percent reporting raising average selling prices. This has increased to 15 percent in May, a gain of 39 percentage points from the low reading in 2009 and 26 points higher than last September. The massive inventory reduction was primarily responsible for the dramatic decline in prices, but that is pretty much over as owners report “balance” in their inventory stocks. About as many owners now report stocks “too low” as report inventories “too high. Plans to raise prices fell 1 point to a net seasonally adjusted 23 percent of owners, the second highest reading in 31 months. In March 2009, the reading was a net 0 percent. The NFIB model now anticipates a stronger push on the core inflation measures, especially since rents are rising which reduces the ability of the imputation for owner inflation to offset the price increases being posted on Main Street.

PROFITS AND WAGES

In spite of rather bad economic news, reports of positive earnings trends improved 2 points in May, registering a net negative 24 percent. Certainly the increase in the frequency of price hikes is contributing to some improvement in the bottom line, but sales growth is not helping. Large firms may be posting great profits, but the trend on Main Street is still not supportive of solid hiring and capital spending. Costs for energy, materials and labor, and higher interest rates are not yet a serious problem, these are yet to come. For those reporting lower earnings compared to the previous three months, 50 percent cited weaker sales, 2 percent blamed rising labor costs, 13 percent higher materials costs, 2 percent higher insurance costs, and 7 percent blamed lower selling prices. Seven percent blamed higher taxes and regulatory costs. As for employee compensation, 6 percent reported reduced worker compensation and 16 percent reported gains yielding a seasonally adjusted net 9 percent reporting higher worker compensation, unchanged from April and the second strongest reading since the fourth quarter of 2008. A seasonally adjusted net 7 percent plan to raise compensation, also unchanged from April.



CREDIT MARKETS

Overall, 92 percent reported that all their credit needs were met or that they were not interested in borrowing. Eight percent reported that not all of their credit needs were satisfied, and 49 percent said they did not want a loan. Three percent reported financing as their #1 business problem, so for the overwhelming majority, “credit supply” is not a problem. Twenty-nine percent of all owners reported borrowing on a regular basis, down 3 points and only 1 point above the record low. A net 10 percent reported loans “harder to get” compared to their last attempt (asked of regular borrowers only), up 1 point, indicating that the lending environment is still a bit less “friendly” than during the expansion.

COMMENTARY

The May survey indicated that there was very little job creation on Main Street in May and that the unemployment rate would rise and, unfortunately, this turned out to be the case. McDonald's one time hiring binge is much appreciated, but is not a repeatable event. Taking the retail anomaly out, private job creation was clearly weaker in April and this was confirmed in May. The Administration has offered tax breaks for hiring and equipment investment with few results. Failing to understand the reasons small business owners are not hiring or investing has resulted in a set of policies that have not been very effective. Low interest rates are not an inducement to buy capital equipment that is not needed. Remember, there was much hiring and expansion based on spending by consumers who did not save. Now there is "excess capacity" and it has not yet been rationalized.

It is simple: when sales pick up, owners will have a reason to hire more workers to take care of customers, to produce more output and will have a reason to invest in new equipment and expansion. The proximate cause of the collapse of spending in 2008 was reduced consumer spending. Dealing with this was not a priority in the "stimulus." So, one in four owners still reports "weak sales" as their top business problem and surveys of consumers show they are uncertain about the future as are business owners. This is amplified by the heavy debt burdens consumers carry as they try to "restructure" and pay down debt. So the Administration is applying misdirected policies to the problem and does not want to acknowledge that some problems can not be resolved quickly. This requires patience, which few who depend on elections for their jobs possess.

The "feedstock" for inflation continued to grow, with the number of owners actually raising average selling prices reaching a net 15 percent, seasonally adjusted. Thirty-one (31) percent reported raising average selling prices, double the percent cutting prices which suggests that average price levels will be rising, and that is "inflation." The Federal Reserve protests the notion that QE2 liquidity is driving commodity prices as liquidity scours the world to find a higher return than that offered by banks, but there is a strong correlation between Federal Reserve purchases and commodity prices. Certainly the risk of "too low for too long" is starting to worry some observers. And savers are getting real tired of the low return on their savings.

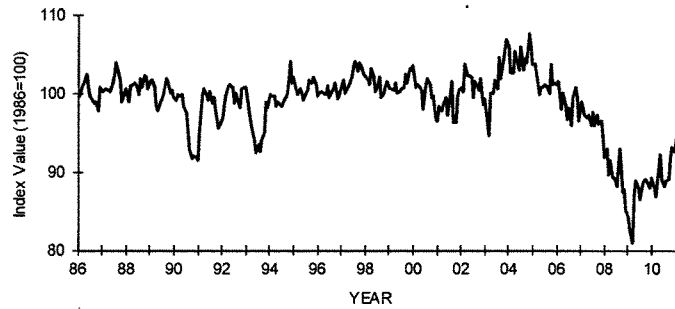
To many, the world looks like it is falling apart at the seams, with evil "leverage" creating problems everywhere. Everyone can't live beyond their means, our governments are finally starting to figure that out.



OVERVIEW - SMALL BUSINESS OPTIMISM

OPTIMISM INDEX

Based on Ten Survey Indicators
(Seasonally Adjusted 1986=100)



OPTIMISM INDEX

Based on Ten Survey Indicators
(Seasonally Adjusted 1986=100)

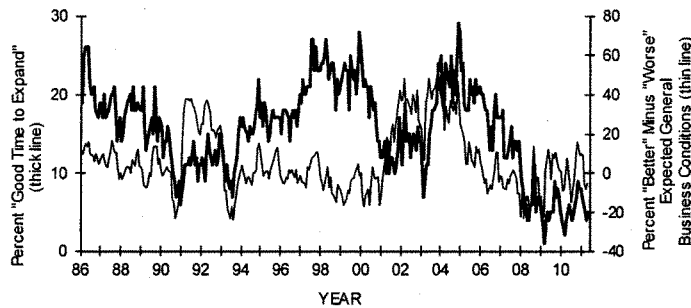
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	101.1	101.5	98.0	100.1	98.5	96.7	98.1	95.9	99.4	100.7	99.7	96.5
2007	98.9	98.2	97.3	96.8	97.2	96.0	97.6	96.3	97.3	96.2	94.4	94.6
2008	91.8	92.9	89.6	91.5	89.3	89.2	88.2	91.1	92.9	87.5	87.8	85.2
2009	84.1	82.6	81.0	86.8	88.9	87.9	86.5	88.6	88.8	89.1	88.3	88.0
2010	89.3	88.0	86.8	90.6	92.2	89.0	88.1	88.8	89.0	91.7	93.2	92.6
2011	94.1	94.5	91.9	91.2	90.9							



SMALL BUSINESS OUTLOOK

OUTLOOK

Good Time to Expand and Expected General Business Conditions
January 1986 to May 2011
(Seasonally Adjusted)



SMALL BUSINESS OUTLOOK (CONTINUED)

OUTLOOK FOR EXPANSION

Percent Next Three Months "Good Time to Expand"
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	20	20	19	18	18	13	16	13	18	20	17	17
2007	17	18	12	12	12	13	16	12	14	14	13	14
2008	9	8	5	6	4	4	6	6	11	5	7	7
2009	6	3	1	4	5	4	5	5	9	7	8	7
2010	5	4	2	4	5	6	5	4	6	7	9	8
2011	8	7	5	4	5							

MOST IMPORTANT REASON FOR EXPANSION OUTLOOK

Reason Percent by Expansion Outlook
May 2011

Reason	Good Time	Not Good Time	Uncertain
Economic Conditions	3	45	18
Sales Prospects	3	4	2
Fin. & Interest Rates	1	1	0
Cost of Expansion	0	2	1
Political Climate	0	9	4
Other/Not Available	0	2	2

OUTLOOK FOR GENERAL BUSINESS CONDITIONS

Net Percent ("Better" Minus "Worse") Six Months From Now
(Seasonally Adjusted)

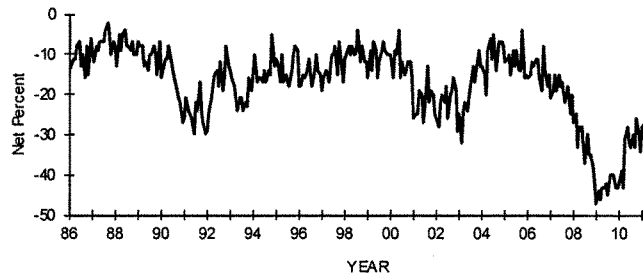
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	6	3	-5	-3	-10	-8	-6	-8	2	11	11	-4
2007	-1	-2	-7	-8	-3	-5	-1	0	2	-2	-10	-10
2008	-22	-9	-23	-12	-12	-19	-17	4	14	-4	-2	-13
2009	-12	-21	-22	2	12	7	-3	10	8	11	3	2
2010	1	-9	-8	0	8	-6	-15	-8	-3	8	16	9
2011	10	9	-5	-8	-5							



SMALL BUSINESS EARNINGS

EARNINGS

Actual Last Three Months
January 1986 to May 2011
(Seasonally Adjusted)



ACTUAL EARNINGS CHANGES

Net Percent ("Higher" Minus "Lower") Last Three Months
Compared to Prior Three Months
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	-16	-15	-12	-13	-11	-11	-16	-19	-8	-14	-18	-15
2007	-21	-19	-15	-19	-15	-18	-17	-22	-20	-18	-25	-20
2008	-27	-25	-33	-28	-28	-33	-37	-30	-35	-35	-38	-42
2009	-47	-44	-46	-43	-43	-42	-45	-40	-40	-40	-43	-43
2010	-42	-39	-43	-31	-28	-32	-33	-30	-33	-26	-30	-34
2011	-28	-27	-32	-26	-24							



MOST IMPORTANT REASON FOR LOWER EARNINGS

Percent Reason
May 2011

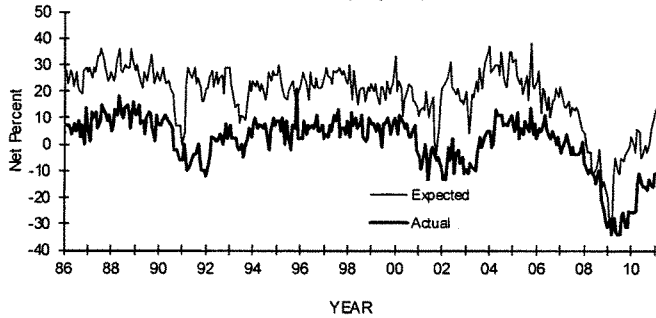
	Current Month	One Year Ago	Two Years Ago
Sales Volume	23	26	35
Increased Costs*	11	11	7
Cut Selling Prices	3	3	5
Usual Seasonal Change	5	5	5
Other	4	4	6

* Increased costs include labor, materials, finance, taxes, and regulatory costs.

SMALL BUSINESS SALES

SALES

Actual (Prior Three Months) and Expected (Next Three Months)
January 1986 to May 2011
(Seasonally Adjusted)



ACTUAL SALES CHANGES

Net Percent ("Higher" Minus "Lower") Last Three Months
Compared to Prior Three Months
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	2	6	5	6	11	6	3	2	5	2	0	3
2007	-3	-1	0	4	1	-4	-1	-4	-4	-4	-3	1
2008	-7	-8	-11	-9	-11	-12	-15	-10	-11	-21	-25	-29
2009	-31	-28	-34	-28	-33	-34	-34	-27	-26	-31	-31	-25
2010	-26	-26	-25	-15	-11	-15	-16	-16	-17	-13	-15	-16
2011	-11	-11	-12	-5	-9							

SALES EXPECTATIONS

Net Percent ("Higher" Minus "Lower") During Next Three Months
(Seasonally Adjusted)

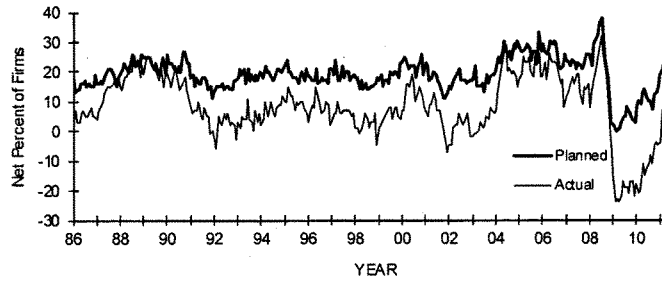
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	24	28	12	21	20	13	18	10	17	17	21	18
2007	22	17	14	14	16	11	14	13	14	13	8	6
2008	4	0	-3	-3	-11	-11	-9	-6	-2	-16	-14	-18
2009	-20	-29	-31	-11	-5	-10	-11	-5	-6	-4	-2	-1
2010	3	0	-3	6	5	-5	-4	0	-3	1	6	8
2011	13	14	6	5	3							



SMALL BUSINESS PRICES

PRICES

Actual Last Three Months and Planned Next Three Months
 January 1986 to May 2011
 (Seasonally Adjusted)



ACTUAL PRICE CHANGES

Net Percent ("Higher" Minus "Lower")
 Compared to Three Months Ago
 (Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	18	23	17	26	24	23	23	22	20	16	17	8
2007	12	13	15	18	16	19	19	13	9	15	14	16
2008	8	13	18	20	23	29	32	26	20	15	0	-6
2009	-15	-24	-23	-24	-22	-17	-19	-19	-21	-17	-17	-22
2010	-18	-21	-20	-11	-15	-13	-11	-8	-11	-5	-4	-5
2011	-4	5	9	12	15							



PRICE PLANS

Net Percent ("Higher" Minus "Lower") in the Next Three Months
 (Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	29	27	26	28	30	29	30	29	22	21	22	26
2007	24	23	22	24	23	21	23	22	21	22	26	26
2008	26	22	29	31	32	36	38	30	24	18	11	3
2009	2	1	0	1	3	5	5	8	6	5	4	3
2010	8	10	9	13	14	11	10	10	7	12	13	15
2011	19	21	24	24	23							

SMALL BUSINESS EMPLOYMENT

ACTUAL EMPLOYMENT CHANGES

Net Percent ("Increase" Minus "Decrease") in the Last Three Months
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	1	4	-1	-3	-3	-2	2	5	-3	5	0	3
2007	2	4	-6	-5	-2	0	1	4	-1	3	0	2
2008	0	-3	-7	-9	-10	-12	-5	-4	-10	-9	-10	-18
2009	-15	-15	-22	-25	-24	-23	-17	-16	-16	-12	-12	-12
2010	-10	-9	-11	-12	-12	-10	-5	-2	-3	-6	-2	-1
2011	-4	-2	-4	-6	-3							

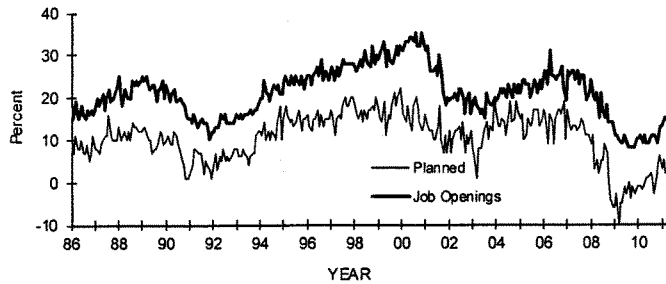
QUALIFIED APPLICANTS FOR JOB OPENINGS

Percent Few or No Qualified Applicants
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	40	40	39	41	46	45	42	46	44	46	44	40
2007	41	41	43	43	42	45	43	44	48	46	40	37
2008	37	36	36	37	33	39	36	35	38	35	31	30
2009	*	*	24	24	25	27	26	23	25	25	28	21
2010	24	26	23	26	26	25	28	32	30	28	27	28
2011	28	30	29	32	30							

EMPLOYMENT

Planned Next Three Months and Current Job Openings
January 1986 to May 2011
(Seasonally Adjusted)



SMALL BUSINESS EMPLOYMENT (CONTINUED)

JOB OPENINGS

Percent With Positions Not Able to Fill Right Now
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	26	26	23	31	25	25	24	25	25	27	22	19
2007	26	25	26	26	24	26	23	25	25	22	19	21
2008	24	20	19	21	15	21	17	15	18	14	14	14
2009	11	11	10	9	9	11	9	8	8	8	8	10
2010	10	11	9	11	9	9	10	11	11	10	9	13
2011	13	15	15	14	12							

HIRING PLANS

Net Percent ("Increase" Minus "Decrease") in the Next Three Months
(Seasonally Adjusted)

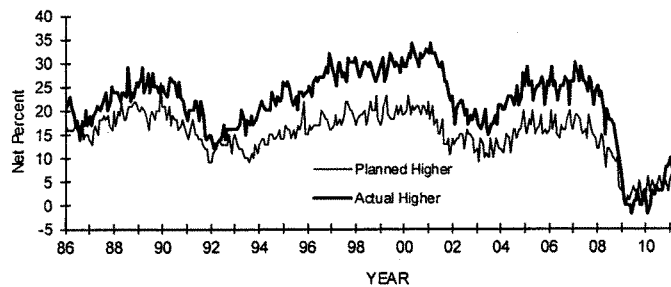
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	17	16	9	16	14	9	15	17	17	16	19	10
2007	17	13	12	13	13	12	13	15	14	11	11	11
2008	9	11	3	5	2	5	5	9	7	0	-4	-6
2009	-6	-3	-10	-5	-5	-1	-3	0	-4	-1	-3	-2
2010	-1	-1	-2	-1	1	1	2	1	-3	1	4	6
2011	3	5	2	2	-1							



SMALL BUSINESS COMPENSATION

COMPENSATION

Actual Last Three Months and Planned Next Three Months
January 1986 to May 2011 (Seasonally Adjusted)



SMALL BUSINESS COMPENSATION (CONTINUED)

ACTUAL COMPENSATION CHANGES

Net Percent ("Increase" Minus "Decrease") During Last Three Months
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	25	24	22	27	24	22	24	25	28	23	25	21
2007	26	30	28	26	29	26	27	24	27	26	21	24
2008	25	23	24	20	15	20	18	18	17	15	13	9
2009	7	1	0	0	0	-2	1	1	3	0	0	3
2010	1	-2	0	3	2	4	3	3	3	4	8	8
2011	10	8	7	9	9							

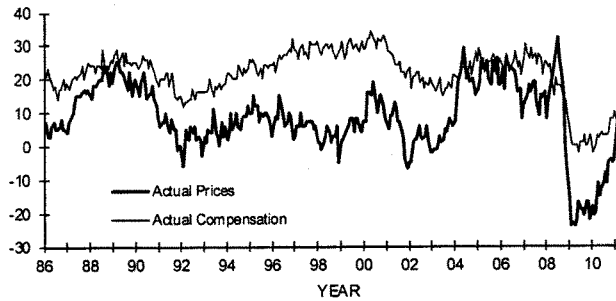
COMPENSATION PLANS

Net Percent ("Increase" Minus "Decrease") in the Next Three Months
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	16	20	16	19	15	14	17	16	16	18	20	17
2007	16	19	19	18	16	15	16	14	19	16	15	14
2008	12	12	15	14	8	12	12	11	10	9	10	4
2009	3	3	0	2	1	3	4	3	3	5	1	1
2010	1	6	3	5	4	3	5	6	3	5	5	3
2011	5	7	9	7	7							

PRICES AND LABOR COMPENSATION

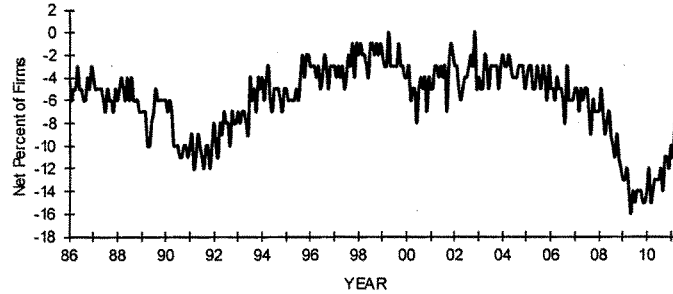
Net Percent Increase and Net Percent Compensation
(Seasonally Adjusted)



SMALL BUSINESS CREDIT CONDITIONS

CREDIT CONDITIONS

Loan Availability Compared to Three Months Ago*
January 1986 to May 2011



* For the population borrowing at least once every three months.

REGULAR BORROWERS

Percent Borrowing at Least Once Every Three Months
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	37	38	36	40	38	41	38	46	35	37	38	35
2007	37	39	35	37	38	35	36	35	36	36	32	34
2008	36	34	33	36	35	35	34	34	32	33	31	33
2009	35	36	33	33	34	30	33	32	33	33	33	33
2010	32	34	35	31	32	29	32	31	33	31	28	30
2011	31	31	29	32	29							



AVAILABILITY OF LOANS

Net Percent ("Easier" Minus "Harder")
Compared to Three Months Ago
(Regular Borrowers)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	-5	-5	-6	-4	-5	-5	-6	-8	-3	-6	-6	-6
2007	-5	-5	-7	-5	-6	-5	-5	-7	-9	-6	-7	-7
2008	-7	-5	-7	-9	-8	-7	-9	-10	-11	-9	-11	-12
2009	-13	-13	-12	-14	-16	-14	-15	-14	-14	-14	-15	-15
2010	-14	-12	-15	-14	-13	-13	-13	-12	-14	-11	-11	-12
2011	-10	-11	-8	-9	-10							

SMALL BUSINESS CREDIT CONDITIONS (CONTINUED)

BORROWING NEEDS SATISFIED

Percent of All Businesses Last Three Months Satisfied/
Percent of All Businesses Last Three Months Not Satisfied
(All Borrowers)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	36/4	37/6	36/6	38/5	38/5	39/5	38/4	44/4	34/4	36/7	34/4	36/5
2007	36/5	40/5	35/5	38/4	39/6	36/4	37/5	35/4	37/5	36/6	32/4	32/7
2008	34/5	35/4	32/6	34/5	34/7	35/5	32/7	35/6	33/6	31/6	31/7	32/6
2009	33/8	32/8	29/10	30/8	28/9	30/10	28/10	30/7	30/10	29/9	29/10	28/8
2010	27/11	29/9	29/11	28/9	28/8	25/10	27/9	27/9	27/9	26/9	25/9	28/9
2011	28/8	29/8	28/7	28/8	28/8							

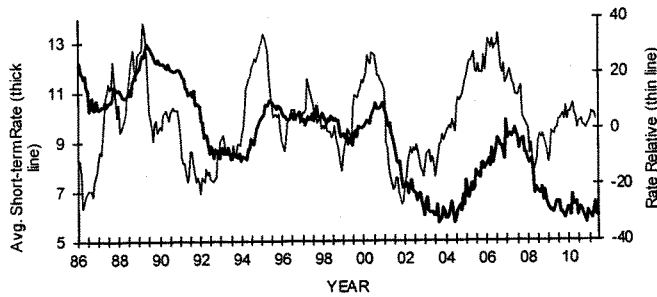
EXPECTED CREDIT CONDITIONS

Net Percent ("Easier" Minus "Harder") During Next Three Months
(Regular Borrowers)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	-6	-7	-7	-8	-8	-8	-7	-9	-5	-6	-5	-7
2007	-7	-8	-8	-7	-6	-6	-6	-9	-10	-8	-8	-10
2008	-9	-8	-9	-11	-10	-10	-12	-11	-13	-16	-13	-15
2009	-14	-16	-14	-12	-15	-13	-14	-13	-15	-16	-15	-15
2010	-13	-14	-16	-15	-12	-13	-14	-14	-14	-12	-10	-11
2011	-10	-10	-9	-13	-11							

INTEREST RATES

Relative Rates and Actual Rates Last Three Months
January 1986 to May 2011



SMALL BUSINESS CREDIT CONDITIONS (CONTINUED)

RELATIVE INTEREST RATE PAID BY REGULAR BORROWERS

Net Percent ("Higher" Minus "Lower") Compared to Three Months Ago

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	26	32	29	32	28	30	30	34	22	20	23	16
2007	17	21	19	16	15	12	12	14	15	4	3	1
2008	0	-9	-5	-12	-15	-11	-4	-2	-3	-2	-6	-8
2009	-12	-9	-1	-2	0	0	3	3	5	3	8	3
2010	6	6	9	5	4	0	2	3	1	1	0	1
2011	3	6	5	5	3							

Borrowing at Least Once Every Three Months.

ACTUAL INTEREST RATE PAID ON SHORT-TERM LOANS BY BORROWERS

Average Interest Rate Paid

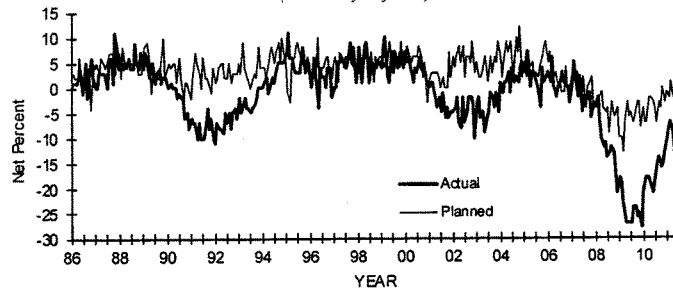
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	8.1	8.3	8.0	8.7	8.1	8.7	9.1	9.0	8.8	8.8	8.3	9.8
2007	9.1	9.3	9.3	9.2	9.5	9.3	9.2	8.7	9.0	9.1	8.5	8.5
2008	8.3	8.1	8.3	7.7	6.9	7.1	7.0	6.9	7.1	6.6	7.0	6.6
2009	6.4	6.2	6.2	6.1	6.3	6.5	6.5	6.1	6.1	6.0	5.9	6.3
2010	6.3	6.0	6.8	6.4	6.5	6.0	6.3	6.3	6.2	6.0	5.7	6.2
2011	6.0	6.0	5.9	6.5	6.0							



SMALL BUSINESS INVENTORIES

INVENTORIES

Actual (Last Three Months) and Planned (Next Three Months)
January 1986 to May 2011
(Seasonally Adjusted)



SMALL BUSINESS INVENTORIES (CONTINUED)

ACTUAL INVENTORY CHANGES

Net Percent ("Increase" Minus "Decrease") During Last Three Months
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	3	1	6	0	-2	0	0	3	1	0	0	-3
2007	1	5	2	-2	2	-5	-2	-3	-2	-1	-6	-3
2008	-4	-2	-7	-10	-12	-11	-14	-13	-12	-13	-17	-21
2009	-18	-19	-23	-27	-27	-27	-27	-24	-24	-26	-25	-28
2010	-21	-18	-18	-18	-20	-21	-19	-15	-14	-16	-15	-13
2011	-10	-8	-7	-9	-13							

INVENTORY SATISFACTION

Net Percent ("Too Low" Minus "Too Large") at Present Time
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	-1	-2	0	-1	-1	-1	-2	-6	-6	-3	-6	-7
2007	-2	-2	-5	-3	-6	-7	-2	-2	-3	-7	-3	-3
2008	-4	-4	-1	-1	-3	-1	-4	-3	-1	-4	-4	-7
2009	-6	-5	-4	-5	-2	-5	-4	-4	0	-3	-2	-4
2010	-1	-1	-1	1	0	-1	0	-1	-2	1	-3	-3
2011	0	2	-1	1	-1							

INVENTORY PLANS

Net Percent ("Increase" Minus "Decrease") in the Next Three to Six Months
(Seasonally Adjusted)

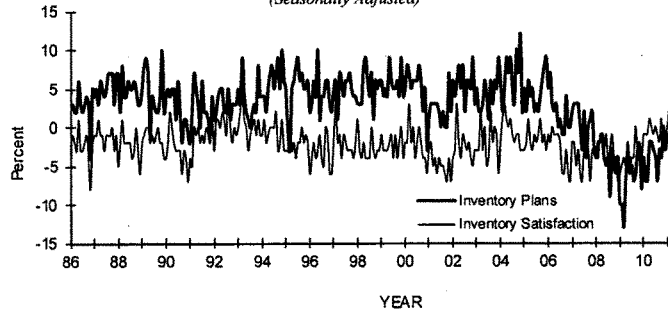
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	5	7	3	2	3	0	1	-1	-1	4	0	0
2007	2	3	3	3	0	-3	2	-4	0	1	2	-3
2008	-4	-2	-2	-1	-4	-5	-4	-9	-3	-5	-6	-4
2009	-10	-10	-13	-7	-3	-6	-5	-7	-6	-3	-3	-8
2010	-4	-7	-7	-2	2	-3	-4	-7	-3	-4	0	-3
2011	-1	-2	1	-1	-3							



SMALL BUSINESS CAPITAL OUTLAYS

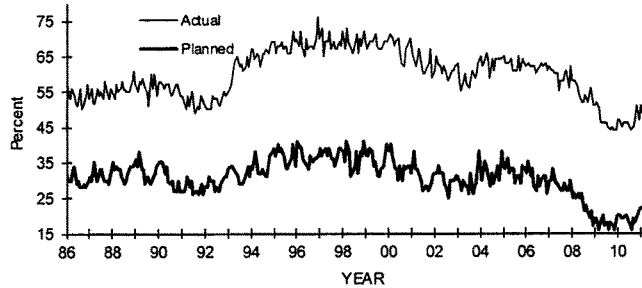
INVENTORY SATISFACTION AND INVENTORY PLANS

Net Percent ("Too Low" Minus "Too Large") at Present Time
 Net Percent Planning to Add Inventories in the Next Three to Six Months
(Seasonally Adjusted)



CAPITAL EXPENDITURES

Actual Last Six Months and Planned Next Three Months
January 1986 to May 2011
(Seasonally Adjusted)



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ACTUAL CAPITAL EXPENDITURES

Percent Making a Capital Expenditure During the Last Six Months

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	62	63	62	62	62	60	61	62	63	62	63	61
2007	62	61	61	60	60	55	58	58	60	61	56	62
2008	58	58	57	56	54	52	52	54	52	54	56	51
2009	51	52	50	46	46	46	46	45	44	45	44	44
2010	47	47	45	46	46	46	45	44	45	47	51	47
2011	51	49	51	50	50							

SMALL BUSINESS CAPITAL OUTLAYS (CONTINUED)

TYPE OF CAPITAL EXPENDITURES MADE

Percent Purchasing or Leasing During Last Six Months

Type	Current	One Year Ago	Two Years Ago
Vehicles	16	17	16
Equipment	36	32	35
Furniture or Fixtures	12	10	9
Add. Bldgs. or Land	4	5	3
Improved Bldgs. or Land	9	11	9

AMOUNT OF CAPITAL EXPENDITURES MADE

Percent Distribution of Per Firm Expenditures
During the Last Six Months

Amount	Current	One Year Ago	Two Years Ago
\$1 to \$999	4	4	4
\$1,000 to \$4,999	8	6	8
\$5,000 to \$9,999	6	4	5
\$10,000 to \$49,999	18	17	15
\$50,000 to \$99,999	5	7	6
\$100,000 +	8	7	6
No Answer	1	1	2

CAPITAL EXPENDITURE PLANS

Percent Planning a Capital Expenditure During Next Three to Six Months
(Seasonally Adjusted)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	32	35	31	33	28	27	31	28	30	31	31	26
2007	30	30	33	29	29	28	27	27	29	27	27	30
2008	25	26	25	26	25	26	21	23	21	19	21	17
2009	19	18	16	19	20	17	18	16	18	17	16	18
2010	20	20	19	19	20	19	18	16	19	18	20	21
2011	22	22	24	21	20							



SINGLE MOST IMPORTANT PROBLEM

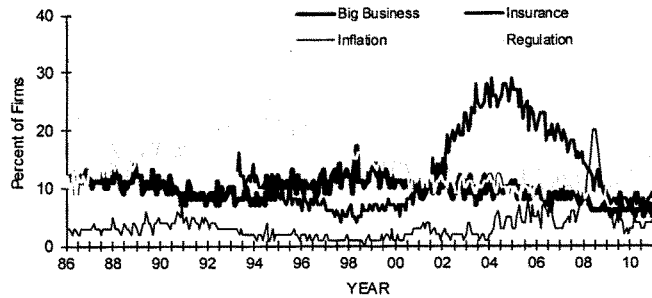
SINGLE MOST IMPORTANT PROBLEM

May 2011

Problem	Current	One Year Ago	Survey High	Survey Low
Taxes	20	22	32	8
Inflation	10	4	41	0
Poor Sales	25	30	34	2
Fin. & Interest Rates	3	3	37	1
Cost of Labor	4	4	9	2
Govt. Reqs. & Red Tape	15	13	27	4
Comp. From Large Bus.	7	6	14	4
Quality of Labor	5	4	24	3
Cost/Avail. of Insurance	7	9	29	4
Other	4	5	31	1

SELECTED SINGLE MOST IMPORTANT PROBLEM

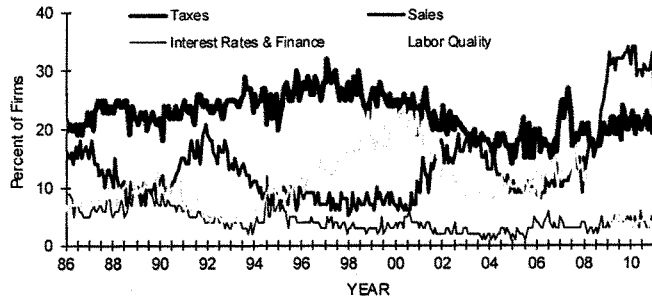
Inflation, Big Business, Insurance and Regulation
January 1986 to May 2011



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SELECTED SINGLE MOST IMPORTANT PROBLEM

Taxes, Interest Rates, Sales and Labor Quality
January 1986 to May 2011



SURVEY PROFILE

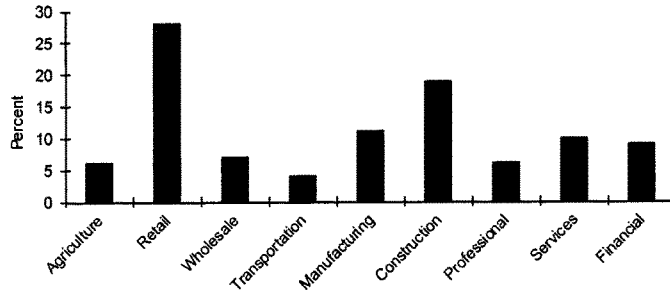
OWNER/MEMBERS PARTICIPATING IN ECONOMIC SURVEY NFIB

Actual Number of Firms

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2006	1274	484	471	1094	440	416	1007	480	380	1075	451	446
2007	1755	750	737	1703	618	589	1613	720	674	1614	719	670
2008	1845	700	735	1768	737	703	1827	812	743	1992	826	805
2009	2013	846	867	1794	814	758	1994	882	827	2059	825	830
2010	2114	799	948	2176	823	804	2029	874	849	1910	807	804
2011	2144	774	811	1985	733							

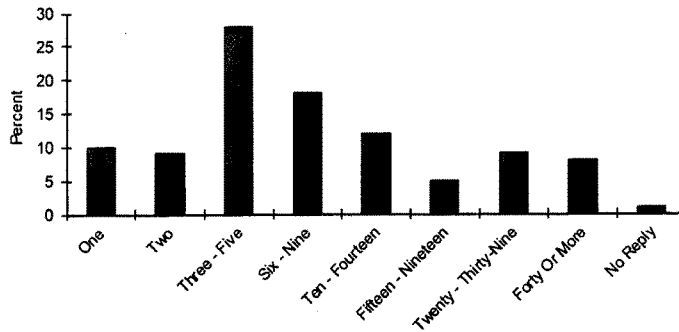
NFIB OWNER/MEMBERS PARTICIPATING IN ECONOMIC SURVEY

Industry of Small Business



NFIB OWNER/MEMBERS PARTICIPATING IN ECONOMIC SURVEY

Number of Full and Part-Time Employees



NFIB RESEARCH FOUNDATION SMALL BUSINESS ECONOMIC SURVEY

SMALL BUSINESS SURVEY QUESTIONS	PAGE IN REPORT
Do you think the next three months will be a good time for small business to expand substantially? Why?	4
About the economy in general, do you think that six months from now general business conditions will be better than they are now, about the same, or worse?	5
Were your net earnings or "income" (after taxes) from your business during the last calendar quarter higher, lower, or about the same as they were for the quarter before?	6
If higher or lower, what is the most important reason?	6
During the last calendar quarter, was your dollar sales volume higher, lower, or about the same as it was for the quarter before?	7
Overall, what do you expect to happen to real volume (number of units) of goods and/or services that you will sell during the next three months?	7
How are your average selling prices compared to three months ago?	8
In the next three months, do you plan to change the average selling prices of your goods and/or services?	8
During the last three months, did the total number of employees in your firm increase, decrease, or stay about the same?	9
If you have filled or attempted to fill any job openings in the past three months, how many qualified applicants were there for the position(s)?	9
Do you have any job openings that you are not able to fill right now?	10
In the next three months, do you expect to increase or decrease the total number of people working for you?	10
Over the past three months, did you change the average employee compensation?	11
Do you plan to change average employee compensation during the next three months?	11



Are...loans easier or harder to get than they were three months ago?12

During the last three months, was your firm able to satisfy its borrowing needs?.....13

Do you expect to find it easier or harder to obtain your required financing during the next three months?.....13

If you borrow money regularly (at least once every three months) as part of your business activity, how does the rate of interest payable on your most recent loan compare with that paid three months ago?.....14

If you borrowed within the last three months for business purposes, and the loan maturity (pay back period) was 1 year or less, what interest rate did you pay?14

During the last three months, did you increase or decrease your inventories?.....15

At the present time, do you feel your inventories are too large, about right, or inadequate?.....15

Looking ahead to the next three months to six months, do you expect, on balance, to add to your inventories, keep them about the same, or decrease them?15

During the last six months, has your firm made any capital expenditures to improve or purchase equipment, buildings, or land?16

If [your firm made any capital expenditures], what was the total cost of all these projects?17

Looking ahead to the next three to six months, do you expect to make any capital expenditures for plant and/or physical equipment?17

What is the single most important problem facing your business today?18

Please classify your major business activity, using one of the categories of example below.....19

How many employees do you have full and part-time, including yourself?19





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it's not what you say, it's what they hear

U.S. Chamber of Commerce
Small Business Outlook Survey
April 2011

Key Findings

- **The small business climate has deteriorated.** Small business owners almost universally agree—by a 73% to 17% margin—that the climate of the last two years has hindered their growth. Respondents were split in how they view the next two years, with 38% believing it will improve, 37% believing that it will worsen, and the remainder uncertain. (See questions 10 and 11.)
- **Uncertainty abounds with small businesses.** They are worried about current regulations, but are even more concerned about what Washington will do next. 49% say they “really don’t know” if their business’ best days are ahead of them. (See questions 9 and 25.)
- **Small business continues to be hesitant to hire.** 55% of respondents cited *economic* uncertainty as their greatest hiring obstacle and 35% said *Washington* uncertainty impacted growth, while 35% cited too little revenue as their greatest obstacle. 70% of respondents do not plan to hire new employees next year, and 9% will continue layoffs. (See questions 16 and 20.)
- **Two of the top issues of concern are America’s debt and the health care law.** 80% said America’s debt and deficit have a negative impact on their business, and 72% of respondents say the health care law has made hiring more difficult. (See questions 27 and 29.)
- **Small businesses want Washington to get out of the way.** In a commanding majority, 79% of small business owners say they want more certainty, and only 14% want more government assistance. (See question 14.)

U.S. Chamber of Commerce Research Survey Topline –Small Business Owners
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Methodology: The U.S. Chamber of Commerce conducted two small business focus groups on April 1, 2011, in Philadelphia, as well as a national survey sample of small business owners through interviews with 900 businesses April 8 -12, 2011. The findings from these studies are highlighted in the inaugural quarterly "Small Business Outlook Survey." The margin of error is +/- 3.3%.

BUSINESS ENVIRONMENT

You will see list of entities. Please indicate whether you think each one is basically headed in the right direction or pretty seriously off on the wrong track.

1. The United States.

TOTAL	
11%	HEADED IN THE RIGHT DIRECTION
84%	OFF ON THE WRONG TRACK
5%	DON'T KNOW/REFUSED

2. The national economy.

TOTAL	
14%	HEADED IN THE RIGHT DIRECTION
83%	OFF ON THE WRONG TRACK
4%	DON'T KNOW/REFUSED

3. Your business.

TOTAL	
75%	HEADED IN THE RIGHT DIRECTION
16%	OFF ON THE WRONG TRACK
9%	DON'T KNOW/REFUSED

4. Your local economy.

TOTAL	
34%	HEADED IN THE RIGHT DIRECTION
58%	OFF ON THE WRONG TRACK
8%	DON'T KNOW/REFUSED

5. Generally speaking, do you believe that Congress is ... economic growth and progress in the United States today?

TOTAL	
6%	PROMOTING
87%	STANDING IN THE WAY OF
7%	DON'T KNOW/REFUSED

6. Generally speaking, do you believe that President Obama is ... economic growth and progress in the United States today?

TOTAL	
18%	PROMOTING
75%	STANDING IN THE WAY OF
7%	DON'T KNOW/REFUSED

7. Do you approve or disapprove of the job President Obama is doing on the economy?

TOTAL	
21%	NET APPROVE
7%	STRONGLY APPROVE
14%	SOMEWHAT APPROVE
4%	TOTALLY NEUTRAL—NO OPINION
15%	SOMEWHAT DISAPPROVE
61%	STRONGLY DISAPPROVE
76%	NET DISAPPROVE

8. Are America's best days...?

TOTAL	
22%	AHEAD OF US
36%	BEHIND US
42%	I REALLY DON'T KNOW

9. Are your business's best days...?

TOTAL	
30%	AHEAD OF US
21%	BEHIND US
49%	I REALLY DON'T KNOW.

10. Do you believe the overall climate for small businesses like yours has...over the past two years?

TOTAL	
17%	NET IMPROVED
2%	GREATLY IMPROVED
5%	SOMEWHAT IMPROVED
10%	SLIGHTLY IMPROVED
10%	STAYED THE SAME
16%	SLIGHTLY WORSENE
24%	SOMEWHAT WORSENE
33%	GREATLY WORSENE
73%	NET WORSENE
-	DON'T KNOW/REFUSED

11. Do you believe the climate for small businesses like yours will ... over the next two years?

TOTAL	
38%	NET IMPROVE
3%	GREATLY IMPROVE
12%	SOMEWHAT IMPROVE
23%	SLIGHTLY IMPROVE
19%	STAY THE SAME
10%	SLIGHTLY WORSEN
15%	SOMEWHAT WORSEN
12%	GREATLY WORSEN
37%	NET WORSEN
7%	DON'T KNOW/REFUSED

12. Who do you blame most for America's current economic challenges?

TOTAL	
48%	ALL OF THEM IN WASHINGTON
17%	DEMOCRATS IN CONGRESS
13%	PRESIDENT OBAMA
9%	THE GLOBAL ECONOMIC SITUATION
8%	PRESIDENT BUSH
5%	REPUBLICANS IN CONGRESS
1%	DON'T KNOW/REFUSED

13. When you think about what your small business and others across America need most right now, which of the following actions from Washington would help more?

TOTAL	
72%	GET OUT OF THE WAY
24%	A HELPING HAND
4%	DON'T KNOW/REFUSED

14. When you think about what your small business and others across America need most right now, which of the following actions from Washington would help more?

TOTAL	
79%	MORE CERTAINTY
14%	MORE ASSISTANCE
7%	DON'T KNOW/REFUSED

15. Which of the following issues in Washington makes you feel most uncertain about the future of your business?

TOTAL	
50%	THE FEDERAL DEBT & DEFICIT
30%	REGULATIONS COMING OUT OF WASHINGTON
17%	TAX RATES AND TAX CODE CHANGES
4%	NONE OF THESE MAKES ME FEEL UNCERTAIN.

PLANS FOR YOUR BUSINESS

16. If you had to choose, which of the following is the greatest obstacle to hiring more employees over the next two years? And what is your second choice?

TOTAL	
55%	ECONOMIC UNCERTAINTY
35%	UNCERTAINTY ABOUT WHAT WASHINGTON WILL DO NEXT
35%	TOO LITTLE REVENUE
26%	THE REQUIREMENTS OF THE HEALTHCARE BILL
16%	TOO MUCH REGULATION
16%	HIGH TAXES
7%	NOT ENOUGH CREDIT
7%	NONE OF THESE

17. Which of the following best describes how the number of employees in your business has changed compared to 3 years ago?

TOTAL	
14%	NET ADDED
2%	ADDED MANY EMPLOYEES
12%	ADDED A FEW EMPLOYEES
42%	KEPT THE SAME NUMBER OF EMPLOYEES
30%	LOST A FEW EMPLOYEES
13%	LOST MANY EMPLOYEES
43%	NET LOST
1%	DON'T KNOW/REFUSED

18. Which of the following best describes how the number of employees in your business has changed compared to one year ago?

TOTAL	
13%	NET ADDED
1%	ADDED MANY EMPLOYEES
12%	ADDED A FEW EMPLOYEES
54%	KEPT THE SAME NUMBER OF EMPLOYEES
26%	LOST A FEW EMPLOYEES
5%	LOST MANY EMPLOYEES
31%	NET LOST
2%	DON'T KNOW/REFUSED

19. And looking forward over the next 3 years, do you expect that your business will most likely..?

TOTAL	
30%	NET ADD
2%	ADD MANY EMPLOYEES
28%	ADD A FEW EMPLOYEES
56%	KEEP THE SAME NUMBER OF EMPLOYEES
7%	LOSE A FEW EMPLOYEES
2%	LOSE MANY EMPLOYEES
9%	NET LOSE
5%	DON'T KNOW/REFUSED

20. And looking forward over the next one year, do you expect that your business will most likely..?

TOTAL	
17%	NET ADD
1%	ADD MANY EMPLOYEES
16%	ADD A FEW EMPLOYEES
70%	KEEP THE SAME NUMBER OF EMPLOYEES
8%	LOSE A FEW EMPLOYEES
1%	LOSE MANY EMPLOYEES
9%	NET LOSE
4%	DON'T KNOW/REFUSED

21. Thinking back over the last 3 years, is it...to access credit and grow your business?

TOTAL	
6%	NET EASIER
1%	VERY MUCH EASIER
2%	SOMEWHAT EASIER
3%	ONLY A LITTLE EASIER
29%	ABOUT THE SAME—NEITHER EASIER NOR HARDER
9%	ONLY A LITTLE HARDER
20%	SOMEWHAT HARDER
27%	VERY MUCH HARDER
56%	NET HARDER
7%	DON'T KNOW/REFUSED

22. Thinking back over the last one year, is it...to access credit and grow your business?

TOTAL	
9%	NET EASIER
1%	VERY MUCH EASIER
3%	SOMEWHAT EASIER
5%	ONLY A LITTLE EASIER
35%	ABOUT THE SAME—NEITHER EASIER NOR HARDER
8%	ONLY A LITTLE HARDER
16%	SOMEWHAT HARDER
22%	VERY MUCH HARDER
46%	NET HARDER
11%	DON'T KNOW/REFUSED

REGULATION

23. Overall, how reasonable are federal government regulations of small businesses today?

TOTAL	
14%	NET REASONABLE
3%	VERY REASONABLE
11%	SOMEWHAT REASONABLE
13%	TOTALLY NEUTRAL—NEITHER REASONABLE NOR UNREASONABLE
37%	SOMEWHAT UNREASONABLE
36%	VERY UNREASONABLE
73%	NET UNREASONABLE

24. Overall, how reasonable are state government regulations of small businesses today?

TOTAL	
17%	NET REASONABLE
1%	VERY REASONABLE
16%	SOMEWHAT REASONABLE
20%	TOTALLY NEUTRAL—NEITHER REASONABLE NOR UNREASONABLE
39%	SOMEWHAT UNREASONABLE
24%	VERY UNREASONABLE
63%	NET UNREASONABLE

25. When you think about Washington regulations, which of the following scare you more?

TOTAL	
65%	WHAT WASHINGTON WILL DO NEXT TO SMALL BUSINESS
24%	WHAT WASHINGTON HAS ALREADY DONE TO SMALL BUSINESSES
12%	NEITHER OF THESE SCARES ME.

26. Please read the following statement and respond whether you agree or disagree.

“The taxation, regulation and legislation from Washington makes it much harder for my business to hire more employees.”

TOTAL	
76%	NET AGREE
47%	STRONGLY AGREE
29%	SOMEWHAT AGREE
15%	TOTALLY NEUTRAL
5%	SOMEWHAT DISAGREE
3%	STRONGLY DISAGREE
8%	NET DISAGREE

27. Please read the following statement and respond whether you agree or disagree.

“The recent healthcare law makes it much harder for my business to hire more employees.”

TOTAL	
72%	NET AGREE
44%	STRONGLY AGREE
28%	SOMEWHAT AGREE
17%	TOTALLY NEUTRAL
5%	SOMEWHAT DISAGREE
7%	STRONGLY DISAGREE
12%	NET DISAGREE

DEBT & DEFICIT

28. As you may know, America faces a budget deficit of \$1.65 trillion and a debt of \$14.3 trillion. America borrows approximately \$4.5 billion per day to cover the shortfall. Which of these statements do you agree with most?

TOTAL	
64%	NET DEFINITE THREAT
23%	THE U.S. DEFICIT AND DEBT DEFINITELY POSE AN IMMEDIATE THREAT TO THE SUCCESS OF MY BUSINESS.
41%	THE U.S. DEFICIT AND DEBT DEFINITELY POSE A LONG TERM THREAT TO THE SUCCESS OF MY BUSINESS.
21%	THE U.S. DEFICIT AND DEBT POTENTIALLY POSE A LONG TERM THREAT TO THE SUCCESS OF MY BUSINESS.
13%	I AM PERSONALLY CONCERNED ABOUT THE DEFICIT AND DEBT, BUT IT WON'T SIGNIFICANTLY IMPACT MY BUSINESS.
2%	I AM NOT CONCERNED ABOUT THE DEFICIT AND DEBT, AND IT WON'T IMPACT MY BUSINESS.
15%	NET WON'T IMPACT

29. Please read the following statement and respond whether you agree or disagree.

"America's large national debt has a real and negative impact on my business. The bigger America's national debt, the less certain I feel about my business's future."

TOTAL	
80%	NET AGREE
49%	STRONGLY AGREE
31%	SOMEWHAT AGREE
10%	TOTALLY NEUTRAL
7%	SOMEWHAT DISAGREE
3%	STRONGLY DISAGREE
10%	NET DISAGREE

UNIONS AND SMALL BUSINESS

30. When thinking about labor unions, do you believe that overall they are... to America's economic challenges?

TOTAL	
6%	PART OF THE SOLUTION
15%	NEUTRAL—THEY ARE NEITHER PART OF THE SOLUTION NOR PART OF THE PROBLEM.
76%	PART OF THE PROBLEM
4%	DON'T KNOW/REFUSED

31. Overall, do you believe that labor unions have ... power in Washington?

TOTAL	
80%	NET TOO MUCH
66%	FAR TOO MUCH
14%	A LITTLE TOO MUCH
8%	ABOUT THE RIGHT AMOUNT
5%	A LITTLE TOO LITTLE
3%	FAR TOO LITTLE
8%	NET TOO LITTLE
6%	DON'T KNOW/REFUSED

32. As you may know, recent legislation in states like Wisconsin and Ohio has raised public debate over the issues of government unions and budget deficits. Here are two different statements about how government should set policy on government unions and spending. Which do you agree with more?

TOTAL	
84%	MY BUSINESS WILL BE BETTER OFF IF GOVERNMENT CUTS SPENDING, BALANCES ITS BUDGET AND KEEPS TAXES LOW, EVEN IF THAT MEANS REDUCING BENEFITS FOR GOVERNMENT UNION EMPLOYEES.
7%	IN THESE TOUGH TIMES, THE LAST THING WE SHOULD BE DOING IS REDUCE BENEFITS FOR GOVERNMENT UNION EMPLOYEES. MY BUSINESS RELIES ON THESE WORKERS TO BUY MY GOODS AND SUPPORT THE LOCAL ECONOMY.
9%	NEITHER OF THESE.

DEMOGRAPHICS

33. What is your age?

TOTAL	
14%	21-39
41%	40-54
33%	55-64
13%	65+
52	MEAN AGE

34. How many employees work for your company? Even if you don't know the exact number, please give your best estimate.

TOTAL	
19%	SOLE PROPRIETOR/ONE PERSON SHOP
35%	2-9
16%	10-19
16%	20-49
14%	50+
27	MEAN EMPLOYEES

35. What is your company's annual revenue? Even if you don't know the exact sum, please give your best estimate.

TOTAL	
28%	LESS THAN \$250,000
20%	\$250,000 TO \$999,000
31%	\$1 MILLION TO \$4.9 MILLION
21%	MORE THAN \$5 MILLION
\$3.4	MEAN REVENUE (IN MILLIONS)

36. Please select your business industry.

TOTAL	
15%	MANUFACTURING
11%	CONSUMER RETAIL OR STORE
8%	FINANCE, INSURANCE, OR REAL ESTATE
7%	COMPUTER, SOFTWARE OR INFORMATION TECHNOLOGY
6%	AGRICULTURE, FORESTRY, OR FISHING
6%	OFFICE, HOUSING OR ROAD CONSTRUCTION
5%	HOME SERVICES (PLUMBING, ELECTRICAL, PAINTING, LANDSCAPING, ETC.)
4%	COMMUNICATIONS, MARKETING OR PUBLIC RELATIONS
4%	HEALTH CARE
4%	BUSINESS SERVICES (BUILDING CLEANING, MAINTENANCE, ETC.)
4%	TRANSPORTATION
3%	TRAVEL, TOURISM OR ENTERTAINMENT
1%	ENERGY, ELECTRIC, OR GAS
1%	INTERNATIONAL TRADE
1%	MINING
1%	DOES NOT APPLY
20%	OTHER

37. How many years has your current business been operating?

TOTAL	
12%	0-4 YEARS
14%	5-9 YEARS
13%	10-14 YEARS
10%	15-19 YEARS
51%	20+ YEARS