

Statement by Frank Knapp, Jr.

Before the Committee on Small Business & Entrepreneurship
United States Senate

“Examining How Small Businesses Confront and Shape Regulations”

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Thank you, Chairman Risch, Ranking Member Shaheen and members of the committee. My name is Frank Knapp Jr. I am the board co-chair of the American Sustainable Business Council which, through its network represents over 200,000 businesses and more than 325,000 business professionals, advocates for advancing policies that support a vibrant and sustainable economy. I am also the President, CEO and co-founder of the South Carolina Small Business Chamber of Commerce, a statewide, 5,000+ member advocacy organization working to make state government more small-business friendly. Finally, over the past 26 years I have started and operated my own small businesses as well as owning and managing commercial and residential investment properties.

Thank you for the opportunity to testify today. Regulations are an important part of owning and running a small business. While most of the government regulations that affect small businesses come from local and state government, there are federal regulations that either directly or indirectly impact small businesses.

Small businesses do not resent good, well thought out regulations. In fact, polling by the American Sustainable Business Council has found that 86% believe that regulations are necessary and 93% believe their business can live with fair and manageable regulations. In fact, small and big businesses alike are living with regulations and growing. The economy is booming creating tens of thousands of new jobs every month. In my home state this past February we had the largest one-month increase in the number of people working.

Small business owners know that regulations, the rules of the game, level the playing field with big businesses and protect small businesses from unfair competition from big businesses. Regulations create opportunity for entrepreneurs and small businesses to innovate and grow by creating new products and services requiring new jobs. Small business owners care about their families, neighbors, workers, communities and environment which they want to keep safe and healthy. They understand the purpose of regulations in helping achieve these objectives.

The American Sustainable Business Council asked its members to give examples of how federal regulations have helped their businesses.

For Vincent Siciliano, CEO of New Resource Bank in California, Dodd-Frank has helped his business be more competitive with larger banks because of the new rules that have changed the overdraft products and reduced ATM interchange fees.

Fire standards for residential mattresses that required that all newly manufactured mattresses in the United States meet an open flame requirement and similar federal regulations for commercial mattresses helped Harrison Murphy, founder of the innovative textile company Ventex, grow his Virginia mattress manufacturing business.

Stephen McDonnell, founder and CEO of Applegate Natural and Organic Meats, believes that his business benefited from FDA regulation on food safety.

Ben Cohen, co-founder of Ben & Jerry's Ice Cream, says that his business almost melted in 1984 due to illegal actions of a bigger competitor. He attributes much of the success of his business to government protection from unfair trade practices.

Ally LaTourelle of Bioamber, Inc. says that the renewable chemical industry has developed because of regulations to protect the public encouraged private investment and increased consumer demand due to public awareness.

However, today we are here to examine how small businesses confront and shape federal regulations.

Let's first start with the process of how small businesses are involved in the regulatory development process.

As I mentioned, regulations can benefit small businesses. But we want them to be the least burdensome as necessary to achieve their intended goal and use common sense.

That was the purpose of the 1980 Regulatory Flexibility Act—to have federal agencies determine if a rule will have a significant impact on small businesses and, if so, engage small businesses to comment before finalizing the rule to hopefully achieve the goal of creating the least burdens on small businesses.

Then in 1996 came the Small Business Regulatory Enforcement Fairness Act. This gave small businesses even more input into the regulatory process of the Occupational Safety and Health Administration, the Environmental Protection Agency and the Consumer Financial Protection Bureau through the outreach efforts of the Office of Advocacy. Affected small businesses of proposed regulations from these agencies are to be part of a SBREFA panel to obtain their advice and recommendations with a final report of findings provided to the promulgating federal agency for making needed modifications to the final rule.

This is the process small businesses have to shape federal regulations. So how is it working?

Unfortunately, not real well.

The process to promulgate a rule in order to implement a law passed by Congress can take years—2, 5, even 10 or more—to finalize. This isn't the fault of the RFA or SEBREFA.

South Carolina passed its own Small Business Regulatory Flexibility Act 13 years ago and it has worked well. We have an all-volunteer Review Committee that looks at every promulgated state regulation to see how it might be amended to be less burdensome on small businesses. Very few problems are found and when they are the Committee has worked well with state agencies to resolve the issues.

But at the federal level, small businesses across this nation really aren't having input into the regulatory decision-making process that has been taken over by powerful, often big-business special interest groups lobbying the agencies. In addition to their Washington clout, the special interests have used the courts successfully to give us regulatory paralysis.

These efforts for the most part aren't to simply lessen a burden on small businesses. Instead they are designed to help big businesses protect themselves by stalling the regulatory process so that even good, well-thought out and needed regulations can't be successfully promulgated or at least the process delayed until a different political reality happens in Washington.

Making matters worse is the fact that the whole beneficial purpose of regulations is almost completely left out of the evaluation process by the agencies responsible for considering the impact on small businesses. I will go more into why this is a problem later.

Unfortunately the regulatory reforms being offered are not designed to make the regulatory process produce fair, well-crafted regulations in a timely fashion.

Instead proposals for reform would result instead in even more regulatory chaos.

- Federal agencies will take even longer than the current years or even decades to promulgate regulations,
- There will be even more avenues for opponents of regulations to delay regulations through litigation,
- Businesses will face even more uncertainty due to the longer time needed to promulgate regulations and increased litigation.

Now, I've only been discussing the front end of the regulatory process that gets all the attention. But it's the back end of the process that is just as important to small businesses—how small businesses interact with the federal regulations that already exist.

When a real small business has a concern about compliance with a federal regulation, they have two options for trying to get help.

First, they can contact the federal agency to ask for clarification or help in compliance.

Second, they can contact the Office of the National Ombudsman and ask for assistance in trying to resolve their regulatory issue with the appropriate federal agency.

The problem with option one is that a small business owner doesn't stand much of a chance in working with a big federal agency to get personal attention even if that agency has an ombudsman.

The problem with option two is that even though it is the much better path, the Office of the National Ombudsman is almost virtually unknown outside of the Small Business Administration where it is housed and it is tiny in terms of a federal agency.

If Congress shares the belief that regulations are needed in today's fast-changing world and it truly wants to help small businesses, here would be my recommendations—none of which require changing the RFA or SBREFA.

Balance the Balance Sheet

We have created a public impression that all regulations are evil and if we would just get rid of them the economy will thrive. That's the message the public hears but everyone here knows that regulations are needed for the benefits they yield.

So why do we never see the benefits of regulations in any agency analysis? For example the EPA and the Corps estimate that permitting costs under the WOTUS rule will increase over \$19 million annually and mitigation costs will rise over \$59 million. These are direct costs and some believe that indirect costs should also be reported. But there is no analysis showing how these direct costs are also direct benefits to the local economy because most of this money will be go to local small businesses for goods and services. The money doesn't just disappear. It flows through the local economy directly and indirectly.

Even the U.S Chamber and NFIB in prior testimony to Congress acknowledged that agencies are to analyze costs and benefits in the rulemaking process

However, the positive side of the ledger is always blank when the potential impacts of regulations are analyzed. The economic, health and social benefits of rules put in terms of dollars is not considered by the Office of Advocacy and the regulatory agencies. We often hear critics say that government should run like a business. Well, businesses weigh the benefits versus expenses when making a business decision. No business would invest in new equipment if all they considered was cost. Whether the absence of analyzing the benefits of a regulation in the formal process is by statute or custom, this must change if we

are to get a truly accurate data for rulemaking decisions and give the public complete information about the value of regulations.

Invest in Better Outreach and Analysis

Everyone, including the critics of the rulemaking process, wants more outreach and better analysis of regulatory impact in promulgating a rule. So let's invest in that. We have essentially starved the regulatory agencies and Advocacy while at the same time wanting both to do more. But they can't. Small business outreach is primarily to Washington insiders who want to clog up the regulatory process through heavy lobbying, litigation and creating public anxiety by quoting huge bogus costs. Then the reform proposals that get the most attention fix the wrong problems and would just make more problems. The RFA process we have today simply needs more resources so it can run more effectively and efficiently. If you want agencies to cross every "T" and dot every "I" in the RFA process, give them the resources to do it so they can both perform their everyday tasks and conduct the quality rulemaking analysis and outreach we all want.

Help Small Businesses Understand the Rules and Provide Compliance Assistance

Once a rule has been promulgated and hopefully the burden on small businesses has been reduced as much as possible, the job of the federal government is not done. Small businesses need to be educated about the new rule and, when necessary, provided regulatory compliance assistance. Congress has also set up a process for this, not only within every regulatory agency, but also through the SBA Office of the National Ombudsman. Where the Office of Advocacy works on the front end of the development of significant regulations, the Office of the National Ombudsman is charged with helping small businesses on all regulation compliance on the back end. It serves as the conduit for small businesses to have their grievances about compliance problems or other issues with federal agencies heard directly by the agencies in question in an effort for successful resolution. In this way the Office of the National Ombudsman and the agencies can detect patterns of compliance problems so that the agencies can revisit rules for modifications.

This important component of the rulemaking process is woefully underfunded. The Office of the National Ombudsman relies on volunteers to help get the message out about its vital small business services. It is for the most part unknown and thus underutilized. If Congress really wants to help small businesses comply with needed federal regulations, invest more in this small business outreach, support and feedback loop.

In conclusion, the current regulatory process can produce good rules while protecting small businesses from unnecessary burdens if we provide the adequate resources for agencies to expeditiously carry out the requirements Congress has already put in place on the front end and back end of the process. Most of the regulatory reform proposals, while achieving the agenda of some seeking to delay and stop some regulations, will inevitably fail to help the vast majority of small businesses.

Thank you for the opportunity to speak before you today and I welcome any questions the committee may have.