

Regulatory Reform

NFIB is fighting to reduce the disproportionate burden placed on small business by federal regulations. Small businesses with fewer than 20 employees face regulatory costs of almost \$7,000 per employee per year. Meaningful regulatory reform is essential to reduce the unfair regulatory burden on small businesses.

Below are just some of the key components of regulatory reform that directly affect small business:

Environmental Regulation

Next to taxes, and the associated paperwork requirements, complex environmental regulatory requirements are the most troublesome issue for NFIB's members. NFIB has continued to press for more consideration as to how the burdens imposed by the Toxics Release Inventory affect small business. Currently, the Environmental Protection Agency requires those dealing with this regulation for the first time to undergo a rigorous process to complete and file the appropriate documentation—a process estimated by EPA itself to take nearly 100 hours. Post-hoc regulations—regulations imposed after the fact—like those at work under Superfund should also be changed to minimize their unfair impacts on small businesses. NFIB continues to seek a de micro-minimus exemption for small contributors to Superfund sites, which would protect truly small businesses who inadvertently contributed to those sites. In addition, NFIB brought to light in Congress the problem of intrusive “Ability to Pay Claim” forms, which ask for very private details of a small-business owner’s family life and finances. There are also issues with regulatory matters overseen by agencies other than EPA, such as the wetlands programs administered by the Army Corps of Engineers and the endangered species programs under the Department of the Interior’s Fish and Wildlife Service.

OSHA and the Department of Labor

The small-business community scored a tremendous victory in March 2001 when Congress overturned the Clinton administration’s ergonomics regulations. NFIB continues to work to ensure that the defeated regulatory scheme is not reconstituted in a supposedly voluntary form. NFIB has stressed repeatedly that the best approach for OSHA is to offer clear assistance in showing businesses how they might limit true musculo-skeletal disorders in their workplaces. Small businesses do not want a series of new requirements that will be difficult to understand, costly to implement and undertaken without regard to how they will actually improve the health and safety of their employees. The Occupational Safety and Health Act still needs to be reformed to help fight the burdensome and often unfair regulations placed on small businesses.

Paperwork Reduction

One of the foremost concerns of NFIB members is the amount of paperwork they must file. Small-business owners ought to be spending their time on their businesses, not filling out forms for the federal government. Following passage of the Paperwork Reduction Act, NFIB has worked hard to ensure that federal agencies are doing what is required to cut the bureaucratic red tape faced by small businesses. NFIB has been active not only in pointing out the importance of letting businesses do business, but also showing where the burden can be reduced by dealing with specific agencies and regulations.

Property Rights

Many regulatory battles deal with government encroachment on how small-business owners can legitimately use their property. One such battle involves the Tucker Act, which forces property owners to choose between fighting for compensation in the Court of Federal Claims, or getting the regulatory decision overturned by the U.S. District Court. When they do press their claims in either court, or both at the same time, the court that is hearing the claim typically says that the property owner is in the wrong venue. Thus, the cases shuffle from one court to the other. Small-business owners should be allowed to have their day in court. “Eminent domain” is yet another property rights issue. A number of NFIB members have expressed concern about abusive uses of government’s power to condemn property under eminent domain. Though intended to be used for public purposes — for example, to take land for schools, roads or parks — the government is increasingly using this power on behalf of large businesses to take property that these businesses otherwise would have had to buy on the open market.

The Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) of 1980 requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make analysis available for public comment. The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 amended the RFA and provided additional tools to help achieve regulatory fairness for small business. NFIB continues to press for the full enforcement of the RFA and SBREFA. Among other things, SBREFA requires agencies to develop better compliance-assistance strategies and undertake greater review of the impact of regulations on small businesses. NFIB serves as a watchdog to ensure that, when new regulations are proposed, the impact on small business is considered.

Superfund Waste Oil

The Superfund law, passed in 1980, has been interpreted by the courts to hold service-station dealers who used licensed handlers to dispose of motor oil responsible for that disposal. The EPA has used the law to identify service station and repair shops as liable parties in lawsuits that retroactively fine small businesses for clean-up costs to Superfund sites. Limits on liability for small businesses that legally disposed of oil and protection from any response costs or damages resulting from a release or threatened release of recycled oil is critical for small businesses facing this issue.

This is just a brief overview of some of the many regulatory issues facing small businesses today.
For more information visit www.NFIB.com/issues or call NFIB at (800) 552-NFIB.

