

REGULATORY REFORM

OBJECTIVE: Reform the regulatory system so that it is fair for everyone, takes into account the views of communities and businesses, evaluates the impact rules will have on jobs and small businesses, and limits instances where agencies are able to enter into certain settlement agreements.

BACKGROUND: The National Association of Manufacturers (NAM) calculates that federal regulations cost small companies — those with fewer than 50 employees — almost \$12,000 per employee each year. With over 60 percent of private sector job creation coming from small businesses, excessive regulations not only increase their compliance costs, but also make it harder for them to grow.

Targeted reform of the regulatory process is needed to help federal agencies more fully involve the public and stakeholders when developing expensive new rules, and require agencies to prove that a new rule is necessary, supported by good data, and no more burdensome than necessary. And because small businesses are vital to our economic growth and yet more vulnerable to the burdens of new regulations, agencies should more fully consider the cost of new regulations on small business. Protections should also be put in place to bring transparency to so called “sue and settle” agreements that can place costly new requirements on businesses without their input.

Congress recognizes the challenges that increased regulations have on businesses and is actively working on a variety of solutions to address the problem. Already, a number of regulatory reform bills have been approved by the House of Representatives. In addition, President Trump has signed several Executive Orders to reduce the regulatory burden faced by businesses.

NLBMDA supports two bills in particular that would reform the regulatory process, update it, and make it more responsive to the needs of its citizens: The Regulatory Accountability Act, and Sunshine for Regulatory Decrees and Settlements Act.

REGULATORY ACCOUNTABILITY ACT: On January 11, the House of Representatives approved the *Regulatory Accountability Act* (H.R. 5) by a vote of 238 to 183. The legislation reforms the regulatory process by increasing transparency during rule development, allowing interested parties access to the data that federal agencies rely on, and making agencies consider alternatives that achieve their objective at a lower cost. NLBMDA supports these efforts and urges the Senate leadership to consider and pass the bill.

To achieve these goals, the legislation would: (1) allow for increased participation in the public commenting process; (2) mandate that agencies select the lowest cost option or demonstrate that a costlier rule is needed to protect public health, safety, or welfare; (3) allow public access to the data used in the rulemaking process to ensure that Information Quality Act standards are followed; and (4)

for the most costly rules, require the agency to publish an Advance Notice of Proposed Rulemaking and demonstrate the rule has been properly designed.

Importantly, the Regulatory Accountability Act addresses the role of small businesses in the rulemaking process. It amends the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA) to ensure agencies adequately analyze proposed rules for their potential impacts on small businesses. This section of the bill, the *Small Business Regulatory Flexibility Improvements Act*, was also introduced as standalone legislation (H.R. 33) by Rep. Steve Chabot (R-OH).

The small business section of the bill updates the RFA and SBREFA to close loopholes and more effectively reduces the disproportionate burden that over-regulation places on small entities. In addition, it requires agencies to perform a regulatory flexibility analysis when a proposed rule's effects are significant but beneficial. According to the Small Business Administration's (SBA) Office of Advocacy, because of the RFA small businesses saved \$1.4 billion in Fiscal Year 2016.

Under current law, agencies conduct a regulatory flexibility analysis only when a proposed rule has significant costs to small entities. This section expands those requirements in order to encourage agencies to select the most beneficial regulatory alternative.

DISCOURAGING "SUE AND SETTLE" TACTICS: Legislation has been introduced in both the House (H.R. 469) and Senate (S. 119) to end the practice of enacting federal regulations through "sue-and-settle" agreements. Federal agencies would be required to give the public early notification when a notice of intent to sue is received, and directs agencies seeking to enter into a consent decree settlement or agreement to publish the agreement online and in the Federal Register 60 days before it is filed in court.

These changes would help end the "sue and settle" practice of complicit federal agencies entering into legally binding agreements behind closed doors with pro-regulatory special interest groups. Unlike the normal rulemaking process, potentially-affected parties – such as businesses and even states – are often kept completely in the dark about the negotiations, and the resulting regulations can come as a complete surprise.

NLBMDA POSITION: NLBMDA supports periodic updates to federal laws and regulations, but changes are needed to bring greater transparency to the rulemaking process and take into account their impact on the regulated community, especially small businesses.

REQUEST: *House:* Pass the *Sunshine for Regulations and Regulatory Decrees and Settlements Act* (H.R. 469). *Senate:* Pass the Regulatory Accountability Act and address the role of small businesses in the rulemaking process. Pass the *Sunshine for Regulatory Decrees and Settlements Act* (S. 119).

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