COALITION FOR SENSIBLE SAFEGUARDS

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Small Business Regulatory Reform in the 112th Congress is Unwarranted

Several bills have been introduced in the House and Senate to alter the regulatory process in the name of small businesses. The bills would expand the cost-benefit analyses regulatory agencies are required to prepare, exempt small businesses from certain requirements and penalties, and generally seek to create more barriers to developing safeguards. The Coalition for Sensible Safeguards has outlined several reasons why the regulatory reform proposals being considered are unwarranted. They include:

•Regulatory reform is actually about helping big business.
Because small businesses already enjoy special benefits and breaks from regulatory requirements, many large businesses game the system in order to fit the definition of a small business. As a result, *not all "small businesses" are actually small*. Current business-size definitions are not protective enough of true small businesses, so small business regulatory reform can have unintended consequences. For example, an oil refinery may employ up to 1,500 workers before losing its status as a "small business."[1] By extending benefits tailored for small businesses to larger corporations, regulatory reform can actually make it more difficult for small businesses to remain competitive because of the unleveled playing field that is created.

•Just because a business fits the definition of small does not mean it should be exempt from meeting consumer protection, worker safety, and environmental standards.
Regardless of size, every business should be responsible for the safety of its products, services, business practices and conditions. They must be held accountable for safety lapses. Regulatory agencies tend to focus the enforcement of health and safety standards on those businesses and other entities that have flaunted federal law. Agencies must be allowed to continue this practice to protect workers and the public.

Data indicate that small companies may place their employees at greater risk than large companies. "For every sector except retail trade, establishments with 1–19 employees have the highest fatality rates," according to a 2006 RAND Corporation report.[2] "For the manufacturing, transportation and utilities, and service sectors, the fatality rate for the 1–19 category is more than seven times that for the size category that has the lowest rate." In the mining industry,

[1] "Table of Small Business Size Standards Matched to North American Industry Classification System Codes," U.S. Small Business Administration, Nov. 5, 2010, http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf (accessed June 3, 2011).
[2] John Mendeloff, Christopher Nelson, Kilkon Ko, Amelia Haviland, "Small Businesses and Workplace Fatality Risk: An Exploratory Analysis," Kauffman-RAND Center for the Study of Small Business and Regulation, 2006, http://www.rand.org/pubs/technical_reports/2006/RAND_TR371.pdf (accessed June 16, 2011).

fatality rates at mines employing less than 100 workers are 21.5 deaths per 100,000 employees or higher, while the rate at companies employing 250 or more workers is 12.0 deaths per 100,000 employees, according to government data.[3] A similar situation exists in the construction industry, where the smallest firms (less than 20 employees) account for 55 percent of construction deaths despite employing only 39 percent of the construction workforce.[4]

•Holding bad actors accountable helps to level the playing field for the small businesses that do play by the rules, and it prevents compliant companies from being left to clean up the messes of others.

For example, the Peanut Corporation of America – a family-owned business employing 90 workers in three states with annual sales of $25 million – failed to follow sanitary food safety practices in its processing plants, leading to a salmonella outbreak that sickened 700 and killed as many as nine people in 2008 and 2009.[5] The ensuing recall was one of the largest in U.S. history, involving nearly 4,000 products made by more than 200 companies, many of them small businesses.[6]

•Regulations often help the business community, including small businesses.

Some regulations protect or strengthen certain industries, including small businesses. Other regulations deliver aid to small businesses; the Small Business Administration sets standards for when and how small businesses qualify for special loans or other benefits.

At the macro level, research shows that regulations foster innovation, as a recent paper by the Economic Policy Institute found. EPI also found regulations can help specific industries, can stabilize the financial and housing markets essential to sound growth, and generally result in net benefits to society.[7] Fears of job loss due to regulations are overblown. For instance, the paper finds that the preponderance of evidence from jobs and regulations studies indicate they have a modestly positive or little to no effect on job trends and that since 2007 only 0.3 percent of mass job layoffs have been attributed to regulation.

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[3] "Number and Rate of Fatalities by Employment Size of Mining Operation, 2003-2007," CDC Workplace Safety and Health, http://www.cdc.gov/niosh/mining/statistics/images/cb7.gif (accessed June 16, 2011).

[4] "Construction Death and Injury Rates in Selected Industrial Countries," *The Construction Chart Book: The U.S. Construction Industry and its Workers*, CPWR – The Center for Construction Research and Training, 2008, http://www.cpwr.com/pdfs/CB%204th%20Edition/31_50%20Safety%20and%20Health.pdf (accessed June 16, 2011).

[5] Dan Chapman and Margaret Newkirk, "Blakely plant part of firm with humble start: Company of hardworking Lynchburg, Va., CEO has faced trouble before," *The Atlanta Journal Constitution*, Feb. 8, 2009, http://www.ajc.com/services/content/news/stories/2009/02/08/peanutcorp0208.html (accessed June 3, 2011).

[6] Kelsey Wittenberger and Erik Dohlman, "Peanut Outlook: Impacts of the 2008-09 Foodborne Illness Outbreak Linked to *Salmonella* in Peanuts," Economic Research Service, US Department of Agriculture, Feb. 2010, http://www.ers.usda.gov/publications/ocs/2010/02feb/ocs10a01/ (accessed June 3, 2011).

[7] Isaac Shapiro and John S. Irons, "Regulation, employment, and the economy: Fears of job loss are overblown," Economic Policy Institute, April 12, 2011, http://www.epi.org/publications/entry/regulation_employment_and_the_economy_fears_of_job_loss_are_overbover (accessed June 3, 2011).

•The regulatory system already incorporates special approaches to respond to the needs of small businesses.

In the 1980s and 1990s, Congress passed the Regulatory Flexibility Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Small Business Regulatory Enforcement Fairness Act to tailor the regulatory process to small businesses and other entities by requiring agencies to examine regulations' impacts from every conceivable angle. Agencies currently examine the effects of rules, especially on small businesses, in compliance with these laws and with instructions from the White House on cost-benefit analysis. The Obama administration has taken and continues to take steps to address small business concerns. Feedback mechanisms are also woven into the fabric of administrative government: The Small Business Administration's Office of Advocacy exists to serve as, "an independent voice for small business within the federal government."[8] This and rulemaking agencies by law must thoughtfully respond to the concerns of small businesses and other members of the public who file comments on proposed rules.

•Small business owners have more in common with the ordinary Americans who support public protections than with the industry lobbyists who oppose it.

Small business owners are mothers and fathers, consumers, patients, and concerned citizens. Public opinion research often shows that their views do not differ significantly from non-small business owners. For example, research has shown that more small business owners support energy and climate legislation than oppose it, and many believe such legislation would aid their businesses.[9]

Because of the complexity of the process, rulemakings often take years to finalize, allowing corporate lobbyists to game the system while the public remains at risk. Agencies do not need more hurdles to clear they need more resources and more authority that they can use both to protect the public and to communicate their expectations to small businesses and help those businesses understand regulations.

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[8] http://www.sba.gov/category/advocacy-navigation-structure/about-us

[9] "Report: Small Businesses and Clean Energy Policy," Small Business Majority, June 9, 2010, http://www.smallbusinessmajority.org/_pdf/SBM_energy_poll_final.pdf (accessed June 3, 2011).