



NSBA

National Small Business Association

Issue Briefs

2021 – 2022

Economic Development Committee

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Environmental & Regulatory Affairs Committee

Chair: Bill Belknap | Staff: Jody Milanese

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Health & Human Resources Committee

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[Labor & Employment Policy Briefs](#)

[Health Care Policy Briefs](#)

Taxation Committee

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Capital Access Issue Briefs

Improve Access to Credit

Problem:

While no American small business has been unscathed by the COVID-19 pandemic and subsequent economic downturn, it has affected certain industries and locales more than others and disproportionately harmed minority-owned businesses. Access to credit can help small businesses avoid cash shortfalls—whether they are due to slow business, the current COVID-19 pandemic or daily operations—and stay afloat when times are tough.

- Capital is the lifeblood of any small business, and according to NSBA’s most recent data, which was pre-pandemic, there was a drop in bank lending to smaller firms—35 percent said that lack of capital is hindering their ability to grow their business or expand operations, and 19 percent said they had to reduce the number of employees as a result of tight credit.
- Because small firms are closely tied to the financial well-being of the owner, any negative mark on the owner’s FICO score can exclude them from applying for a bank loan.
- Businesses with poor credit ratings face higher credit card and interest rates from lenders, and insufficient or delayed financing remains common reason for business failure.
- Unlike banks, credit unions can only lend 12.25 percent of the worth of their assets to businesses —leaving billions of dollars of potential loans to businesses off the table.
- The Credit Union National Association estimates that, if the MBL cap were lifted, credit unions would lend an additional \$5 billion “in capital to small and informal business ventures” over the next year. Another \$5 billion to small businesses and entrepreneurs could translate to 50,000 jobs created over the same period.

Solution:

With small businesses especially hard-hit by the COVID-19 pandemic, easier access to capital is more important than ever. Access to credit can help small businesses grow, invest in the business, increase hiring and more —which leads to U.S. economic growth.

- Congress needs to protect and support the U.S. Small Business Administration’s (SBA) critical loan programs and increase the authorization level for SBA loans in order to prevent unnecessary stalls in lending.
- Regulators should seek to ease restrictions on lenders for smaller loans since a one-size-fits-all formula doesn’t often work for many small businesses and start-ups.
- The statutory cap for credit union MBL should be increased from the current 12.25 percent to at least 25 percent of the total assets of the credit union. Banking regulators must embrace a new methodology for evaluating small-business financial soundness without placing such heavy reliance on a FICO score.

SBA Lending

Problem:

The U.S. Small Business Administration (SBA) has played a crucial role in supporting small businesses throughout the COVID-19 pandemic. SBA offers several different relief options to help small businesses recover from the impacts of COVID-19. In 2020, the agency backed more than \$547 billion in small-business loans, and 2021 is likely to be just as significant. SBA provides a variety of lending options for America's small businesses and their mission is critical to overall economic growth in the U.S.

- *The Paycheck Protection Program (PPP)*: Approved as part of the CARES Act 2020, the PPP was designed to help businesses stay in business and keep their workforce employed during the COVID-19 crisis. Borrowers under the PPP can receive loan forgiveness provided the loan is primarily used for payroll costs, employee benefits, mortgage payments, and a handful of other targeted purposes. While the roll-out was bumpy—no surprise for a federal program in excess of \$500 billion implemented in just 10 days—legislative changes were made to improve it. It was more recently re-opened for first- and second-draw loans, but is set to close March 31.
- *COVID-19 Economic Injury Disaster Loans (EIDL)*: the program is designed to provide economic relief to businesses that are currently experiencing a temporary loss of revenue due to COVID-19. The purpose of EIDL loans is to help businesses meet financial obligations and operating expenses that could have been met had the disaster not occurred.
- *7(a) Loans*: The 7(a) loan program is SBA's flagship lending program, which provides critical funds for businesses who otherwise may not get needed financing. Loans are offered at very low interest rates with minimal fees and there are a variety of tailored lending programs to fit a variety of small-business needs.
- More than 7.1 million businesses received some form of aid from the agency in 2020. Over 5.2 million small businesses received a PPP loan during the first and second tranches of the aid program, 1.8 million businesses received debt relief from the agency, and more than 42,300 businesses received a loan through SBA's flagship 7(a) loan program in 2020.

Solution:

While small businesses continue to struggle due to the ongoing effects of the pandemic, they need access to capital to continue their operations and keep their employees on payroll. Policymakers must ensure that programs and pandemic-related program changes are not closed if the need for lending still exists.

- SBA must be given appropriate leeway to leverage appropriated dollars to match stakeholder need and avoid inadvertent program shut-downs. Keeping fees low for borrowers and lenders is critical in ensuring ample lender participation: if lenders don't want to participate in a program, it will not benefit small businesses.
- SBA should seek opportunities to streamline and simplify the application process in order to benefit all small businesses, specifically more rural small businesses which are served more often by smaller lenders without the teams of staff available at larger banks to navigate what can be a complex lending process under the SBA.

Equity Capital & Crowdfunding

Problem:

One of the most prominent challenges for small businesses is raising adequate capital to launch new ventures. Entrepreneurs have traditionally relied upon funding from capital providers such as banks, venture capitalists, angel investors, or contributions from friends and family members. Crowdfunding allows entrepreneurs to directly appeal to the general public through online platforms for help in getting their innovative ideas off the ground. Yet, equity crowdfunding platforms do not all follow the same model, charging different fees, offering different types of financial securities, and specializing in different sectors.

- Title III of the JOBS Act authorizes equity crowdfunding—allowing small businesses to raise up to \$1 million per year, through intermediaries facilitating crowdfunding transactions.
- According to the regulations, an individual investor may not contribute more than \$100,000 in any 12-month period across all crowdfunding offerings. This cap is the same regardless of whether an investor is accredited or non-accredited. Additionally, the vast majority of Americans will face limits even lower than that, largely dependent on their income and assets.
- The JOBS Act sets high transaction costs required to raise \$1 million. Issuers will find themselves with bills in the tens of thousands of dollars right out of the gate to pay for legal and accounting services—and will then have to spend at least a couple thousand dollars after fundraising to comply with ongoing reporting requirements.
- Transactions must be conducted through an intermediary that either is registered as a broker-dealer or a “funding portal.” A funding portal must register with the SEC and be subject to the SEC’s oversight. Furthermore, for companies that raise over \$500,000, significant disclosures in the form of audited financials are required.

Solution:

Due to COVID-19 lockdowns, equity crowdfunding really took off in 2020, raising \$214.9 million in 2020 (a 105 percent growth from 2019) for 1,035 new companies. With better underlying legislation and better implementing regulation, investment crowdfunding can provide a useful contribution to capital formation for the smallest companies. Properly done, crowdfunding can provide small, quick injections of funds into early stage or small companies.

- SEC should issue rules in-line with the intent of the law and avoid creating costly new regulatory regimes in the process.
- Lawmakers should clarify and ease costly and complex registration requirements on small businesses seeking investment.

Small Business Contracting

Problem:

The complexity of applying for a government contract can discourage many small-business owners from competing in a government bid. Despite the federal government meeting its small-business contracting goals in recent years, more can and should be done to ensure fairness for small firms within the federal marketplace.

- In recent years, while the federal government has generally succeeded in meeting the government-wide goals of awarding 23 percent of federal contracting dollars to small business, it has fallen short of the goals established for woman-owned small businesses and HUBZone small businesses.
- While some in the federal bureaucracy have suggested raising the 23 percent—specifically, Treasury has outlined a goal of 35 percent overall small-business contracts—absent legislation, such goals and targets are relatively meaningless.
- The bidding process for a federal contract can be hard and complicated, especially for small businesses new to the process, due to a long list of special forms, terms and conditions, and other requirements. Additional requirements, such as a Defense Contract Audit Agency-compliant accounting system can incur further costs on a small business looking to work with the federal government.

Solution:

Small businesses are agile, innovative and affordable partners for the federal government, and the government in turn can be an important partner for small business. Through small business contracting, the federal government acts as a catalyst for small business growth and innovation and supports the national economic security of the nation. NSBA supports reasonable reforms and policies that will further promote and facilitate small-business participation in the federal marketplace.

- Increase the small-business federal contracting and subcontracting goal.
- Establish a consolidated, more streamlined registration process.
- Eliminate fraud of awarding small-business federal contracts to large companies through prompt prosecution and increased SBA authority to disbar.
- Strengthen and improve the quality and integrity of contracting data.
- Terminate the practice of contract bundling.
- Increase oversight authority for the Office of Management and Budget and raise the accountability for each agency's respective Office of Small and Disadvantaged Business Utilization so they report directly to the Agency head.
- Ensure appropriate treatment of subcontractors including: timely payment; addressing Miller Act waivers; and including the entire contract award when calculating the percentage of small-business subcontracts given out, not just those dollars that are subcontracted.
- Reject efforts to minimize or eliminate small-business set-asides in federal contracting.

Infrastructure

Problem:

Modern infrastructure plays a critical role in enabling small businesses to grow, and yet, over the past 35 years, government investment in infrastructure has significantly decreased. There needs to be an adequate level of federal investment in our roads, bridges, and broadband network to keep up with the growing needs of small businesses. Investments in these infrastructures will help small businesses reach new domestic and international customers, tap new suppliers, and expand their business operations.

- In 2020, House Democrats released the Moving Forward Framework outlining a five-year, \$760 billion investment to get our existing infrastructure working again and fund new, transformative projects that will create more than 10 million jobs, while reducing carbon pollution, improving safety, and spurring economic activity. The Framework aims to improve roads and highways; rail and transit systems; bridges; airports; ports and harbors; drinking and wastewater systems; and access to high-speed internet.
- According to CBO estimates, the Framework would create up to \$1.2 trillion in Gross Domestic Product (GDP) growth.
- A majority of small businesses rate high speed internet, local roads and bridges, cell phone networks, and highways as vital to the success of their companies.
- Without additional investments in infrastructure, the American Society for Civil Engineers estimates that by 2025 there will be serious consequences, including: \$3.9 trillion in losses to the U.S. GDP, \$7 trillion in lost business sales, and 2.5 million lost American jobs.

Solution:

Policymakers must begin the work of improving our failing infrastructure from roads and highways to clean water and high-speed internet. Not only do small businesses rely on these critical services, but they can also help build up, improve, and secure these services.

- Without additional investments in infrastructure, the American Society for Civil Engineers estimates that by 2025 there will be serious consequences, including: \$3.9 trillion in losses to the U.S. GDP, \$7 trillion in lost business sales, and 2.5 million lost American jobs.
- Congress should prioritize allocating an adequate level of federal investment in infrastructure to keep up with the growing needs of small businesses.
- Small businesses must play an essential role in upgrading and maintaining our infrastructure and transportation networks.
- Infrastructure projects should embrace clean technology and energy throughout the project and enhance efficiency and sustainability wherever possible.



Trade & Technology Issue Briefs

Cybersecurity and Financial Protection

Problem:

Small businesses rely on information technology more than ever, yet the very tools that make small businesses competitive have also put them in the crosshairs of cyber attackers. The security of our online data and finances is a huge concern for America's small businesses, both in terms of being targeted by a cyber attack as well as the potential for unnecessary regulatory burdens that could accompany efforts to stem online attacks.

- 96 percent of small-business owners are concerned about being targeted by cyber attacks, and 35 percent indicated that they had been the victim of a cyber attack.
- 52 percent of small businesses, which had been the victim of a cyber attack incurred a service interruption, 36 percent had information falsely sent from their domains or email addresses, 5 percent had sensitive information and data stolen, and for 4 percent the attack enabled hackers to access the business banking accounts
- Cyber attacks cost small businesses an average of \$5120.
- Business checking accounts are not protected when it comes to online hacking the way consumer accounts are, but a majority (77 percent) of small-business owners are not aware of it, even though 99 percent of owners think it is important to ensure that their information and computer systems are adequately protected.

Solution:

Congress needs to move forward on establishing streamlined guidelines and protocols to ensure the protection and security of online data and financials but avoid a knee-jerk reaction that would place a disproportionate burden on America's smallest firms.

- Legislation to enhance America's cybersecurity should provide clear, simple steps for companies to follow when their data is breached and must balance the need for greater information sharing with privacy rights.
- Any federal discussion on cybersecurity or development of a private-public partnership or advisory board must include representatives of small business.
- Extend consumer banking protections to the banking accounts held by small businesses.

Data Privacy Regulations

Problem:

Governments both domestically and internationally are enacting internet privacy rules that could prove complex and burdensome for many unsuspecting small businesses.

- Several U.S. states, most notably California, Nevada and Vermont, have recently introduced and passed legislation on consumer data privacy, similar to the EU's General Data Protection Regulation (GDPR).
- These state laws are intended to provide consumers with greater transparency and control over their personal data but go beyond breach notification and require companies to make significant changes in their data processing operations.
- The 2018 California Consumer Privacy Act is enforceable in California and applies to California users, but given the nature of data processing, most companies will need to consider whether to apply the rules to all users.
- While these state laws give consumers unprecedented control over their personal information, it creates new and onerous challenges for companies of all sizes that do business in California.
- Managing personal data and keeping it secure will continue to get more expensive for business owners, forcing businesses to look for other technological solutions to help ease their compliance burden and manage risk when they engage in buying and selling of personal data.
- All 50 U.S. states, as well as the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands, have enacted breach notification laws that require businesses to notify consumers if their personal information is compromised. These new and amended state data breach laws expand the definition of personal information and specifically mandate that certain information security requirements are implemented.
- The U.S. lacks national data privacy legislation, leaving small businesses alone in figuring out which laws apply to them.

Solution:

Small businesses need clear guidelines that fit the U.S. legal system, one that targets abuses, encourages innovation and permits reasonable flexibility.

- While Congress has not yet enacted a comprehensive national privacy law, it does have a long history of passing privacy laws to protect some of the most sensitive types of personal data, such as financial and medical information and data concerning children.
- Any such legislation must consider the burden on small business—direct and indirect—and take steps to avoid stymieing innovation and competitiveness.

Net Neutrality

Problem:

In the last decade-plus, the debate over net neutrality has gained momentum, with Democrats and Republicans pushing back and forth on legislation. Net neutrality is the principle that an internet service provider (ISP) must provide access to all sites, content and applications at the same speed, under the same conditions without blocking or preferencing any content.

- In April 2015, the Federal Communications Commission (FCC), under a Democratic administration, published a rule implementing open internet regulations that prohibited the blocking or degrading of lawful content on the internet by ISPs.
- In Dec. 2017, the FCC, under a Republican majority, voted to repeal net neutrality rules, clearing way for internet service companies to charge users more to see certain content and to curb access to some websites. NSBA strongly opposed this change.
- In Oct. 2019, a federal appeals court upheld most of the FCC's repeal of the rules. However, it also ordered the agency to reconsider its repeal, based on how the move might affect public safety, regulations on infrastructure attachments to utility poles, and the FCC's ability to provide subsidies to low-income individuals for broadband service.
- In Oct. 2020, the three Republicans making up the FCC's majority voted to leave the order unchanged.
- In Feb. 2021, the U.S. Department of Justice under President Biden dropped a department lawsuit filed under former President Trump that challenged California's net neutrality rules. California's law, stricter than the federal rules adopted during the Obama administration, could set the baseline for future federal rules. California adopted these new rules after the FCC's repeal of federal net-neutrality rules in 2017.
- The Biden Administration is expected to champion net neutrality. We can see the first steps already being taken, with the DOJ dropping the California lawsuit, and Biden's appointment of Jessica Rosenworcel, a staunch supporter of net neutrality, as the acting chairwoman of the FCC.

Solution:

A free and open Internet helps prevent unfair pricing practices by ISPs. It promotes innovation, the spread of ideas across platforms, and drives entrepreneurship. It allows companies to compete on a level playing field when customers want to visit their websites.

- With strong net neutrality protections, the Internet is an open marketplace where any business can compete, allowing individuals to start companies easily, market their products across the country, and connect with customers anywhere worldwide.
- Paramount to the discussion on net neutrality ought to be the importance of innovation and how any court challenge or state legislative measure must ensure that small businesses aren't relegated to a second-class-citizen role unable to pay massive premiums OR limited in how they are allowed to charge and provide access to their own content/services/goods.

Broadband & 5G Internet

Problem:

Due to the COVID-19 pandemic, small businesses all over the country have been forced to utilize widespread telework and expand their online presence, or even create a brand new one. With a shift in operations comes a change in expenses and the need for reliable internet access, especially for small businesses operating under the strain of the pandemic. The power, speed, and bandwidth of 5G technology can transform the way small businesses work and operate to become more resilient and remain competitive.

- Broadband internet access is key for small-business growth and wireless solutions, such as 5G, can play a critical role in providing nationwide access. 5G technology uses shorter, higher-frequency bands of the radio spectrum, promising lower latency, faster speeds and greater load capacity.
- Reliable broadband technology must be available to all regions of the country to empower individuals and businesses in our new online landscape.
- The lack of consistent access and the fact that people and businesses within a couple of miles of each other have disparate technologies is no longer a working model. The pandemic showed just how important internet connectivity is, even more so for small businesses with limited resources.
- The U.S. Census Bureau estimates that the total e-commerce sales for the third quarter of 2020 totaled \$209.5 billion—an increase of 36.7 percent from the same quarter in 2019. E-commerce sales also accounted for 14.3 percent of total sales.
- Currently, 36 percent of consumers shop online weekly, a 28 percent increase from prior to the pandemic.
- The Federal Communications Commission (FCC) is currently developing the Emergency Broadband Benefit Program, established via the Consolidated Appropriations Act of 2021. The \$3.2 billion would enable eligible households to receive a discount on the cost of broadband service and certain connected devices during the pandemic.

Solution:

Ensuring affordable and reliable broadband internet access throughout the U.S. is crucial. It allows small-business owners to stay connected, expand their online operations, and it drives innovation. With the increase speed and reliable mobility provided by 5G, small businesses will be able to leverage new opportunities in their industry and better meet the demands of their customers.

- Policymakers should embrace efforts to improve technology and invest in internet infrastructure.
- A key goal of any infrastructure package should be to enhance connectivity to rural communities to open more opportunities for people to start, operate, and grow their businesses, regardless of where they live.

Strengthen Federal Innovation Programs

Problem:

The highly successful Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs are set to expire on Sept. 30, 2022, after the last five-year reauthorization. Lawmakers are likely to begin the reauthorization process again sometime this year. More must be done to ensure the long-term stability and viability of these programs and sustain a strong small-business presence across the federal government's various programs targeting small research and development (R&D) companies.

- The SBIR and STTR programs fund a diverse portfolio of startups and small businesses across technology areas and markets to stimulate technological innovation, meet federal R&D needs, and increase commercialization to transition R&D into impact. Reauthorization is crucial to the continued small business expansion and U.S. economic growth.
- The Department of Defense's Rapid Innovation Fund (RIF) provides a collaborative vehicle for small businesses to provide the Department of Defense with innovative technologies that can be rapidly inserted into acquisition programs that meet specific defense needs. Unfortunately, in 2020, the RIF program was not included in Congress's annual Defense spending bill, effectively defunding the program. The COVID-19 pandemic disrupted efforts to include it in the FY2021 budget and shifted Congress's attention to other matters.
- Entrepreneurship has declined significantly over the past four decades, due to the effects of past recessions, demographic forces and regulatory changes according to a recent report from the Congressional Budget Office (CBO). To help support future entrepreneurship efforts, the CBO recommends policymakers direct a share of the federal government's spending on R&D to be set aside for new companies.

Solution:

Congress should permanently authorize and increase the funding levels for the SBIR and STTR programs, while retaining oversight through required regular agency reporting to ensure that funding is being used appropriately. Furthermore, policymakers must resist any attempts to diminish small-business participation in vital innovation programs.

- A swift reauthorization of the SBIR and STTR programs is crucial, and NSBA supports permanency for both SBIR/STTR. NSBA also encourages other changes, including an allocation increase, legislation to update the FAR and DFARS regulations, more investment in training of contracting officials, and greater outreach to underserved states and women/minority-owned businesses.
- The RIF must be appropriated funds annually and NSBA urges that funding level be at least \$500 million.
- Lawmakers should oppose any efforts to transfer funds from small-business programs to already well-funded universities, research institutes, and Federal laboratories.

Patent Reform

Problem:

Abusive patent litigation continues to undermine the U.S. patent system. It discourages and deters investments in jobs and new technologies, stifles innovation, and weakens our intellectual property system.

- Patent protections are particularly important for small inventors, who operate on much smaller margins and often rely more heavily on their intellectual property for revenue than large firms.
- According to the U.S. Small Business Administration, small businesses produce 16 times more patents per employee than large patenting firms, which has a direct correlation with job growth.
- Applying for a patent can be daunting for small businesses, as the number of different patents, with corresponding different fees and paperwork, can prohibit many from applying.
- A patent application can cost anywhere between \$1,000 and \$15,000, depending how much research the small-business owner is able to do themselves, how much competition research is done, or if a special patent agent needs to be hired.
- Additionally, recent Supreme Court decisions have created confusion over what can and cannot be patented. These decisions seriously undermine the longstanding world-class innovation environment in the U.S. and threaten the nation's global competitiveness.
- Technology-focused small businesses contribute new technology, competitive strength, and high-quality jobs to the U.S. economy. These businesses depend on strong and predictable patent rights to survive. Uncertainty in patent regulations add unnecessary costs and stifle innovation. Without the foundation of stable and accessible patent rights, small businesses are not able to obtain the return-on-investment necessary to secure capital.
- In the Bloomberg 2021 Innovation Index the U.S. dropped out of the top ten ranked countries, with South Korea on the top of the list. While the U.S. topped the first Bloomberg Innovation Index in 2013, it now ranks eleventh.
- President Biden ran on a promise to reinvigorate U.S. manufacturing with a \$300 billion investment in R&D and breakthrough technologies.

Solution:

The U.S. must reassert its position as an international leader in innovation with smart fixes which will strengthen patent protections. We must act to ensure our patent system continues to serve as an engine for U.S. innovation and job creation.

- Policymakers must seek reasonable reforms to protect small businesses from unnecessary and unwarranted patent infringement actions and avoid over-reactive solutions that could weaken existing patents and discourage innovation.
- With the majority of U.S. innovations coming from smaller companies, it is imperative that Congress support pro-small inventor legislation.

Free Trade Agreements

Problem:

America's standing as a world leader depends directly upon our competitive success in the global economy. For the past half century, the U.S. has led the world in breaking down barriers to trade and in creating a fairer and freer international trading system based on market economics and the rule of law that has generated more American jobs and helped the growth of small and medium-sized enterprises (SMEs).

- Even in sound economic times, small businesses are at a distinct disadvantage in the global economy. NSBA and its international trade arm, the Small Business Exporters Association (SBEA) have been urging for years—decades, even—that more must be done to emphasize the needs of small business within the scope of U.S. trade.
- In 2020, the U.S. Census Bureau released the “Profile of U.S. Importing and Exporting Companies, 2017-2018” report showing that large exporters accounted for over two-thirds (\$1,005 billion) of the known export value, while SMEs accounted for the remaining \$473 billion. SMEs accounted for 17.4 percent of exports by manufacturers, 60.7 percent by wholesalers, and 47.6 by other exporters.
- The most recent NSBA data indicates that approximately one-third of small firms spent more than five percent of their annual operating revenue to begin exporting, and nearly half spent anywhere between a few months to a full year preparing before actually exporting.
- Among SMEs, there are a broad number of benefits reaped by free trade agreements (FTAs), including access to new foreign markets and opportunities to expand existing export operations. Furthermore, a majority of SMEs state they are more likely to enter a new market if it is covered under an FTA with the U.S.
- FTAs have eliminated nontariff barriers that small businesses cannot handle because of the high fixed costs they impose on their bottom line; as more of these agreements are implemented, small businesses will find greater opportunities to serve markets that, previously, only large multinational corporations could access.

Solution:

Today, the U.S. has FTAs with 20 countries. These agreements have strengthened our economy and support millions of jobs. They have been successful deals for American workers, businesses, and families.

- NSBA supports trade and investment agreements that are fair, accountable, and create a level playing field; put American families and workers first; and benefit consumers and small businesses.
- NSBA supports expansion of international trade and investment, fair and equitable market access for SME products abroad, and elimination of disincentives that impede the international competitiveness of small exporters.
- Recognizing the important role SMEs play in the U.S. economy and trade, NSBA supports the inclusion of stand-alone chapters dedicated to SMEs for all future FTAs—similar to the one in the USMCA.



Regulatory Policy Issue Briefs

Beneficial Ownership

Problem:

The Corporate Transparency Act (Beneficial Ownership) was passed and signed into law as part of the National Defense Authorization Act in Dec. 2020. The new law requires certain LLCs and small companies to inform the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) of their beneficial owners and establishes a database of those names. It requires businesses to submit annual paperwork, which includes personally identifiable information of each business owner, upon the creation of the business and periodically throughout its life. Failure to comply would be a federal crime with civil penalties of \$500 per day up to \$10,000 and criminal penalties of up to three years in prison. Furthermore, the legislation grants broad access to the information to federal, state, local, or tribal law enforcement agencies without having to obtain a subpoena.

- Large companies are mostly exempt from the Corporate Transparency Act—only those with 20 or fewer employees and \$5 million or less in annual sales need to report ownership information to FinCEN.
- As a result of this law, millions of small-business owners will be faced with an additional \$5.7 billion in regulatory paperwork. It imposes burdensome, duplicative reporting on the smallest businesses in the U.S. and it threatens the privacy of law-abiding, legitimate small-business owners.
- More than 4.9 million businesses would be required to provide personal ownership information to FinCEN on an annual basis. The Treasury Department would be required to retain the information for the life of the business plus five years.
- Recently, Sec. Yellen told the Senate Finance Committee that anonymous shell companies present an “important problem,” and that creating a beneficial ownership database at FinCEN is a “very high priority.” It seems that new rules are not too far off.

Solution:

Efforts to stem money laundering are important, but this is the wrong way to do it, especially since the information is already being collected. Treasury has a one-year window to craft corresponding rules—it should use this opportunity to address the concerns of small-business owners regarding the Corporate Transparency Act.

- Congress and regulators should require information sharing between FinCEN and the IRS, which is already permitted for certain law enforcement purposes.
- Policymakers must seek an exemption for small businesses that already disclose this type of information.
- Treasury should use existing forms and databases for collecting ownership information.

Regulatory Reform & Paperwork Reduction

Problem:

America's small businesses are facing the ever-growing financial and time burden of dealing with federal regulations. Despite the vital importance of small businesses to the U.S. economy, federal laws and unnecessary regulations have often disproportionately burdened them relative to large firms, leaving many small businesses struggling to survive. New and even antiquated and obsolete regulations continue to make it more difficult for small businesses to obtain financing to get started, sustain their operations, make payroll, and continue to grow and create new, good-paying jobs. Thus, streamlining and updating old or outdated rules will provide entrepreneurs with flexibility in today's fast-changing world.

- The average small-business owner spends at least \$12,000 every year dealing with regulations, and nearly one-in-three spends more than 80 hours each year dealing with federal regulation, according to NSBA data.
- The small-business owner is the number one regulatory expert in most business and handles the bulk of federal regulatory compliance. In one-quarter of small firms, the owner is spending more than 10 hours per month on federal regulatory compliance.
- Regulatory worries represent a major hurdle to would-be small-business owners and have a stifling effect on innovation and small-business growth.

Solution:

Relief from the massive federal regulatory burden can be achieved through proposals such as establishing a national regulatory budget and requiring a cost-benefit analysis of new regulations. Congress should:

- Require that agencies consider indirect costs and detailed alternatives to minimize any significant adverse impact.
- Require Regulatory Flexibility analyses as a prerequisite to a final rule being issued.
- Require increased economic analyses and the Office of Information and Regulatory Affairs (OIRA) to enhance its oversight efforts.
- Require that agencies use plain writing when revising or drafting new regulations.
- Allow for increased enforcement flexibility and the ability to grant common-sense exemptions for first-time offenders.
- Streamline paperwork, consolidate forms, and harmonize data and due dates.
- Perform and submit cost-benefit analysis on proposed regulations and paperwork.
- Improve information collection by strengthening the *Paperwork Reduction Act* requirement that agencies' chief information officers review and certify information collection requests, require OIRA to develop stricter approval criteria, and limit the number of information requests an agency can issue per year.

Strengthen SBA Office of Advocacy

Problem:

The considerable free rein federal agencies have over how to interpret and enforce laws passed by Congress is too often done in a way that harms America's small businesses. While various regulatory reform initiatives have prohibited the enactment of a range of onerous rules and alleviated some of the federal regulatory burden, those reforms are only as strong as the agency dedicated to their enforcement.

- The Office of Advocacy's efforts at monitoring federal agency compliance with the Regulatory Flexibility Act (RFA) resulted in changes to 10 specific rules in 2019 that led to \$773 million in quantifiable small-business regulatory compliance cost savings in FY2019.
- In FY2019—the most recent data available—Advocacy hosted 17 issue roundtables in D.C., 10 regional roundtables, and 16 small business visits in four states to provide a forum for small businesses to express their concerns with federal regulations. Throughout 2020, despite the COVID-19 pandemic, Advocacy continued holding virtual events.
- During President Trump's term, the Chief Counsel for Advocacy position at the SBA remained vacant. David Tryon was nominated by President Trump in Oct. 2017 but never received a Senate confirmation vote for more than two years.
- President Biden has nominated Isabel Guzman to lead the SBA and on Feb. 3, 2020 she participated in her confirmation hearing, The Chief Counsel for Advocacy should receive the same expediency.

Solution:

Congress must ensure that it allocates the financial resources required for Advocacy, an office devoted solely to serving America's small businesses, to achieve its far-reaching objectives: providing reliable information about the status and role of small business in the U.S. economy; advocating for small businesses within the federal government's agencies and rule-making processes; and fostering public awareness of small-business contributions and concerns.

- It is critical that Advocacy is fully staffed with a strong and capable leader at its helm—the Chief Counsel for Advocacy plays an invaluable role in guiding Advocacy's operations. This position is especially crucial now, while small businesses are struggling under the ongoing weight of the pandemic.
- Advocacy must be fully funded and afforded appropriate strength within the Administration to ensure that agencies adhere to the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and the Plain Language Act in determining the true cost of regulations for America's small businesses, as well as ensuring small businesses can understand regulations.
- The Office of Management and Budget and Office of Information and Regulatory Affairs should maintain close contact with the Office of Advocacy and provide strong support in their efforts to ease regulatory burdens.

Political Reform

Problem:

As a result of growing partisanship, Congress is not doing the job it was elected to do: passing budgets, responsibly managing the nation's finances, and making the decisions necessary to ensure that government functions at a basic level of efficiency.

- Political dysfunction has real costs: it is preventing policymakers from solving very serious problems. Throughout last year, we have seen policymakers fight over the details of COVID-19 relief packages, while citizens, including small-business owners, awaited critical economic aid.
- Discontent among small-business owners with their elected officials and the overall U.S. political machine remains high, with 86 percent of small-business owners saying politics have become more partisan in the last 10 years.
- The constant drive to raise money for reelection campaigns is a major problem, as the time spent legislating suffers when too much time is spent seeking campaign funds.
- Across-the-aisle member interaction has diminished greatly, inhibiting collaboration and an ability to find commonalities in shared interests.
- Communication between the legislative and executive branches must be open and regular regardless of which party controls the White House, Senate, or House.

Solution:

In today's hyper-partisan era, when citizens are more politically divided and get more of their news and information from ideologically driven sources, we must find ways to work together for the common good. Reducing the partisanship in Congress and transforming it into a higher-performing institution will not happen overnight—but some steps can be taken.

- Political contributions, including those made to outside and independent groups, should be disclosed so that citizens have full information about who is paying for the political messages they see.
- Congress should pass legislation requiring detailed disclosure of spending by congressional leadership PACs and mandating that leadership PAC funds be used solely for political activities and not for personal use.
- States should move to a more open process for redistricting and use neutral line-drawers in their redistricting process with opportunities for public comment.
- Additional opportunities for members to interact, especially with their counterparts across the aisle, will help defuse the increasingly toxic discourse on Capitol Hill.
- A strong committee process is necessary: committees should conduct legislative and oversight hearings, marking-up legislation after receiving input from both sides and issuing committee reports.
- Fair and robust floor debate in the House and Senate must be reinstated to allow for debate, amendments and open discourse, followed by conference committee negotiations and final compromise language on legislation.

OSHA Regulations

Problem:

With the Occupational Safety and Health Act of 1970, Congress created the Occupational Safety and Health Administration (OSHA) to ensure safe and healthful working conditions for workers. Due to a complex set of regulations, many small-business owners simply do not know of or do not understand the OSHA regulations that apply to their business, which can result in huge costs—businesses can face a penalty of up to \$70,000 per violation.

- Businesses with more than 10 employees need to keep records of any work-related injuries and illnesses. Record keeping also applies for certain equipment, such as air pressure tanks or elevators, which must have their operating permits and records kept up to date.
- Employers must provide the right PPE (personal protective equipment) for their employees and can't require workers to provide their own. Businesses are also responsible for other safe work conditions, such as proper ventilation.
- The requirements for small businesses differ depending on the state of operation, since OSHA allows states to create their own health and safety plans. There are currently 24 states that operate their own OSHA approved programs.
- Due to the tremendous regulatory requirements facing small businesses, many have had to hire "Compliance Officers" to help keep their companies compliant with federal, state, and local regulations. Some small-business owners report spending at least \$200,000 each year to stay compliant with regulations.
- An Executive Order issued on Jan. 21, 2021 by President Biden directs OSHA to develop guidance for employers to promote workplace safety as it relates to COVID-19, namely mask-wearing, and identify changes that would better protect workers. The order directs OSHA to focus efforts on violations that put the largest number of workers at risk, though it does not specifically exempt small businesses.

Solution:

Small businesses face tremendous amounts of federal, state, and local regulations and staying up-to-date often costs them thousands of dollars each year. Even then, they can still be subject to large fines if they are in violation of OSHA regulations, even if they did so unknowingly.

- Lawmakers and regulators should make every attempt to streamline regulations and make plain language a priority for OSHA rules.
- Compliance assistance should be the focus of OSHA when it comes to small business—not violation enforcement.
- Small businesses ought to be provided some kind of good-faith exemption for first-time violations that do not result in injury where the violation was inadvertent.

Tort Reform

Problem:

Excessive litigation in the U.S. limits job creation, stymies innovation, and increases costs of goods and services. In 2018, small businesses faced \$182 billion in commercial tort costs, even though they brought it only 19 percent of the revenue. The entire commercial tort liability bill for 2018 was \$343 billion – which means that small businesses paid more than half of the commercial liability costs in the tort system. It is clear that common sense must be returned to our system of civil litigation.

- *Punitive Damages*: The difficulty of predicting whether punitive damages will be awarded by a jury in any particular case, and the marked trend toward astronomically large amounts when they are awarded, have seriously distorted settlement and litigation processes and have led to wildly inconsistent outcomes in similar cases.
- *Product Liability*: The inconsistent and often contradictory product liability regulations that exist across the country impose widely varying statutes of limitations, create uncertainty for businesses selling in a national marketplace, and too often allow for absurdly large awards.
- *Frivolous Lawsuits*: Given the exorbitant legal and court fees associated with a typical lawsuit, individuals and businesses must spend huge sums of money to defend themselves in court. Faced with such debilitating fees and bad publicity of a trial, many small businesses must settle out of court, even when they have done nothing wrong.
- *COVID-19 Liability*: Small businesses can be subject to frivolous lawsuits that try to exploit the COVID-19 crisis. Businesses should be protected from liability unless the plaintiffs can prove the business willfully failed to put in place a plan to reduce the risk of COVID-19 exposure.

Solution:

The present tort system is an expensive and inefficient way to compensate those injured. The current system stifles innovation and other economically stimulating activity—Congress needs to boost transparency, restore fairness and properly address excessive regulations as a way to deal with these frivolous lawsuits and unfair liability regulations that are imperiling America’s small businesses.

- Lawmakers must embrace balanced liability relief provisions similar to last Congress’ *SAFE TO WORK ACT (S. 4317)* in any future COVID-19 relief legislation. Legislation should ensure that unfair lawsuits will not hamper those who work to comply with applicable government guidelines.
- There should be a reasonable cap on the awarding of punitive damages.
- Policymakers should promote the creation of a federal product liability reform law, which would create nationally uniform statutes of limitations and “standards of repose,” which would disallow lawsuits over products over a certain age.
- Individuals and attorneys who file frivolous lawsuits should be held accountable for their actions.



Labor & Employment Policy Issue Briefs

Pension Reform & Simplification

Problem:

When a small-business owner is considering his or her retirement needs and those of his employees, there are myriad different plans to consider with countless requirements and stipulations. Navigating an employee pension plan can be extremely complex and cumbersome and can lead to serious taxation issues for the small-business owner, which often places small-business employees at a disadvantage compared to other workers.

- Over the past 30 years, Congress has amended and revised the tax laws governing pension plans at an alarming rate, adding new layers of complexity with every change.
- Passed in Dec. 2019, the SECURE Act (Setting Every Community Up for Retirement Enhancement) made some key improvements to small-business pension offerings. The law provides tax credits for establishing new retirement plans, tax credits for establishing automatic enrollment plans, and the creation of Multiple Employers Plans (MEP) and Pooled Employer Plans (PEP).
- Access to new systems means more options, but it can also mean more challenges—jumping into a PEP or MEP can mean a loss of control and flexibility over retirement plans itself for a business. Further, there are also a number of requirements and qualifications that need to be met to take advantage of some incentives.
- Complex federal rules and legal costs prevent many small businesses from starting and maintaining employee pension plans. It is essential that the federal government re-examine its tax policy regarding pension plans.

Solution:

Combine ease of administration with equitable contributions limits for all employers and workers.

- The current trade-off of lower contribution limits for ease of administration is unfair to small-business owners and their employees.
- In 2020, business owners and employees who participated in easier-to-administer SIMPLE 401(k) plans could save only \$13,500 (before taxes) a year, compared to the \$19,500 allowed under traditional 401(k) plans—a more costly and difficult option for small firms.
- While the SECURE Act made some much-needed adjustments to the country's retirement system, it wasn't a comprehensive solution to the retirement crisis in America. More improvements should be done to further provide small businesses with more flexibility with respect to the tools and resources available to provide retirement options for them and their employees.

Minimum Wage

Problem:

Small businesses, ravaged by the COVID-19 pandemic, are struggling to keep their doors open and keep employees on payroll. More than doubling the federal minimum wage—which has been proposed—presents a significant obstacle to ailing small businesses trying to survive this pandemic. Lawmakers' well-intended efforts to increase the federal minimum wage will cause a hardship for many small firms, particularly those in highly competitive industries, and could lead to reduced work hours, lay-offs and stalled small-business growth.

- Minimum wage increases often exert upward pressure on all employees' pay, requiring an increase in overall prices.
- The Congressional Budget Office (CBO) prognosticated that raising the minimum wage to \$15 by 2025—up from its current \$7.25—would increase the pay of at least 17 million people, but also put 1.3 million Americans out of work.
- Most small businesses that do pay minimum wage are typically in highly competitive industries with low profit margins, and an increase for any employees could be financially devastating.
- To offset higher employee wages, small businesses may need to raise their prices on the goods and services they sell. This can lead to decreased sales, decreased revenues, and lower profits. With less money to spend, small-business owners may have to decrease or eliminate capital improvements, marketing, new hires, bonuses, debt service, and production.
- According to the Bureau of Labor Statistics (BLS) 2019 data, only 1.9 percent of hourly paid workers in the U.S. are paid the federal minimum wage or below, and of that, the majority are young workers not supporting families.

Solution:

Some states and cities have already legislated minimum wage hikes to \$15 per hour, and Congress is also debating enacting a federally mandated minimum wage hike, which will affect all states. Regardless, minimum wage increases and mandates affect small businesses when it comes to labor costs, and that affects hiring levels and hiring rates.

- Lawmakers should oppose the Raise the Wage Act of 2021 which would increase the federal minimum wage to \$15 per hour over five years, allow for annual automatic increases without the consent of Congress, and eventually eliminate the tipped wage.
- Policymakers must take caution in promulgating any kind of federal mandate on small businesses—particularly now under the weight of the pandemic and massive economic downturn.

Fair Union Elections

Problem:

President Biden has pledged to support many policy initiatives endorsed by organized labor. Yet many of these initiatives threaten to negatively impact small businesses, the self-employed, and the economy. The 180-degree turn in regulatory employment policy priorities that will likely result will undoubtedly create uncertainty for employers, which are already dealing with a pandemic and an unstable economy. Over the course of the next couple of years, we can expect to see the reinstatement of the Obama-era labor policies at the U.S. Department of Labor (DOL) and National Labor Relations Board (NLRB) even though many of these policies were previously rejected on a bipartisan basis, widely criticized by the regulated community as unworkable, and rejected by federal courts.

Members of Congress and administration officials must be mindful to focus on maintaining U.S. economic growth, and prevent organized labor from expanding their reach, and the rules they have championed, primarily through the NLRB.

- *PRO Act*: As part of his labor goals, Biden has championed the *PRO Act*, a substantive rewrite of the 85-year-old National Labor Relations Act that was passed by the House in early 2020. The *PRO Act* would codify the ambush election rule and micro-unit policy, neuter employers' ability to mount counter-campaigns to union organizing attempts and weaken right-to-work laws that protect employee free choice. This legislation also would permit the NLRB to issue monetary penalties on employers for violating the NLRA and would more strictly require bargaining after an initial certification of a new union.
- *Employee Free Choice Act or "Card check"*: As a co-sponsor of the original *Employee Free Choice Act*, Biden supports workers choosing to form a union if a majority signs authorization cards empowering a union to represent them. He plans to go beyond the *PRO Act* by allowing workers to use this process "card check" as an initial option for forming a union.

Solution:

NSBA supports fair labor, economic growth and job creation, and will continue to oppose unfair and burdensome efforts to bolster organized labor's stronghold through a number of concerted efforts. These kinds of rules and legislative proposals are non-starters for America's small businesses and should be rejected by lawmakers.

- Oppose the PRO Act and other similar tactics that will severely hamstring small employers' ability to fairly push back against a unionizing campaign.
- Reject any effort to pass the Employee Free Choice Act or other card check legislation.

Paid Family Leave

Problem:

In recent years, the issue of paid family leave has garnered attention from lawmakers on both sides of the aisle. Along with the COVID-19 pandemic, three recent developments have pushed the debate forward: 1) the increasing patchwork of state and local paid leave law requirements; 2) the new paid family leave benefit for federal government employees beginning in 2021; and 3) the paid family and sick leave provisions of the Families First Coronavirus Response Act (FFCRA).

- Although the *Family and Medical Leave Act of 1993* (FMLA) requires employers with at least 50 employees to provide employees with up to 12 weeks of unpaid leave in a 12-month period, pre-COVID-19 no federal law required private-sector employers to provide paid leave of any kind.
- As part of the 2017 Tax Cuts and Jobs Act, employers can claim tax credits for voluntarily offering at least two weeks of paid leave to their employees.
- The FFCRA provided a refundable tax credit for the mandated paid sick leave and family leave for private-sector employers with under 500 employees. The FFCRA's mandatory paid leave provisions expired on Dec. 31, 2020, however, Congress extended the tax credit for covered employers who voluntarily provide leave. President Biden calls for legislation that would:
 - Reinstatement the requirement that employers provide paid leave and expand coverage to virtually all employers.
 - Expand paid sick and family medical leave to 14 weeks for the same reasons included in the FFCRA and for time off to get the vaccine.
 - Provide a maximum paid leave benefit of \$1,400 per-week for eligible workers.
 - Reimburse employers with fewer than 500 employees for the full cost of the leave by extending the tax credits.
 - Extend emergency paid leave measures through Sept. 30, 2021.
- NSBA surveys have found that the majority of members (83 percent) already offer some kind of paid sick leave, and the majority offer 11 days or more.

Solution:

Proposals to mandate or increase leave, both paid and unpaid, impede job creation when we need it most, and will likely create complex new regulations for smaller employers.

Employees and employers should be able to determine for themselves the allocation of compensation between money, paid sick leave, paid vacation leave, health insurance, retirement and other employee benefits. There is no particular approach that meets the needs of all employees or employers.

Trained Workforce

Problem:

A small business that makes good hiring decisions tends to have higher productivity and lower turnover, which positively affects the bottom line. Hiring the wrong people can have a negative impact on employee morale and management time and can waste valuable training and development dollars.

- Smaller employers place a premium on their employees: nearly all small businesses provide opportunities for on-the-job learning. The majority of small-business owners say employees stay with their business four or more years, with 37 percent reporting employees remain on average eight years or more.
- According to NSBA's Small Business Workforce and Labor Survey, when it comes to workforce preparedness, nearly one-quarter of small-business owners believe the quality of high-school educated workers has gotten worse in the last five years.
- Consequently, nearly one-quarter of small firms seek employees with a masters or higher degree.
- Therefore, it is no surprise that one-third of small businesses pay for off-site training for employees and one-fourth provide money toward employees' continuing education, underscoring the real-world cost of the skills gap many employers face.

Solution:

Small businesses around the country believe lack of education, experience, and training is one of biggest challenges they face when it comes to hiring and employment, and they are willing to act to ensure they have the skilled workers they need to run their businesses.

Policymakers must ensure small business hiring is not hampered by unnecessary and unfair regulations that interfere with the regular hiring process, or other state-level requirements.

Immigration Reform

Problem:

The Biden presidency will likely be friendlier to business immigration needs, however there still may be challenges facing employers who supplement their work-force with high-skilled foreign labor. Thus, small-business owners stand to be impacted by various broad immigration reform proposals, specifically as they relate to availability of workers and compliance with new and/or existing rules and regulations. President Biden has said he will work with Congress to first reform temporary visas to establish a wage-based allocation process and establish enforcement mechanisms to ensure they are aligned with the labor market and not used to undermine wages. He is supportive of expanding the number of high-skilled visas and eliminating the limits on employment-based visas by country, which create unacceptably long backlogs. However, employers should not expect all scrutiny of the high-skilled nonimmigrant visa programs to disappear with the Biden administration.

- According to the most recent NSBA data, more than one-in-three small employers hire some kind of immigrant worker: green-card holders, temporary foreign workers or VISA holders. Only one-half of one percent of small firms say they hire undocumented workers.
- More than half of all small- businesses surveyed by NSBA said they rely on highly-skilled workers with a STEM background—with one-third of small-business owners responding they are having difficulties hiring STEM workers.
- The majority of small firms support some kind of required use of an improved E-Verify or similar employee verification system if it included a safe harbor clause for employers operating in good faith.

Solution:

Any comprehensive immigration legislation must address the concerns of the small-business community in order to foster economic growth and to help small businesses prosper and create jobs. Any actionable reform proposals should:

- Ensure that mandatory E-Verify requirements have reasonable penalties, contain swift error correction mechanisms and compensate individuals and small businesses for out-of-pocket losses sustained due to database errors.
- Increase the number of available visas for foreign-born students graduating from a U.S. university with an advanced degree in a STEM field.
- Increase the cap for H-1B visas and H-2B visas or develop new visa categories or increase employment- related permanent resident slots.
- Establish a new visa category for highly-skilled immigrant entrepreneurs.
- Eliminate the per-country numerical limit on employment-based visas.
- Ensure that the administrative burden for employment-related visas is reasonable.

Flexible Scheduling

Problem:

Small-business owners, as well as their employees, are faced with the challenging task of juggling their personal lives with their careers. In order to allow the greatest amount of freedom while maintaining productivity, flexible scheduling—including flexible credit hour programs, compensatory time and compressed workweeks—must be made available to all small businesses.

- Today, 30 U.S. states have some kind of flex-work policy in place for their government workers—and in 2010 the federal government passed the Telework Enhancement Act, which requires federal agencies to establish telework policies for their employees. Yet, private-sector employers aren't currently allowed to give workers complete flexible scheduling options. The law requires, among many other provisions, a 40-hour work week and mandatory overtime payment at the rate of one-and-a-half times the hourly wage.
- Businesses are allowed to adjust schedules and work hours within a 40-hour work week, but nothing beyond that singular week. For certain individuals who are exempt from overtime pay, primarily those in managerial or professional roles, the employee and employer have the opportunity to discuss and legally alter the worker's schedule— even allowing for multiple-week arrangements. Unfortunately, a typical small-business employee may not qualify for such an exemption, leaving them unable to negotiate a better work arrangement with their employer.
- Flexible scheduling has become a key recruitment tool for some of America's largest companies in their search for management-qualified employees. Small businesses, however, are hit particularly hard by the Fair Labor Standards Act's (FLSA) rigid rules, simply because they are more likely to hire fewer management-qualified employees.

Solution:

Workplace flexibility is a strategy for work-life balance that promotes employee retention, satisfaction, production and prevents worker burnout. Finding solutions to work arrangements that provide a balance between job and family responsibilities is also a priority for small-business owners and their employees. Federal one-size-fits-all solutions do not work for small businesses, especially given the massive shifts in working spurred by the pandemic.

Congress should amend the outdated FLSA to give private-sector employees more voluntary flexible scheduling, including compensatory time-off in lieu of overtime pay and flexible 80-hour two-week work periods.

Tort Reform

Problem:

Excessive litigation in the U.S. limits job creation, stymies innovation, and increases costs of goods and services. In 2018, small businesses faced \$182 billion in commercial tort costs, even though they brought it only 19 percent of the revenue. The entire commercial tort liability bill for 2018 was \$343 billion – which means that small businesses paid more than half of the commercial liability costs in the tort system. It is clear that common sense must be returned to our system of civil litigation.

- *Punitive Damages*: The difficulty of predicting whether punitive damages will be awarded by a jury in any particular case, and the marked trend toward astronomically large amounts when they are awarded, have seriously distorted settlement and litigation processes and have led to wildly inconsistent outcomes in similar cases.
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- *Frivolous Lawsuits*: Given the exorbitant legal and court fees associated with a typical lawsuit, individuals and businesses must spend huge sums of money to defend themselves in court. Faced with such debilitating fees and bad publicity of a trial, many small businesses must settle out of court, even when they have done nothing wrong.
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Solution:

The present tort system is an expensive and inefficient way to compensate those injured. The current system stifles innovation and other economically stimulating activity—Congress needs to boost transparency, restore fairness and properly address excessive regulations as a way to deal with these frivolous lawsuits and unfair liability regulations that are imperiling America’s small businesses.

- Lawmakers must embrace balanced liability relief provisions similar to last Congress’ *SAFE TO WORK ACT (S. 4317)* in any future COVID-19 relief legislation. Legislation should ensure that unfair lawsuits will not hamper those who work to comply with applicable government guidelines.
- There should be a reasonable cap on the awarding of punitive damages.
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- Individuals and attorneys who file frivolous lawsuits should be held accountable for their actions.



Health Care Policy Issue Briefs

Rein In The Costs of Healthcare

Problem:

The small-business community needs substantial relief from health care costs. Over the last two decades, health care costs have been steadily increasing and, absent reform, will continue to do so at an unsustainable pace.

- According to the Kaiser Family Foundation 2020 Employer Health Benefits Survey, 55 percent of small firms and 99 percent of large firms offer health benefits to at least some of their workers.
- The likelihood of offering health insurance drops significantly with the firm's size— only 48 percent of firms with 3 to 9 workers offer coverage.
- The average family premiums for small firms have steadily increased over the last decade: from \$13,250 in 2010 to \$20,438 in 2020.
- Despite the cost, small firms are doing more for their employees when it comes to health insurance costs: 27 percent of covered workers in small firms have an employer that pays the full premium for single coverage, compared to 4 percent in large firms.
- For family coverage, those numbers are 10 percent and 1 percent, respectively.

Solution:

True relief can only be achieved through a broad reform of the current health care system with a goal of reducing the cost of coverage, providing universal access, focusing on individual responsibility and empowerment, creating the right market-based incentives, and a relentless focus on improving quality while driving out unnecessary, wasteful, and harmful care. Needed elements to improve the quality of care include:

- The maximum 3-to-1 ratio for premiums has driven up rates for the young and otherwise uninsured—a 5-to-1 ratio would provide much-needed relief and keep costs down for younger employees.
- Policymakers should prioritize health care quality and consumer empowerment.
- The employer mandate creates uncertainty, enormous administrative burdens and financial unpredictability for both firms and employees—while doing virtually nothing to expand coverage—and should be repealed.
- The arbitrary limits on the provisions of Health Savings Accounts and Flexible Spending Accounts need to be reformed and expanded.
- Allow the self-employed to fully deduct the cost of their health insurance premiums—currently they cannot, resulting in an additional 15.3 percent tax no other business owner or worker pays.
- Transparency is crucial to help patients make informed choices and must be utilized.

Medical Liability Reform

Problem:

Health care costs remain one of the main concerns for small businesses in terms of providing health insurance to their employees and their families. The costs of medical malpractice—both direct and indirect—are a significant component of the health care system that is contributing toward unsustainable health care costs for many small businesses.

- New studies have found that the average cost of medical malpractice claims in the U.S. has increased by 50 percent since 2009. Claims above \$5 million now compromise a larger portion of all claims than in previous years.
- More than a third of physicians (34 percent) have had a claim filed against them at some point in their careers.
- Even though the rate of claims dropped in recent years, the cost to manage a legal claim has gone up significantly. The upward trend in case management expenses is striking, particularly since the time to resolve cases has decreased.
- The rising cost of medical malpractice suits has resulted in decreased access to health care and increased health care costs. Rural areas are particularly hard hit by a lack of specialty physicians.

Solution:

Medical malpractice reforms that set limits on awards have shown to lead to increased numbers of practicing physicians.

- Federal legislation to mitigate the costs of medical liability and defensive medicine should, at a minimum, establish a national statute of limitations on health care lawsuits, impose a cap on non-economic damages, and limit punitive damage awards.
- Beyond traditional medical malpractice laws, lawmakers should champion legislation that establishes some kind of safe harbor for physicians, as well as the use of health courts. Any safe harbor rule would have to be in conjunction with federally-defined, evidence-based medical procedures. Physicians who abide by those standards and report outcomes, would be allowed a certain level of protection from medical liability. Health courts would allow for the establishment of specialized courts for dealing with medical malpractice claims.
- Congress should enact much-needed medical malpractice reform in order to promote greater access to more affordable, high-quality health care.



Taxation Policy Issue Briefs

Tax Reform

Problem:

The Tax Cuts and Jobs Act (TCJA) which was enacted late-2017 is now in effect, but key portions of it are only temporary—specifically those that help the majority of America’s small businesses. The TCJA lowered rates on individuals and businesses and updated the business tax code to jumpstart America’s global competitiveness. However, it failed to include tax simplification, parity between large and small businesses, permanency of the changes, or deficit reduction. Unfortunately, in 2025, most individual—which includes any passthrough--cuts and some business tax cuts will revert to pre-reform levels.

- President Biden campaigned on increasing the corporate income tax rate from 21 percent to 28 percent—reversing half of the rate reduction achieved by the TCJA, among other changes.
- Biden has also proposed returning to pre-TCJA tax rates for taxpayers earning more than \$400,000; this would include restoring the highest rate to 39.6 percent for those taxpayers. He also would limit the Section 199A pass-through deduction for individuals with income above \$400,000.

Solution:

Tax reform is critically important in the effort to help grow the economy and improve the fiscal situation, and there are many options available to make improvements on both fronts. It is imperative that the U.S. moves towards a simpler, fairer tax system that does not attempt to only tweak one piece of the puzzle but instead is a permanent solution. Specifically, Congress should focus on fixing the national debt, simplifying the tax code for small businesses, creating stability and predictability in our tax laws, and moving toward greater parity in the tax treatment of various business forms.

- **Rate Parity:** Because 83 percent of small firms are passthrough entities, and therefore pay taxes on small-business income at the individual level, Congress must seek ways to reduce business taxes more fairly, including those on small business.
- **Simplicity:** The TCJA does very little to simplify the tax code, and makes it more complex for most small businesses. Truly simplifying the tax code means reducing compliance and administrative costs and making it possible for job creators to reinvest more of their own money in their businesses.
- **Predictability:** The TCJA sunsets the passthrough deduction after the year 2025, resulting in significant tax hikes on passthrough businesses. NSBA supports making the passthrough business deduction permanent.
- **National Debt:** Without spending-based reforms, deficits will continue to grow, requiring still higher taxes in the future. Outlays continue to far exceed revenues and will continue to do so until Congress places meaningful constraints on federal spending.

Deficit Reduction & Entitlement Reform

Problem:

Despite some short-term improvements made in recent years, long-term debt challenges remain, and in the coming decades, the debt will squeeze budgetary resources that are vital to our economic success and competitiveness will be stymied. The COVID-19 pandemic and the legislation enacted in response created an additional set of issues, which need to be considered.

- The Treasury Department released a fiscal year (FY2020) end report showing that the deficit increased to \$3.1 trillion – \$2 trillion more than forecast in the FY2021 President’s Budget. That is three times more than the \$984 billion deficit in FY2019.
- At 16 percent of gross domestic product (GDP), the deficit in 2020 would be the largest since 1945. The deficit in 2021 is projected to be 8.6 percent of GDP. Between 1946 and 2019, the deficit as a share of GDP has been larger than that only twice.
- As a result of those deficits, federal debt held by the public is projected to rise to 98 percent of GDP in 2020, compared to 79 percent at the end of 2019, and 35 percent in 2007. It would exceed 100 percent in 2021 and increase to 107 percent in 2023, the highest in nation’s history.
- Governmental receipts totaled \$3.420 trillion in FY2020, \$42 billion lower than in FY2019.
- The national debt continues to climb at a staggering pace, reaching more than \$27 trillion in October 2020. A combination of recessions, response to the COVID-19 pandemic, defense budget growth, and tax cuts has raised the national debt-to-GDP ratio to record levels. This is a stark contrast to the year 2000, when the federal government had a surplus of \$236 billion and the national debt was less than \$6 trillion.

Solution:

For NSBA, meaningful tax reform—which includes deficit reduction and entitlement reform—is critically important in the effort to help grow the economy and help improve the fiscal situation. There are still plenty of options available to make improvements on both fronts, however we must act soon.

Avoiding economically disastrous growth in the national debt will require an aggressive combination of reduced spending and increased revenue over the long term. Significant progress can be made by offsetting all new spending or tax cuts and by assuring solvency of all major trust funds. The sooner we act to get our debt under control, the easier pill it will be to swallow with more gradual changes we can hope to enact versus driving our economy off a fiscal cliff.

Self-Employment Tax on Health Care

Problem:

Self-employed individuals, unlike large corporations, cannot fully deduct the cost of their health insurance as a business expense. Although NSBA won the first battle in 2003 allowing self-employed individuals to deduct the cost of health insurance for income tax purposes, they are still not on par with larger businesses, meaning more must be done.

- At issue is the 15.3 percent tax that self-employed individuals must pay on their employer-provided health insurance costs to which nobody else is subjected.
- This significant tariff comes in the form of the FICA payroll taxes—the self-employment tax rate on net earnings is the sum of 12.4 percent for Social Security and 2.9 percent for Medicare.
- Since 2003 small-business owners have been able to deduct the cost of health care from their income, however, that income already has been exposed to the payroll taxes. Thus, the self-employed effectively pay the self-employment tax on income used to purchase health care.
- The average cost of a monthly premium for 2020 health insurance for an individual was \$456. The average cost of a month premium for 2020 health insurance coverage for a family was \$1134.
- Although a self-employed individual can deduct a portion of the FICA tax as a business expense on Schedule 1 of Form 1040, they cannot fully deduct their health insurance expenses as an ordinary business expense, resulting in the 15.3 percent payroll tax they alone pay on their premiums adding extra taxes that only the self-employed pay.
- This additional 15.3 percent tax makes already disturbingly high-priced health care costs even more by adding thousands of dollars to the cost of an individual's health care.

Solution:

NSBA urges Congress to allow self-employed individuals to fully-deduct the cost of their health insurance—something all other business owners and employees can do. NSBA has been leading the charge on ending this unfair penalty on the self-employed for more than 10 years and was integral in a one-year reprieve in 2010—which saved self-employed business owners between \$456 to \$968 in tax that year.

The money self-employed individuals would save could be used to reinvest and grow their business, hire part-time help or cover the ever-increasing costs of health insurance.

Interstate Sales Tax

Problem:

E-commerce provides businesses with access to much larger markets, but it also complicates even the simplest of retail transactions. One of the most challenging aspects can be figuring out which sales taxes apply to individual sales, especially when selling to out-of-state customers.

- On June 21, 2018, the U.S. Supreme Court fundamentally changed the rules for collection of sales taxes by Internet-based retailers. In *South Dakota v. Wayfair Inc.*, the Court effectively stated that individual states can require online sellers to collect state sales tax on their sales. This rule overturns the Court's 1992 decision in *Quill Corporation v. North Dakota*, which prohibited states from requiring a business to collect sales tax unless the business had a physical presence in the state.
- This decision has led to, as of Jan. 1, 2020, 43 states and the District of Columbia requiring remote sales tax collection.
- For many years, states argued that they were losing money by not being able to collect sales tax on Internet sales to customers located in their states. Formerly the burden was on the customer rather than the seller to pay the relevant tax, and customers often simply did not pay use tax to the state.
- The COVID-19 pandemic has left virtually every state with an unprecedented fiscal crisis and threatening basic services including education, health care and public safety – the pandemic could slash 2020-21 state revenues by \$200 billion. These revenue shortfalls will continue to force states to make tough choices in order to balance their budgets, including capturing revenue from out of state jurisdictions.
- For an online small retailer, the decision may mean they will need sales tax software to keep them up to date on which states and localities collect sales tax and at what rate –making compliance burdensome and complex.

Solution:

Since there are thousands of state and local tax jurisdictions across the country, NSBA urges Congress to advance legislation to protect small businesses and Internet entrepreneurs from excessive regulatory burdens associated with the Supreme Court's ruling. Online sellers need clarity and stability in the sales tax arena.

- Any legislation should provide a small-seller exception and prohibit states from requiring remote sellers to collect sales and use taxes until the states come up with—and Congress ratifies—a compact simplifying sales-tax collection.
- States should be required to provide software to online sellers free of charge to calculate, collect and remit the sales tax.
- Liability protection should be given to states, sellers and sales tax software providers for errors made throughout the chain.

The Fair Tax

Problem:

The current federal income tax system is broken—unfair, overly complex, and almost impossible for most Americans to understand. The Fair Tax is a reasonable, nonpartisan alternative before Congress that is both fair and easy to understand. A system that allows taxpayers to keep their entire paycheck and only pay taxes on what is spent.

- The financial burden of taxes and the sheer complexity of the tax code are consistently ranked among the top challenges facing America's small businesses – more than one-fourth of small business owners will spend over 100 hours doing their federal taxes – that is more than two full weeks of work.
- According to most recent NSBA data, the majority of small businesses – 63 percent – spend more than \$1,000 each year on the administration (i.e. accountant fees) of federal taxes alone and 15 percent report spending more than \$10,000.
- It is estimated that American taxpayers spend billions of dollars each year in compliance alone: 83 percent of small-business owners pay an external tax practitioner or accountant to handle their taxes.
- The current tax code poses a huge headache to small firms and we desperately need fundamental reform and simplification of the tax law.

Solution:

NSBA advocates that the Fair Tax is a fair, efficient, transparent, and intelligent solution to the frustration and inequity of the current tax system.

- The Fair Tax is a 23 percent, single rate, national retail sales tax that treats every person equally and allows American businesses to thrive, while generating the same tax revenue as the current four-million-word-plus tax code.
- The Fair Tax applies to the sale of all consumer goods and services at the final point of consumption and rates depend on the amount of purchases made.
- Every taxpayer would be subject to the same tax rate with no exceptions and no exclusions and gets to keep 100 percent of their paycheck, pension, and Social Security payments enabling them to save more, invest in their businesses, and boost our economy through job creation and innovation.
- It would dramatically reduce the tax bias against work, savings and investment, and would substantially reduce complexity and compliance costs.
- The Fair Tax would make the U.S. an extremely attractive location to manufacture goods and put U.S. produced products on even footing with foreign produced goods.