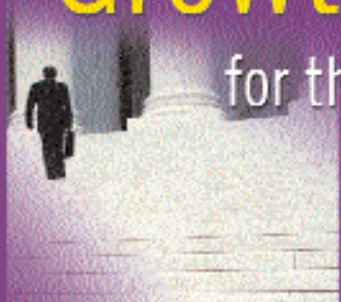




The NFIB

Small Business Growth Agenda

for the 108th Congress



NFIB
The Voice of Small Business®

To help small business, government should not try to manage the economy from Washington. Government's role is to create an environment in which employers succeed and hire new people.

—PRESIDENT GEORGE W. BUSH, RADIO ADDRESS, JAN. 18, 2003

The NFIB Small Business Growth Agenda is for those who want to know more about small business and the concerns of small business owners—the men and women whose passion for independence and innovation has meant so much to the prosperity of America.

For 60 years, NFIB has been the voice of small business. We work in Washington and the 50 state capitals urging lawmakers to avoid the temptation to intervene in the marketplace.

When legislation affecting small business is up for a vote in a committee room in a state capitol or on the floor of the U.S. House or Senate, it is not unusual for lawmakers to ask, “What’s the small business position on this?”

Members of Congress and state legislators know that small business owners pay attention to public policy. They vote in large numbers. A Tel Opinion Research survey conducted for NFIB in July 2002 found 84 percent of small business owners were “extremely” or “very” likely to vote in the November elections.

Voters respect the opinions of small business owners. A national survey of registered voters conducted in June 2002 by the Winston Group found voters prefer candidates supported by small business by almost 3-to-1 over those supported by organized labor.

NFIB knows the small business position on legislation in the states and in Washington. We poll our members and report the results. The vote of a majority of NFIB members— thousands in the states and 600,000 nationwide—is the small business position.

What follows is a primer on small business: Read the statistics about small business job creation and small business innovation. Read the stories by women and men trying to run their businesses while coping with ill-advised government policies. Finally, read how small business owners want lawmakers to deal with the tax code, frivolous lawsuits, the escalating cost of health insurance, unfair competition— often from the government—and regulations issued without regard to the impact on small firms.

I hope you will keep the *NFIB Small Business Growth Agenda* handy during the next two years. That way, you’ll never have to ask a colleague, “What’s the small business position?”



Jack Faris
President, NFIB



Table of Contents

Who is NFIB3

Amazing Facts About Small Business6

Simplify the Code and Reduce Taxes8

- Repeal the death tax
- Save Social Security by creating Personal Retirement Accounts
- Cut payroll taxes and return the unemployment system to the states
- Simplify the tax code for small business
- Update automobile expensing
- Retain current definition of highway vehicles

Ease the Burden of Excessive
Regulation and Intrusive Labor Laws11

- Ensure that property rights of small business owners are respected
- Make regulations less costly and complicated for small business
- Oppose minimum-wage increases
- Oppose expansion of the Family Medical Leave Act
- Reform the Fair Labor Standards Act

Make Health Care More Accessible13

- Allow small businesses to band together to purchase health insurance
- Expand options for individuals who buy their own health insurance
- Oppose health-care mandates; don't drag employers into litigation
- Permit self-employment deductibility of health care costs

Curb Frivolous Lawsuits15

- Limit financial damages for lawsuits
- Establish a products standard to protect sellers
- Strengthen the Equal Access to Justice Act
- Cap damages in medical liability lawsuits

Competition and Procurement17

- Eliminate the Federal Prison Industries mandatory source status
- End contract bundling
- Support competitive government contracting
- Prevent rural electric cooperatives abuse of tax-exempt status

Any Questions?

Call NFIB's legislative staff at
202-554-9000 or log on to www.nfib.com

The National Federation of Independent Business is the nation's largest small business advocacy group.

Who is NFIB?

With a membership of 600,000 business owners employing more than seven million people, NFIB is a melting pot of commercial enterprise, manufacturers, family farmers, neighborhood retailers and service companies.

Founded 60 years ago (1943), NFIB was created to give small and independent business a voice in governmental decision-making. Today, the organization remains true to its charter of advancing the concerns of small business owners among state and federal legislators and regulators.

Two fundamental differences make NFIB stand out from most other associations. First, to prevent undue influence by one member or group of members, dues are capped. The maximum contribution is \$2,400. Second, the members determine NFIB policy. They vote on public policy positions, and the majority sets the NFIB official position. Each NFIB member gets one vote.



NFIB's positions advance the consensus for the small business community rather than the narrow interests of any particular trade group. Once the ballots are tallied—five times a year on federal issues and at least once a year on state issues—NFIB's lobbyists carry the message to Congress and the state legislatures, backed by the clout of hundreds of thousands of small business owners.

With public policy offices in Washington, D.C., and all 50 state capitals, NFIB ensures small business owners have a strong voice in the development of legislation and regulatory policy. The NFIB Small Business Works for America Support Center is located in Nashville, Tenn.

NFIB Membership Profile

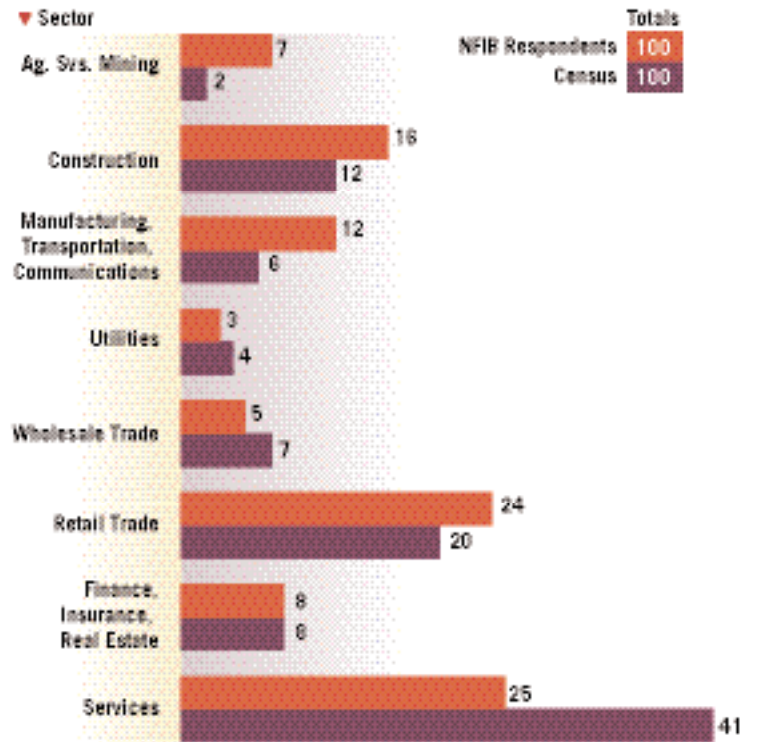
NFIB's national membership spans the spectrum of business operations, ranging from one-person cottage enterprises to firms with hundreds of employees. Its total membership employs more than seven million people and reports annual gross sales of approximately \$523 billion.

While there is no standard definition of an average small business, the typical NFIB member employs five people and reports gross sales of around \$350,000 per year.

The NFIB membership is very much a reflection of the face of American small business overall, as evidenced by the following comparisons between NFIB members and Census Bureau data prepared for the Small Business Administration (*next page*):

Who is NFIB?

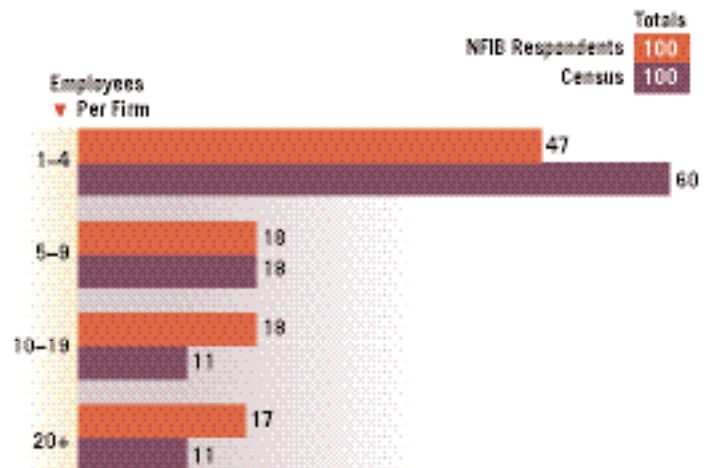
Comparison of Industrial Distributions
 NFIB Survey Respondents versus U.S. Census Bureau Data
 Census Bureau Data by Firm Size
 (Percentage of Total)



Sources: National Federation of Independent Business, Surveys of September, 1999, August 2000;

Census Data: Office of Advocacy, U.S. Small Business Administration, data prepared by Census under contract, 1999 (sba.gov/advo/stats) Census under contract (sba.gov/advo/stats), 1999

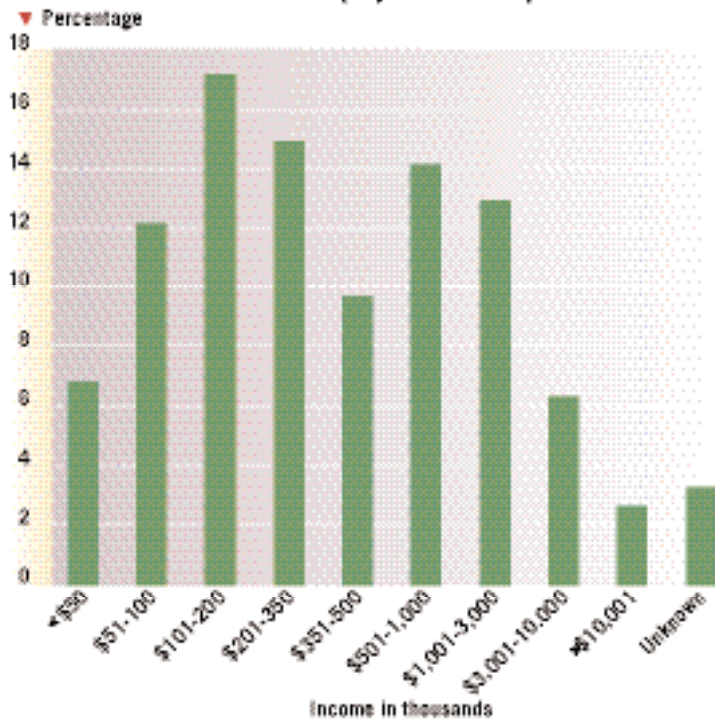
Distribution of NFIB Survey Respondents versus Census Bureau Firms by Firm Size
 (Employees Per Firm)



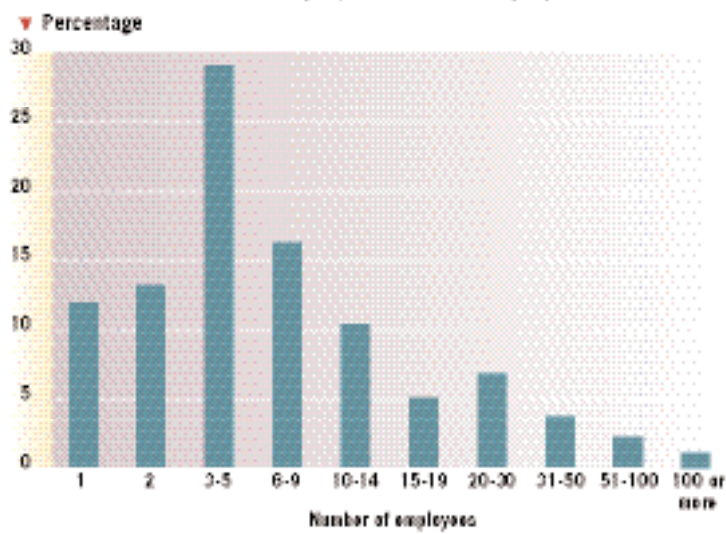
Sources: National Federation of Independent Business: Surveys of September, 1999, August 2000

Census: Office of Advocacy Firm Size Data Base, prepared by the Bureau of the Census under contract, 1999.

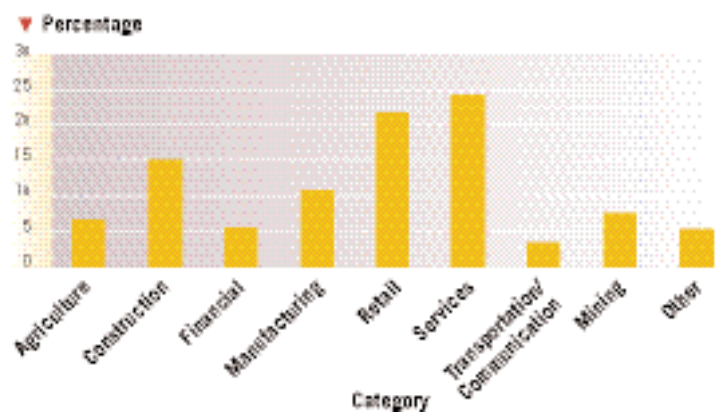
NFIB Membership by Gross Receipts



NFIB Membership by Number of Employees



NFIB Members by Standard Industrial Classification



With so many special-interest groups clamoring for attention these days, what makes small business worthy of special legislative attention? And what type of attention does it need?

Amazing Facts About Small Business

Small business interests need to be a legislative priority because small business is not a special interest. What's good for small business is good for America. It is unlikely that most Americans realize the significant role small business plays in the nation's economy. At the same time, most do not realize that laws enacted, without considering the impact on a Main Street business, can cripple them or put them out of business altogether.

Small business is providing the economy with a wealth of jobs and revenue, and does so in a way that is still traditional and friendly. It is an economic powerhouse that knows you by your first name.

Small business is the leader in job creation and a leader in the world's economy because it is the embodiment of the entrepreneurial spirit. The larger a business, the more bogged-down it becomes in managerial details. Small business produces products and services using fewer financial resources and fewer people than big business. Small businesses bring their products to market more rapidly. Small business is innovative, improving the quality of life with inventions such as air-conditioning, airplanes, catalytic petroleum cracking, continuous casting, gyrocompasses, insulin, lasers, optical scanners, pacemakers, personal computers, turbojet engines, and xerography. Imagine today's world without these inventions, and it becomes more and more clear why small business is a special—*not* special interest—group.

The legislative attention that small business seeks is not about special subsidies or specialty loan programs. Small business owners want lawmakers to give attention to policies that encourage economic growth and job creation. Small business wants to be left alone to do what it does best: strengthen and expand the U.S. economy.

American Small Business in Numbers

- The number of small businesses in the United States depends on the definition of the term. If everyone who files a tax return with business income is included, about 24 million businesses exist. However, those whose principal occupation is owning or operating a small business number 12 million, and the other 12 million work in their business part-time (*NFIB Small Business Policy Guide*, William J. Dennis, Jr., November, 2000).
- Seven out of 10 small business owners start their business with less than \$20,000 (*Wells Fargo/NFIB Series on Business Starts and Stops*, William J. Dennis, Jr., November 1998).

- Fourteen percent of *Inc.* magazine's 500 fastest-growing companies in the U.S. started with less than \$1,000 (*Inc.*, October 2002).
- Most ideas for businesses originate from other work or hobbies; sometimes the ideas are related to educational courses, chance happenings, or suggestions (*New Business in America*, William J. Dennis, Jr., The NFIB Education Foundation).
- More than 60 percent of all businesses in the United States employ between 0 and 4 people. Another 18 percent employ 5 to 9. Therefore, 78 percent of all employers sign paychecks for between 0 and 9 employees. An additional 11 percent employ 10 to 19. Thus, four of five employing businesses have fewer than 20 people working in them (*NFIB Small Business Policy Guide*, William J. Dennis, Jr., November, 2000).
- Over the 1987-1997 decade, the number of minority-owned firms increased 168 percent to about 3.25 million (*The Facts About Small Business: 2000*, US Small Business Administration Office of Advocacy, August, 2000).
- The Center for Women's Business Research estimates that between 1997 and 2002 the number of women-owned firms increased by 14 percent nationwide—twice the rate of all firms. Employment at women-owned businesses increased by 30 percent, 1.5 times the U.S. rate. Sales at women-owned firms grew by 40 percent, the same as the rate for all firms.
- Small firms produce 55 percent of innovations. They produce twice as many as large firms (*The Facts About Small Business: 2000*, US Small Business Administration Office of Advocacy, August, 2000).
- Among important small firm innovations in the 20th century are the airplane, audio tape recorder, double-knit fabric, fiber optic examining equipment, heart valve, optical scanner, pacemaker, personal computer, soft contact lenses, and the zipper (*The Facts About Small Business: 2000*, U.S. Small Business Administration Office of Advocacy, August, 2000).
- Of the workers in high technology occupations (scientists, engineers, computer programmers and analysts), 40.2 percent worked in small firms in 1998, up from 39.0 percent in 1997 (Current Population Survey). According to a 1998 study by the National Science Foundation, a majority of new bachelor's level college graduates in science and engineering now work in small firms.
- The share of private non-farm gross domestic product (GDP) produced by small business has remained relatively stable over the last two decades at approximately 50 percent of GDP (Joel Hopkin & Co. 2001).

Small Business and Jobs*

- Small firms with fewer than 500 people employed 52 percent of the non-farm, private sector work force in 1998 and were responsible for 51 percent of the private sector business share of the nation's gross domestic product (GDP).
- Small firms provide most initial on-the-job training and exposure to the labor force for new entrants. They are also more likely to employ younger workers, older workers, former welfare recipients and women.
- The largest job creators were small businesses with one to four employees, which created about 143,000 net new jobs through new firm births and another 838,000 through expansions over the 1995-1996 period. Small companies with 20-99 employees added 78,000 net new jobs or about 4.2 percent of the small firm total.
- From 1994 to 1998, about 11.1 million net new jobs were added to the economy. According to Cognetics, Inc. data by firm size, virtually all were generated by small firms with fewer than 500 employees. Large companies continued to downsize, and separations exceeded hires. Small businesses with 1-4 employees generated 60.2 percent of the net new jobs over this period; firms with 5-19 employees created another 18.3 percent.

* All data from: "The Facts About Small Business," U.S. Small Business Administration Office of Advocacy, August 2000.

Taxes that are too high, and a system that is ridiculously complex, stand in the way of small business growth.

Simplify the Code and Reduce Taxes

Karen Brown and her late husband were in business for 18 years together, and, through hard work, built up 17 businesses throughout the Midwest. When Karen's husband died in March 2000, she found herself a 38-year old widow left with two young daughters, ages six and eight.

Although Karen and her family were fortunate enough to have had a smart financial plan in place and an irrevocable life insurance trust, she worries that her businesses could not survive the approximately 6 to 7 million-dollar tax burden in the event of her death. The company's life insurance policy certainly would not cover the tax debt, and the businesses that she and her family have nurtured over the years would be lost.

Karen says, "I am looking for the best way to pass on the family business to my girls, along with a sense of pride and accomplishment that comes in working for yourself and building a company from nothing. The death tax would literally wipe out all that my husband and I have worked for. I would rest easier knowing that if something happened to me, my children could take over the business without the heavy tax burden."

Karen, like many small business owners, doesn't mind paying her fair share of taxes, but she feels that small businesses end up paying more than their fair share. Relief from burdensome taxes, and particularly the death tax, is a top priority for Karen and other small business owners like her.

The Problems for Small Business

- Since 1986, taxes have ranked among the top concerns in the NFIB survey, "Small Business Problems and Priorities." The survey tracks the top problems facing small business owners.
- The effective tax rate in 2002 (total tax burden from all levels of government) was 32.1 percent—higher than at any time in World War II (Tax Foundation, "Tax Freedom Day Report").
- For the average household, taxes now exceed the cost of food, clothing, shelter and transportation combined (based on data from the Tax Foundation).
- Family firms taking steps to survive death-tax liabilities spend an average of nearly \$125,000 per company on attorney/consultant fees, life insurance premiums, etc. (*Impact of the Federal Estate Tax on Family Business Employment Levels in Upstate New York*, Travis Research Associates, June 22, 1999).
- The costs of complying with the death tax are roughly equal to the tax yield—about \$23 billion in 1998 (*The Economics of the Estate Tax*, Joint Economic Committee, December, 1998).

1. Repeal the death tax

The death tax, (estate tax), affects all Americans, especially small business owners. It will be fully repealed in 2010, but under present law, reinstated in 2011. The death tax creates a disincentive to expand a business, create jobs, and far too often, literally taxes family businesses right out of the family. It is important to note that much of the “cost” of the death tax occurs before the tax itself is levied. The threat of the tax actually forces small business owners to pay for expensive “estate planning” if they want to keep their business in the family. As shown by a survey in upstate New York, average spending for tax planning (i.e. attorney/consultant fees, life insurance premiums, internal labor costs, etc.) by small business owners can run nearly \$125,000 per company over a five-year period (Survey of the Impact of the Federal Estate Tax on Family Business Employment Levels in Upstate New York, June 22, 1999).

The Legislative Solution:

Permanent repeal of the death tax.

2. Save Social Security by creating Personal Retirement Accounts (PRAs)

Small business owners, like all Americans, are concerned about the future of Social Security. Their perspective on the issue is unique, as it is both that of the future retiree and of the employer paying the payroll taxes.

The Legislative Solution:

Make Social Security fair to small business.

- **Do not increase payroll taxes.**
 - **Social Security reform should be seen as an opportunity to reduce, rather than increase, paperwork burdens.**
 - **Social Security should continue its commitment to provide benefits to retirees.**
 - **Individually controlled personal retirement accounts should be a major part of any Social Security reform.**
-

3. Cut payroll taxes and return the unemployment system to the states

While unemployment insurance is essentially a state-level program, small businesses are hit with a double-whammy because unemployment taxes are collected at both the state and federal levels. The federal unemployment tax (FUTA) pays for the program’s administration, and the state tax pays for the actual benefits. In normal years of relatively low unemployment, too much of the FUTA revenues is spent on administrative costs, while the remainder is spent on non-related government programs. This is an inefficient system that imposes its tax burden on employers and helps make payroll taxes the highest of all the taxes that small business pays.

The Legislative Solution:

Cut the FUTA tax and return the unemployment insurance system to the states.



4. Simplify the Tax Code for Small Business

There is no greater burden placed on small businesses by government than that of the current IRS tax code. Small business owners potentially face more than 200 different IRS requirements, and 80-85 percent rely on tax practitioners to prepare their tax return.

The Legislative Solution:

- **Increase Section 179 Expensing:** A majority of NFIB members exceed the current small business expensing limits in only three months. The limit this year is \$25,000. Congress should immediately raise the threshold to \$100,000 and index it for inflation. This will allow additional investments by small firms to be expensed, therefore enabling those businesses to expand and create new jobs. It will lower the cost of capital for tangible property and eliminate depreciation record-keeping requirements.
- **Relief from the Alternative Minimum Tax (AMT):** According to the Joint Committee on Taxation, fewer than one in 150 taxpayers are subject to the AMT today. By 2007, however, that number is expected to grow to one in 14, with the largest increase coming from taxpayers earning between \$50,000 and \$100,000. The individual AMT is a remarkably complex and obtuse provision in a tax code not known for its clarity. It requires taxpayers to calculate their taxes twice, and then pay the larger amount. While originally designed to ensure that wealthy Americans pay a reasonable level of their income in taxes, the AMT has the side effect of hitting taxpayers—increasingly middle-class taxpayers—when they can least afford the bill
- **Establish a Standard Home Office Deduction:** Home-based businesses incur expenses that would be easily deductible if the businesses were not located in a home. Many business owners do not take legitimate deductions because of the complexity of the paperwork involved in doing so. The complicated record keeping now required by the IRS to qualify for a home office deduction is a barrier to many who would qualify but don't have the time and staff to do the paperwork. That barrier would be removed if a "standard deduction" for home-based businesses were allowed. Like the 1040 standard deduction, the deduction would be optional.

5. Update Automobile Expensing

Depreciation of automobiles, minivans and sport utility vehicles (SUVs) under 6,000 pounds is limited by law. The maximum depreciation allowed by business owners for these assets is \$14,460. When Congress drafted this law, minivans and SUVs did not exist in their present form or did not have significant market share. Today small business owners rely heavily on these types of vehicles.

The Legislative Solution:

Congress should update the law to reflect the changes in the marketplace by raising the depreciable amount to \$25,000.

6. Retain Current Definition of Highway Vehicles

Since 1956, federal highway construction has been supported via four major taxes: fuel tax on gasoline and diesel fuel, tire excise tax on heavy duty tires, truck and trailer excise taxes, and an annual heavy vehicle tax based on the weight of the vehicle. Non-highway vehicles, such as farm equipment and off-road vehicles are exempt from the taxes because they don't use the highways. On June 6, 2002, the IRS proposed a rule that would end the tax exemption for any non-farm vehicle that might use the highway, even if it qualifies under the current law use test as primarily an off-road vehicle. The change will result in a tax increase on tens of thousands of vehicles.

The Legislative Solution:

If IRS does not rescind the rule, Congress should take steps to rectify the situation.

Both the legislators who pass laws and the bureaucrats who write the regulations must recognize that small business is not the same as big business. NFIB's legislative and regulatory agenda seeks to set small business apart from the near-endless maze of laws and regulations, freeing up entrepreneurs so that can do what they do best: create jobs.

Ease the Burden of Excessive Regulation and Intrusive Laws

Chuck Toudouze is the third-generation manager of Toudouze Market, a wholesale cash-and-carry grocer in San Antonio, Texas. Chuck believes that many government regulations begin with good intentions but immediately take on lives of their own. Chuck knows first-hand how government regulations can impact small business owners.

Because of amendments to the Clean Water Act, the U.S. Environmental Protection Agency (EPA) requires local governments to control stormwater runoff. As a result, many cities, such as San Antonio, have been forced to impose new taxes to pay for stormwater control. This tax has quickly become the highest charge on Chuck's monthly water bill—and the tax has increased 32 percent since its implementation. Chuck feels

that this is just one more example of how small businesses pay the added costs of often senseless, unreasonable bureaucracy at the local, state, and federal levels, and, he says, the bureaucrats think we can simply pass the hidden costs on to our customers.

Chuck says, "If I forget the basic purpose of quality, service and value, my customers will simply go elsewhere. Over-regulation by the government prevents me from offering this value by diverting resources unnecessarily. Small businesses must regulate themselves through free market dynamics in order to stay in business. Overly burdensome government regulations only take away dollars that could be spent on hiring good workers and keeping the economy running strong."

The Problems for Small Business

- Americans spent \$843 billion to comply with regulatory costs in 2000, nearly 8 percent of Gross Domestic Product.
- Regulatory costs per employee for small firms are approximately 55 to 60 percent more than the costs for large firms. Small businesses employ just over half of the work force, but shoulder nearly two-thirds of the total business regulatory costs.
- Federal regulations cost small businesses \$6,975 per employee. They cost large companies \$4,463 per employee.
- Since 1995, the cost of regulation to Americans has increased at a rate of 4 percent per year, outpacing inflation.

Source: Crain and Hopkins, The Impact of Regulatory Costs on Small Business: A Report for the Office Of Advocacy, Small Business Administration, December 2001, <http://www.sba.gov/advo/research/rs207tot.pdf>

1. Ensure that private property rights of small business owners are respected

Regulations continue to chip away at the rights of individuals to lawfully use their property, and effectively conduct business. The EPA, Department of Interior, Army Corps of Engineers, and other agencies continue to issue regulations that are devastating to small business owners, and legal hurdles frustrate the ability of these entrepreneurs to seek proper redress and compensation.

The Legislative Solution:

Remove legal hurdles preventing property rights victims from having their claims heard and redressed. Continue to ensure that federal agencies assess the impact of their regulations on private property.

2. Make regulations less costly and complicated for small business

Regulations can be excessively expensive and intrusive to small business. The per-employee regulatory cost to small firms is approximately 50 percent more than the cost to large firms. Small businesses employ 53 percent of the work force, but shoulder 63 percent of the total business regulatory costs.

The Legislative Solution:

Ensure fair treatment for small businesses; tighten agency compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). Provide amnesty to small business owners for first-time paperwork violations

3. Oppose minimum-wage increases

When the minimum wage is hiked, it is not the big corporations that have to absorb the cost. It is the small firms that offer most of the minimum-wage jobs (jobs for younger, less experienced employees). The overwhelming majority of economists continue to affirm the job-killing nature of mandatory wage increases.

The Legislative Solution:

Defeat any increase or indexing of the minimum wage.

4. Oppose expansion of the Family and Medical Leave Act (FMLA)

Lawmakers are proposing legislation to expand the current FMLA by requiring employers to give employees up to 24 hours a year of unpaid leave for their children's school activities and routine medical appointments. Some want to eliminate or lower the current 50-employee small business exemption from the FMLA.

The Legislative Solution:

Expansion of family leave must be defeated because government mandates take away the freedom for small employers and employees to negotiate the benefit package that best meets their mutual needs.

5. Reform the Fair Labor Standards Act (FLSA)

The FLSA, passed in 1938, provides for minimum standards for both wages and overtime and mandates administrative procedures employers must follow to compensate for their time. The FLSA needs to be updated to give employees flexibility and to permit employers to reward employees financially for improving productivity and profitability.

The Legislative Solution:

Change FLSA to allow employers to give employees the option to take compensatory time in lieu of overtime pay, allow employers to set up flexible work schedules with their employees and remove obstacles employers face when they attempt to provide bonuses for hourly employees.

The No. 1 concern of small business owners is the cost and availability of health insurance—whether or not they currently offer health benefits to their employees. It has been the top-ranked issue in NFIB surveys since 1986, more of a problem than government regulations, federal paperwork mandates, and even taxes.



Make Health Care More Accessible

Jim Brewer, Jr., owner of Jim's Propane in Leon, Kansas, has experienced the rising cost of health insurance premiums firsthand. Jim's company has always provided health insurance for his employees, but now Jim is concerned that if premiums continue to increase, he will be unable to provide this essential benefit.

From 1995 to 2001, Jim saw his premiums increase approximately 61 percent. In 2002, he was shocked to learn that his insurance was going to increase another 47 percent over what he had paid in 2001. "This leaves me wondering what my next move will be,"

Jim says. "Do I try to find less expensive rates, deduct part of the premium from employees' salaries, or limp along with yet another higher premium each month?"

Jim believes that the passage of Association Health Plan (AHP) legislation would benefit his company with lower premiums, which would enable him to continue to provide his employees with health insurance. "I want to continue to provide health insurance for my employees because it is a very important benefit for them. Passage of AHP legislation would certainly make that more feasible for small businesses like mine."

The Problems for Small Business

- Of the 142.6 million workers in the United States 18 to 64 years of age, 56.3 percent had employment-based health insurance policies in their own name in 2001. In firms with fewer than 25 employees, only 31.6 percent had such policies ("Current Population Survey: Health Insurance Coverage 2001," U.S. Census Bureau).
- Compared with the year 2000, the proportion who had employment-based policies in their own name decreased in 2001 for those employed in firms with fewer than 25 employees ("Current Population Survey: Health Insurance Coverage 2001," U.S. Census Bureau).
- Fifty-two percent of small businesses carry employee health insurance. Forty-five percent of those employing fewer than 10 people have such coverage while 83 percent of those employing 20 or more people provide it (*NFIB National Small Business Poll* [Business Insurance] Volume 2, Issue 7, 2002).
- In 2001, small business owners and their employees paid \$6,900 or more per year for a family health plan (Kaiser, Sept. 2002 report).
- The cost of health care increased 13.7 percent in 2001, a rise of \$67 billion. Government mandates accounted for 15 percent of the increase or \$10 billion (PricewaterhouseCoopers study for the American Association of Health Plans, 2002).

1. Allow small businesses to band together to purchase health insurance

Due to economies of scale and the dynamics of group purchasing, the cost of health insurance is much higher, per employee, for small businesses than it is for large companies. This bias against smaller firms is exacerbated by the fact that small businesses that offer health benefits must comply with costly state and federal mandates, while the large companies that self-insure are exempt from those mandates.

The Legislative Solution:

Pass legislation allowing associations to offer health insurance to their small business members through Association Health Plans (AHPs). Exempt AHPs from costly state mandates.

2. Expand options for individuals who buy their own health insurance

The tax code encourages health insurance to be provided through the workplace by giving special tax benefits to employers who subsidize health insurance and to their employees who receive this benefit. However, those employees who do not obtain their health benefits through the workplace must purchase their health care with little or no tax benefit. This is unfair.

The Legislative Solutions:

- **Expand the availability of Medical Savings Accounts (MSAs) by removing current restrictions.**
 - **Allow annual rollover of Flexible Spending Account (FSA) funds.**
 - **Allow small business employees to use a tax credit to purchase their own insurance policy.**
-

3. Oppose health-care mandates; don't drag employers into litigation

Mandates not only take away the freedom of employers and employees to choose the benefit package that best meets their needs, they increase the cost of health insurance. Current proposals in Congress would expose small employers to the threat of health-coverage lawsuits. Higher premiums and the threat of being sued for actions beyond their control can, and will, force small employers to drop coverage. Studies show that every 1 percent increase in health care premiums causes 300,000 individuals to lose their health insurance. With 41 million Americans already uninsured, additional mandates will only increase the problem.

The Legislative Solution:

Stop mandating health-care benefits at the federal level and don't drag small employers into health-coverage litigation.

4. Permit Self-Employment Deductibility of Health Care Costs

While small businesses will be able to fully deduct the costs of health care from their annual income in 2003, the code still prevents entrepreneurs from deducting these costs from the wage base for self-employment taxes (Social Security and Medicare). This means entrepreneurs are treated differently than individuals who receive their health care from a corporation—they are forced to pay more taxes simply because they are self-employed.

The Legislative Solution:

Change the code to give fair treatment to the self-employed.

Any Questions?

Call NFIB's legislative staff at
202-554-9000 or log on to www.nfib.com

Frivolous lawsuits and out-of-control, lottery-sized damage awards characterize our system today—a very expensive system that too often drives small businesses out of business.

Curb Frivolous Lawsuits

Bob Carnathan, owner of Smith Staple and Supply Co., Inc., knows the impact that frivolous lawsuits can have on small businesses. In the winter of 1996, Carnathan's small nail and staple fastening business, located just outside Harrisburg, Pennsylvania, was involved in costly and time-consuming litigation.

Bob's business is located in a leased space in a strip mall. After a snowstorm, one of the tenants in the complex was walking across the parking lot when he slipped and fell on the icy pavement injuring his back and head. The medical bills from his injury totaled a little more than \$3,000; however, the man sued every tenant in the complex, as well as the landlord and the developer,

for \$1.75 million. Joint and several liability laws hold all parties involved responsible for all damages regardless of the extent of their involvement. Bob was sued even though he was not at fault. His rent included maintenance of the facilities and grounds.

After two years of endless meetings and conference calls, Bob was told that his business was released from the lawsuit. He says that there is no compensation for the time that he was forced to spend away from his business fighting the spurious charges. Mr. Carnathan firmly believes that "the smaller your business, the more you are impacted when a frivolous lawsuit lands on your doorstep."

The Problems for Small Business

- Lawsuit filings have tripled in the last 30 years and represent a serious threat to small business owners (*NFIB Small Business Policy Guide*, William J. Dennis, Jr., November, 2000).
- A survey of NFIB members in Texas showed that more than one-third had been sued or threatened with a suit for punitive damages (*NFIB Small Business Policy Guide*, William J. Dennis, Jr., November, 2000).
- Just over 11 percent of small business owners nationwide have been sued or threatened with at least one liability suit within the last five years (*NFIB National Small Business Poll [Liability]*, NFIB Research Foundation, Vol. 2, Issue 2, 2002).
- Because of the skyrocketing costs of liability insurance, about 26 percent of small businesses are not covered by liability insurance (*NFIB National Small Business Poll [Liability]*, NFIB Research Foundation, Vol. 2, Issue 2, 2002).
- Seventy-eight percent of NFIB members support placing a cap on punitive damages.
- Seventy-nine percent of NFIB members believe medical malpractice awards should be capped (NFIB Member Ballot, October 1996).
- Eighty-eight percent of NFIB members think that attorney fees should be capped (NFIB Member Ballot, October 1999).



1. Limit financial damages for lawsuits

Small business owners face rising costs for liability insurance and the crippling cost of defending themselves should they be named in a suit. Innocent or not, defending oneself is costly. According to the *Journal of Commerce*, the typical cost to defend a business if a case goes to trial is at least \$100,000 and even frivolous cases can cost \$20,000. Considering that the salary of a typical small business owner is only \$40,000-\$50,000, it's easy to see that just one frivolous suit can put a small firm out of business.

The Legislative Solutions:

- **Cap non-economic (pain and suffering) and punitive (punishment) damages in civil suits at fair, reasonable levels.**
 - **Abolish joint liability. Make liability commensurate with responsibility.**
-

2. Establish a products standard to protect sellers

Current product liability law does not distinguish between the manufacturer and seller of a product; this has resulted in product sellers—often small retail businesses—being unfairly dragged into lawsuits for defective products.

The Legislative Solution:

Establish a product liability standard that distinguishes sellers from manufacturers, thus protecting small retail shops from lawsuits over products they did not make. Enact a uniform statute of limitations in product liability cases.

3. Strengthen the Equal Access to Justice Act (EAJA)

Under current law, small business owners who are wrongly accused of violating laws or regulations often must pay attorney fees and other costs to extricate themselves from government penalties. The EAJA is intended to help small businesses recover attorney fees when they prevail in a suit against the government. Unfortunately, a loophole in the law allows agencies to avoid granting reimbursements, and as a result, EAJA applications are rarely filed.

The Legislative Solution:

Reform the EAJA to improve the process of allowing small businesses to recover attorney fees and other litigation expenses when they prevail in administrative or judicial proceedings in which the federal government is an opposing party.

4. Cap Damages in Medical Liability Lawsuits

The country is facing a medical liability crisis. In many states, large jury awards have caused insurance premiums to skyrocket, forcing doctors to retire or move to neighboring states. The situation has led to severe shortages of specialists and caused emergency rooms to drastically cut back services. These critical shortages in the health care system lead to increased costs for small business owners who are voluntarily providing health insurance to their employees.

The Legislative Solution:

Cap non-economic damages in medical liability suits at fair and reasonable rates. Cap attorney fees to ensure that patients harmed from negligent care are allowed to keep a higher percentage of the award. Abolish joint liability to make liability commensurate with responsibility.

Any Questions?

Call NFIB's legislative staff at
202-554-9000 or log on to www.nfib.com

Small business owners are no strangers to competition—all they ask is that it is fair. NFIB continues to fight against unfair competition from government agencies and certain non-profits.

Competition and Procurement

The Problems for Small Business

- The small business share of bundled contracts was 52.7 percent and the small business share of all bundled dollars was just 16.7 percent (*The Impact of Contract Bundling on Small Business FY 1992-FY 2001*, Eagle Eye Publishers, Inc.; SBA Office of Advocacy, October 2002).
- In 2001, the federal agencies estimated that as many as 850,000 of their employees were performing commercial-like functions commonly available in the private sector and not “inherently governmental” in any way (The Heritage Foundation; Utt, Ron; Heritage Backgrounder #1452).

1. Eliminate the Federal Prison Industries (FPI) Mandatory Source Status

FPI, a government-owned corporation operated by the Federal Bureau of Prisons, has become one of the most blatant examples of unfair government competition. FPI is a mandatory source for all federal agencies—meaning a federal agency must obtain FPI’s authorization before it can solicit competitive offers from the private sector. Instead of market-driven wages, FPI workers receive an hourly rate of \$1.50. FPI can use production excess from other government agencies at no cost.

The Legislative Solution:

Change FPI mandatory source status and allow more government contracts to go to small businesses.

2. End Contract Bundling

Contract bundling is the practice of combining several smaller federal projects into one massive package, too large for a small business to handle. When contract bundling occurs, small businesses are no longer able to compete because of the size, diversity, aggregate dollar value, or specialized nature of the procurement requirements.

The Legislative Solution:

Stop contract bundling to create greater competition and opportunity for small business to tap into the government contract market.

3. Support Competitive Government Contracting

The Bush administration is proposing that government contracts be open to all small businesses that can supply the government’s needs by implementing full and open competitive procedures. Shifting commercial government services, from trash collection to food and lodging, to the private sector allows government to utilize the competitive marketplace to encourage qualified businesses to offer the same or better service at lower cost.

The Legislative Position:

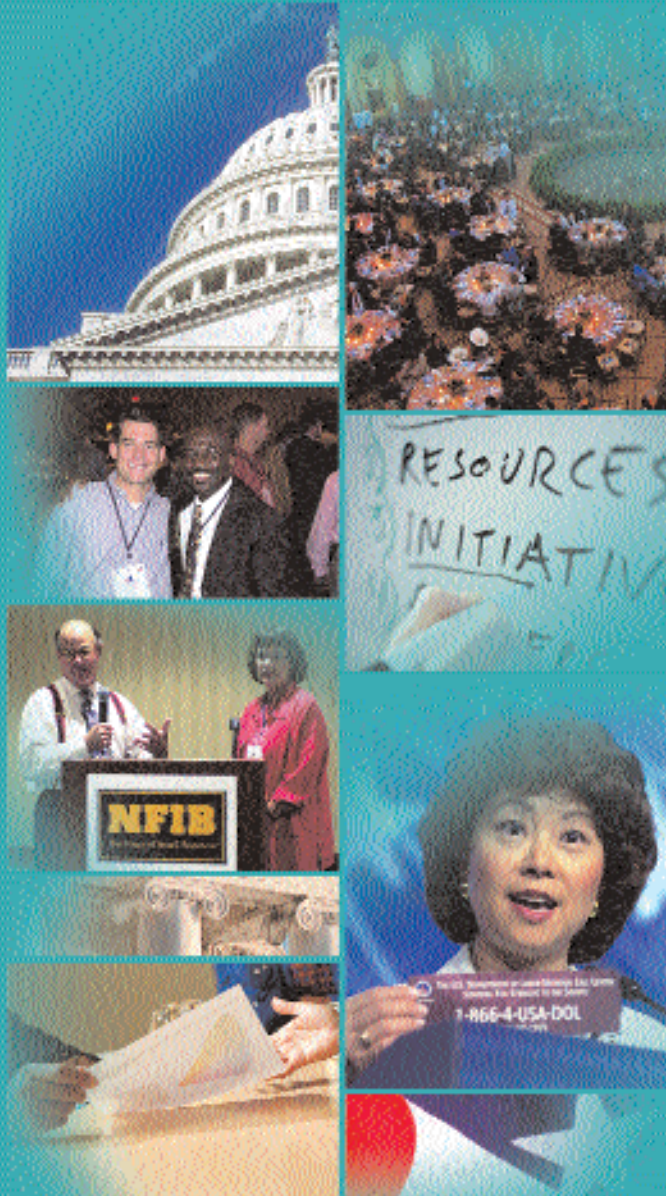
Change regulations to allow more small businesses to compete for federal contracts, providing taxpayers with improved services at lower costs.

4. Prevent Rural Electric Cooperatives Abuse of Tax-Exempt Status

In the late 1990s, not-for-profit electric cooperatives obtained permission from the IRS to expand beyond their original mandate of providing electric service, while still maintaining their tax-exempt status. The IRS initially permitted unfair expansion into the highly competitive propane industry, giving the tax-exempt electric cooperatives an unfair advantage over small business. The Treasury Department has now ruled that electric cooperatives must tax propane sales, just like any other non-core business in which they engage.

The Legislative Position:

Reject any future attempts to expand unfair competition from tax-exempt entities. The Department of Treasury Office of Tax Policy should issue new guidance on this matter.



The NFIB **Small Business Growth Agenda** for the 108th Congress

NFIB
The Voice of Small BusinessSM

1201 F STREET, NW
SUITE 200
WASHINGTON, D.C. 20004

www.nfib.com

202-554-9000