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The Honorable Bobby Scott
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Virginia Foxx
Committee on Education and Labor
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Scott and Ranking Member Foxx:

I write in opposition to H.R. 7701, the *Wage Theft Prevention and Recovery Act*. This legislation significantly increases penalties on small businesses who have isolated errors when trying to comply with complicated federal employment law, increases paperwork and compliance burdens for small businesses, and deputizes private organizations – including those that may not be impartial – to help enforce the law.

H.R. 7701 would exponentially increase fines for overtime and minimum wage violations. Under current law, employers found guilty of these violations are required to pay back wages to employees to make them whole and fined up to \$2,203 in civil penalties per violation for repeat or willful violations, as well as up to \$10,000 in criminal penalties. H.R. 7701 would subject employers to *two times* back wage payments, a first-time violation civil penalty of up to \$22,030 per employee, up to \$110,150 in civil penalties per employee for repeat or willful violations, and \$10,000 in criminal penalties *per employee*.

These massive fines are the same regardless of the size of the business. Minimum wage and overtime violations currently operate under a strict liability standard, meaning the law does not account for employers who have an honest misinterpretation of the law or make an isolated mistake. For example, consider a small business that employs four people who work 42 hours a week at a wage rate of \$20 an hour. That employer, who does the payroll by hand, forgets to pay overtime one week. Under current law, the employer must pay back wages, which would total \$80, and up to \$10,000 in criminal penalties for a maximum liability of \$10,080. If H.R. 7701 were enacted, the employer would owe \$160 in back wages, a \$22,030 fine per employee, and \$10,000 criminal penalty per employee totaling \$128,280. These penalty amounts will undoubtedly put some small employers out of business.

H.R. 7701 would also require all employers to issue pay stubs to employees. While employers in most states are required to do so, there are still nine states that do not require pay stubs (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Ohio, South Dakota, and Tennessee). About half of small employers process their payroll in-house and half of the owners handling payroll personally (rather than delegating to another employee),¹ asking them to process detailed pay stubs may be costly and time-consuming to owners that don't already provide pay stubs to employees.

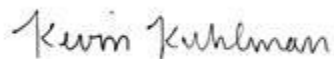
Further, H.R. 7701 would establish a "Wage Theft Prevention and Wage Recovery Grant Program" to partner with private organizations for, among other actions:

*"Assisting enforcement agencies in conducting investigations, including in the collection of evidence and recovering back pay; monitoring compliance with wage and hour laws; performing joint visitations to worksites that violate wage and hour laws with officials from the Wage and Hour Division of the Department of Labor... evaluating the effectiveness of programs designed to prevent wage and hour violations and enforce wage and hour laws; and recruiting and hiring of staff and volunteers."*²

The deputizing of private organizations to perform functions traditionally performed by the Department of Labor establishes a problematic precedent. These types of enforcement activities should only be performed by agencies that have a requirement of impartiality in enforcing the law, not by groups that may have a motive or interest in a particular outcome.

H.R. 7701, the *Wage Theft Prevention and Recovery Act* may be well-intentioned but can have real and lasting negative effects on the small business community. NFIB opposes H.R. 7701 and urges the committee to reject its consideration.

Sincerely,



Kevin Kuhlman
Vice President, Federal Government Relations
NFIB

¹ NFIB Research Center, *NFIB National Small Business Poll: Tax Complexity and the IRS*, Volume 13, Issue 5, 2017, <http://www.411sbfacts.com/sbpoll.php?POLLID=0086>.

² Sec. 302(c)(1)(E)-(G), (I)-(J), Title III—WAGE THEFT PREVENTION AND WAGE RECOVERY GRANT PROGRAM, <https://docs.house.gov/meetings/ED/ED00/20220518/114805/BILLS-1177701ih.pdf>.