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October 14, 2021

The Honorable Ron Wyden  
Chairman  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Richard Neal  
Chairman  
Committee on Ways and Means  
United States House of Representatives  
1102 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Kevin Brady  
Ranking Member  
Committee on Ways and Means  
United States House of Representatives  
1139 Longworth House Office Building  
Washington, D.C. 20515

Dear Chairman Wyden, Chairman Neal, Ranking Member Crapo, and Ranking Member Brady:

I write in opposition to the Biden Administration's proposal to require annual reporting to the Internal Revenue Service (IRS) of gross inflows and outflows from all business and personal customers' accounts above a de minimis threshold.<sup>1</sup> This proposal would sacrifice the privacy of law-abiding small business owners and expose them to costly and burdensome audits. If this or a substantially similar provision is added to "pay for" spending provisions of the *Build Back Better Act*, it would only serve to increase the heavy burden of taxes and mandates small business owners are facing in that legislation.<sup>2</sup>

This proposal would sacrifice the privacy of law-abiding small business owners, continuing a troubling trend of Congress increasing intrusive government reporting requirements.<sup>3</sup> Providing this level of detail about the ordinary banking practices of small business owners should be alarming to Congress, particularly in light of the IRS's troubled history of violating taxpayers' rights

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<sup>1</sup> "The annual return will report gross inflows and outflows with a breakdown for physical cash, transactions with a foreign account, and transfers to and from another account with the same owner. This requirement would apply to all business and personal accounts from financial institutions, including bank, loan, and investment accounts, with the exception of accounts below a low de minimis gross flow threshold of \$600 or fair market value of \$600." *General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals*, Department of Treasury, May 2021, <https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf>.

<sup>2</sup> See Kevin Kuhlman, *NFIB letter to House Budget Committee in opposition to the Build Back Better Act*, September 24, 2021, [https://assets.nfib.com/nfibcom/09-24-21-NFIB-letter-of-opposition-to-FY2022-Budget-Reconciliation-Markup-House-Budget-Committee\\_9.24.21.pdf](https://assets.nfib.com/nfibcom/09-24-21-NFIB-letter-of-opposition-to-FY2022-Budget-Reconciliation-Markup-House-Budget-Committee_9.24.21.pdf).

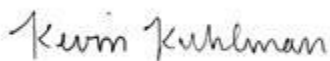
<sup>3</sup> The proposed reporting requirements would be in addition to new beneficial ownership reporting requirements, which require nearly every business with 20 or fewer employees to provide personally identifiable information to another database at the Department of Treasury. *Beneficial Ownership Information Reporting Requirements*, Financial Crimes Enforcement Network, Proposed Rule, Federal Register, April 5, 2021, <https://www.federalregister.gov/documents/2021/04/05/2021-06922/beneficial-ownership-information-reporting-requirements>.

and due process requirements when investigating taxpayers under existing currency transaction reporting requirements.<sup>4</sup> Moreover, NFIB is concerned that the IRS is incapable of safeguarding the account information of small business owners. The IRS has recently suffered from notable leaks<sup>5</sup> and disclosures<sup>6</sup> of taxpayer data. As former National Taxpayer Advocate Nina Olson has testified, the IRS “still has 60 separate major databases containing taxpayer information.”<sup>7</sup> This broken system already has “consequences not only for taxpayer assistance but also for audit selection, collection prioritization, and protection of taxpayer rights.”<sup>8</sup> There is no shortage of data and reporting to IRS, and Congress should not add this level of additional reporting to an already troubled agency.

NFIB is also concerned that this new reporting regime would result in the IRS targeting small business owners with costly and burdensome audits. Approximately 83% of private small employers are organized as passthrough entities (S-corporations, LLCs, Sole proprietorships, and Partnerships).<sup>9</sup> The increased reporting requirements would target these taxpayers for additional scrutiny and audits as the Administration has cited proprietorship, partnership, and S-corporation business income as the reason for the proposal.<sup>10</sup> This proposal, combined with other IRS enforcement funding and provisions the Administration is seeking, focus so heavily on increased enforcement, increased revenue, and increased audits – without any programmatic or cultural changes at the IRS – that it would likely result in sacrificing taxpayer rights. As Ms. Olson further testified, “because there is so much pressure on the IRS to collect revenue, there is a risk the IRS will not deploy the data intelligently or effectively, and instead use enhanced information reporting to go after the lowest hanging fruit.”<sup>11</sup>

Small businesses are struggling with labor shortages, rising inflation, supply chain disruptions, and increasing threats from COVID-19 variants.<sup>12</sup> Now is not the time to subject small business owners to new reporting requirements that will violate their privacy and subject them to additional, unwarranted IRS scrutiny.

Sincerely,



Kevin Kuhlman  
Vice President, Federal Government Relations  
NFIB

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<sup>4</sup> See Treasury Inspector General for Tax Administration, *Criminal Investigation Enforced Structuring Laws Primarily Against Legal Source Funds and Compromised the Rights of Some Individuals and Businesses*, March 20, 2017, <https://www.treasury.gov/tigta/auditreports/2017reports/201730025fr.pdf>.

<sup>5</sup> See United States v. John C. Fry, <https://www.justice.gov/usao-ndca/pressrelease/file/1134051/download>.

<sup>6</sup> Jesse Eisinger, Jeff Ernsthausen, and Paul Kiel, *The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax*, June 8, 2021, <https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax>.

<sup>7</sup> Nina E. Olson, *Closing the Tax Gap: Lost Revenue from Noncompliance and the Role of Offshore Tax Evasion*, Testimony before the Committee on Finance Subcommittee on Taxation and IRS Oversight, May 11, 2021,

[https://www.finance.senate.gov/imo/media/doc/SFC%20Subcomm%20on%20Taxation%20and%20Oversight%20Tax%20Gap%20-%20Olson%20-%202005-11-21%20\(final\)\(rev\)1.pdf](https://www.finance.senate.gov/imo/media/doc/SFC%20Subcomm%20on%20Taxation%20and%20Oversight%20Tax%20Gap%20-%20Olson%20-%202005-11-21%20(final)(rev)1.pdf).

<sup>8</sup> *Id.*

<sup>9</sup> U.S. & states, *NAICS sectors, legal form of ownership (LFO)*, 2018 SUSB Annual Data Tables by Establishment Industry, U.S. Census Bureau, May 2021, <https://www.census.gov/data/tables/2018/econ/susb/2018-susb-annual.html>.

<sup>10</sup> Natasha Sarin, *The Case for a Robust Attack on the Tax Gap*, September 7, 2021, <https://home.treasury.gov/news/featured-stories/the-case-for-a-robust-attack-on-the-tax-gap>.

<sup>11</sup> Nina E. Olson, *supra* note 9.

<sup>12</sup> *NFIB Small Business Jobs Report*, NFIB Research Center, October 7, 2021, <https://www.nfib.com/foundations/research-center/monthly-reports/jobs-report/>.