



555 12<sup>th</sup> St NW, Suite 1001  
Washington, D.C. 20004

1-800-552-5342  
NFIB.com

November 30, 2022

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
H-222, The Capitol  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
H-204, The Capitol  
Washington, D.C. 20515

The Honorable Charles Schumer  
Majority Leader  
U.S. Senate  
S-221, The Capitol  
Washington, D.C. 20510

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
S-230, The Capitol  
Washington, D.C. 20510

Dear Speaker Pelosi, Leader McCarthy, Leader Schumer, and Leader McConnell:

On behalf of NFIB, the nation's leading small business advocacy organization, I write to share NFIB's priorities for the lame duck session of the 117<sup>th</sup> Congress. Throughout this Congress, small businesses have faced persistent economic headwinds from high inflation, workforce shortages, and supply chain disruptions. Those challenges continue. The NFIB Research Center's latest *Small Business Economic Trends* survey reports small business owners expecting better business conditions over the next six months decreased to a net negative 46%, the sixth lowest reading in the 49-year history of the survey and the tenth consecutive month below the historical average.<sup>1</sup> Thus, before the end of the year, NFIB urges Congress to consider legislation that provides promised tax relief, reduces tax compliance burdens, and protects small businesses from anticompetitive practices to ease the forthcoming uncertainty.

### **Employee Retention Tax Credit Availability**

As small businesses navigated the COVID-19 pandemic, the Employee Retention Tax Credit (ERTC) provided a vital lifeline. To qualify for the ERTC, business owners must have demonstrated significant decline in gross receipts or been subject to a full or partial suspension of business operations due to a government order. In March 2021, Congress extended availability of this critical credit to help keep employees on payroll through December 31, 2021. Unfortunately, the *Infrastructure Investment and Jobs Act (IIJA)* prematurely ended this credit on September 30, 2021. President Biden signed *IIJA* into law on November 15, 2021 – over six weeks into the fourth quarter. NFIB urges Congress to reinstate the ERTC for the fourth quarter of 2021 so that owners who were planning on using the tax credit will no longer face a retroactive tax increase.<sup>2</sup>

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<sup>1</sup> William C. Dunkelberg and Holly Wade, *NFIB Small Business Economic Trends*, NFIB Research Center, October 2022, <https://assets.nfib.com/nfibcom/SBET-Oct-2022.pdf>.

<sup>2</sup> S. 3625 / H.R. 6161, the *Employee Retention Tax Credit Reinstatement Act*.

### New Form 1099-K Reporting Thresholds

Early next year, small businesses and individuals are scheduled to receive millions of new tax forms as Third-Party Settlement Organizations (TPSOs), such as PayPal, Venmo, and online marketplaces that connect buyers and sellers, must issue a Form 1099-K for goods and services transactions made by customers with \$600 or more in annual gross sales this year. Previously, TPSOs were only required to issue a Form 1099-K for users with \$20,000 in transactions and more than 200 transactions in a calendar year. Millions of Americans and small business owners will receive a Form 1099-K for transactions where they have no tax liability, such as reimbursements, gifts, or the selling of property at a loss. This increased reporting will further complicate the already difficult tax compliance burden small businesses and individual filers face. NFIB urges Congress to repeal this anti-small business expanded tax reporting requirement.<sup>3</sup>

### Credit Card Competition

Small business owners operate on thin profit margins, which have been increasingly cut into in recent years as credit card “swipe fees” have increased. Small businesses do not have the market power to negotiate with large credit card companies on “swipe fees,” which have more than doubled since 2012. This problem has been exacerbated by pervasively high inflation, which acts as a multiplier as “swipe fees” are a percentage of each sale. In a recent NFIB member ballot, 92% of NFIB members believe that small business owners should have the right to choose among multiple credit card processing networks. NFIB urges Congress to consider legislation that will harness the power of competition to give small business owners real choices when it comes to credit card processing networks.<sup>4</sup>

### Competition in Digital Marketplaces

History has shown that control of markets often leads to monopolistic practices and anticompetitive behaviors, and it is often small businesses who suffer in such situations due to a lack of bargaining power and alternative choices. Unfortunately, these problems are already presenting themselves in the digital economy today. Small business owners are increasingly frustrated by technology company practices such as the blurred line between paid ads and organic search results, which are critical to driving business traffic. For small business sellers using marketplace platforms, competition between the operator’s own products and third-party sellers creates conflicts of interests and has been shown to lead to unfair business practices. Facing these challenges, in a recent member ballot, 84% of NFIB members favor Congress taking legislative action to control unfair and anticompetitive practices of large tech companies. NFIB urges Congress to consider legislation that seeks to remedy conflicts of interests and ensure a level playing field for small businesses and users of platforms covered by the legislation.<sup>5</sup>

As the 117<sup>th</sup> Congress concludes, NFIB urges Congress to pass pro-small business policies and avoid those that may worsen the small business economic outlook.

Sincerely,



Kevin Kuhlman  
Vice President, Federal Government Relations  
NFIB

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<sup>3</sup> S. 3496 / H.R. 6913, the *Stop the Nosy Obsession with Online Payments Act (SNOOP Act) of 2022* and H.R. 3425, the *Saving Gig Economy Taxpayers Act*.

<sup>4</sup> S. 4674 / H.R. 8874, the *Credit Card Competition Act of 2022*.

<sup>5</sup> S. 2992 / H.R. 3816, the *American Innovation and Choice Online Act*.