



# Small Business GROWTH AGENDA

FOR THE 118TH CONGRESS

## WHO IS NFIB?

The National Federation of Independent Business (NFIB) is the nation's leading small business advocacy organization, with offices in Washington, D.C., and all 50 state capitals. NFIB's mission is to promote and protect the right of our members to own, operate, and grow their businesses.

As a nonprofit, nonpartisan organization, NFIB was founded in 1943 and developed into a powerful network of grassroots activists who send their small business views to federal and state lawmakers through our member-only "one member, one vote" ballot process. Additionally, the NFIB Research Center collects information from members on small business operations, on the economy generally, and on specific small business issues using periodic surveys. The results of our Member Ballots and research surveys guide NFIB's policy positions and make NFIB a member-driven and research-backed organization.

NFIB provides a platform for small and independent business owners to have a voice in shaping the public policy issues that affect their businesses. These American entrepreneurs serve as the crucial links that drive America's economy, in good times and bad. Small businesses are America's job creators.



## SMALL BUSINESS ECONOMY OVERVIEW

- Small businesses make up 99.9% of U.S. businesses.<sup>i</sup>
- In 2018, there were 33 million small businesses in the U.S.: 6 million small employer businesses and 26 million non-employer small businesses. There were 21,000 large businesses.<sup>ii</sup>
- From 1995 to 2020, small businesses created 12.7 million net new jobs while large businesses created 7.9 million. Small businesses accounted for 62% of net new job creation in that period.<sup>iii</sup>

# TOP LEGISLATIVE PRIORITIES

## **Taxes**

NFIB advocates to protect small business owners from tax increases, burdensome paperwork, and unnecessary audits; make permanent the helpful small business and individual provisions of the tax code; and restore lower corporate taxes for smaller businesses.

## **Labor**

NFIB opposes expanding burdensome employment mandates and overzealous regulatory enforcement on small business owners.

## **Regulatory Reform and Burdensome Regulations**

NFIB supports proposals to reform the regulatory process by strengthening small business input; supports increasing transparency and accountability in the regulatory process; and opposes adding new regulatory burdens on small businesses.

## **Healthcare**

NFIB supports affordable, flexible, and predictable health insurance options for small business owners and their employees.

## **Competition**

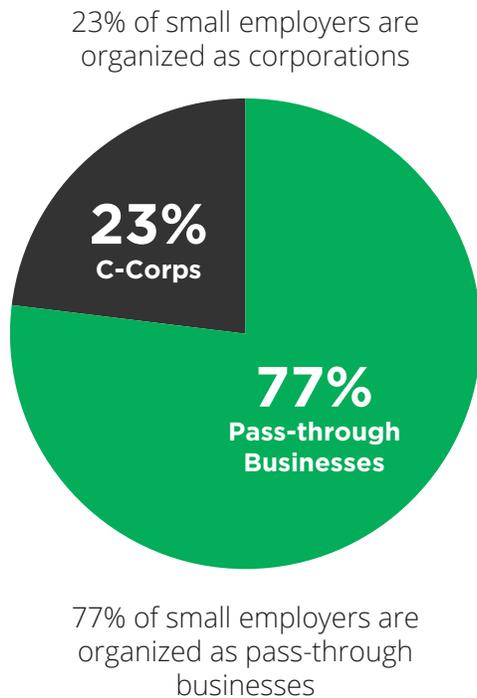
NFIB supports commonsense legislative solutions that seek to provide small businesses a level playing field against anticompetitive practices of big business.



# TAXES

NFIB advocates to protect small business owners from tax increases, burdensome paperwork, and unnecessary audits; make permanent the helpful small business and individual provisions of the tax code; and restore lower corporate taxes for smaller businesses.

- **NFIB Member Input:** As NFIB's *Small Business Problems and Priorities* surveys have noted repeatedly throughout the decades, taxes remain the top concerns for small business owners.<sup>iv</sup>



## NFIB supports permanency for the Small Business Deduction (Section 199A),<sup>v</sup> as proposed by the *Main Street Tax Certainty Act*.

Pass-through business owners (S-corporations, LLCs, sole proprietorships, or partnerships) can claim a 20% tax deduction on their share of the business's income up to \$182,100 in tax year 2023, or \$364,200 for those filing jointly.<sup>vi</sup> Over three-quarters of small employers are legally structured as pass-through businesses.<sup>vii</sup> This critical tax relief expires after 2025.

- **NFIB Member Input:** In a recent NFIB Member Ballot, 91% of NFIB members support permanently extending the tax cuts for individuals and small businesses established in the 2017 tax law. In a recent NFIB Research Center survey, 81% of small business owners believe the Small Business Deduction is important.<sup>viii</sup>

**NFIB supports reinstating a lower tax rate for small businesses organized as C-corporations (C-corps).** Nearly one-quarter of small employers are legally structured as C-corps.<sup>ix</sup> All C-corps are currently taxed at flat rate of 21%. Prior to the 2017 federal tax law, businesses with less than \$50,000 in taxable income were taxed at 15%. When the 2017 tax law implemented a flat 21% corporate tax rate, smaller businesses experienced a tax increase.

- **NFIB Member Input:** In a recent NFIB Member Ballot, 93% of NFIB members agree that Congress should reinstate a lower corporate tax rate for smaller businesses.

**NFIB supports extending the current estate tax exemption thresholds and existing estate tax planning tools, specifically step-up in basis.**

- **NFIB Member Input:** In an NFIB Research Center survey, 41% of small business owners view the estate tax as a very important issue. A relatively small percentage of business owners end up paying the estate tax, but many more seek professional guidance on how to prepare for it or evaluate the likelihood of being affected by it in the future.<sup>x</sup>

## TAXES (CONTINUED)

**NFIB supports vigorous oversight of the Internal Revenue Service (IRS) enforcement expansion.** In August 2022, Congress allocated \$45.6 billion to the IRS for enforcement efforts while only providing \$3 billion for taxpayer services. The heavy focus on enforcement rather than increasing customer service support and resolving the tremendous paperwork backlog is a disservice to small businesses and taxpayers. In the 118th Congress, NFIB welcomes the opportunity to advocate for taxpayer services and robust oversight of this immense funding increase.

- **NFIB Member Input:** In NFIB Research Center's March COVID-19 survey, 22% of members surveyed attempted to contact the IRS for information related to their businesses in the last 12 months and 64% of these respondents reported that the experience was not helpful at all.<sup>xi</sup>

### New Paperwork Expansion:

Millions of small businesses and taxpayers will receive 1099-K Forms from the IRS in early January 2024 as a result of an expanded reporting requirement provision added late to the *American Rescue Plan Act*. This expansion was originally scheduled to take place in January 2023, but the IRS delayed the effective date by one year in late December 2022. NFIB supports the *SNOOP Act* and the *Saving Gig Economy Taxpayers Act*, which would provide relief from these expanded reporting requirements.

## LABOR

**NFIB opposes expanding burdensome employment mandates and overzealous regulatory enforcement on small business owners.** NFIB urges Congress to avoid passing policies that will exacerbate the current difficulties small business owners are facing, including workforce shortages and inflation.

- **NFIB Member Input:** NFIB members continue to report labor quality as a top business problem, second only to inflation.<sup>xii</sup>

**NFIB opposes significant increases to the federal minimum wage and paid leave mandates.**

- **NFIB Member Input:** In a recent NFIB Member Ballot, 92% of small business owner members oppose increasing the federal minimum wage to \$15 per hour. NFIB Research Center estimates the bill would result in more than 1.6 million jobs lost; 900,000 of the job losses (57%) would come from small businesses.<sup>xiii</sup>

**NFIB opposes proposals to upend existing employment law to the detriment of small business owners, such as the *Protecting the Right to Organize (PRO) Act*.**

- **NFIB Member Input:** Recent NFIB Member Ballots show 89% of NFIB members believe that a contractor should not be responsible for a subcontractor's hiring practices; 93% of NFIB members oppose requiring employers to provide the personal contact information of their employees to union organizers; and 92% members oppose allowing unions to picket an employer's suppliers and customers during a labor dispute.

## LABOR (CONTINUED)

**NFIB opposes plans to drastically increase fines for minimum wage and overtime violations such as those contained in the *Wage Theft Prevention and Recovery Act*.** These violations are enforced with a strict liability standard, meaning innocent mistakes could result in substantial penalties for small business owners, who often lack dedicated compliance staff. Instead, NFIB supports legislation to allow small business owners to identify and work with the Department of Labor (DOL) to correct mistakes and make employees whole before incurring a penalty, as proposed by the *Ensuring Workers Get Paid Act*.

- **NFIB Member Input:** In a recent NFIB Member Ballot, 88% of NFIB members support a program in which the DOL would allow employers to self-report and correct minor overtime and minimum wage violations before incurring a penalty.

**NFIB supports the protection of, and efforts to further secure, the right of individuals to work as independent contractors and for business owners to choose to classify workers as independent contractors lawfully.** The National Labor Relations Board's (NLRB) proposed Joint Employer rule and the DOL's proposed Independent Contractor rule have the potential to significantly curtail the use of independent contractors by small businesses and stymie the right of non-employers to contract independently. NFIB supports legislation that would codify the traditional understanding of "joint employment," such as the *Save Local Business Act*.

- **NFIB Member Input:** In a recent NFIB Member Ballot, 95% of NFIB members believe that small businesses should be able to hire independent contractors to perform tasks essential to their businesses.

**NFIB opposes efforts to substantially increase the overtime exemption threshold for salaried employees.** In 2020, the overtime exemption threshold was increased to \$35,568. The DOL continues to deliberate increasing the threshold further. NFIB cautions the DOL that any increase will likely be inflationary by raising the cost of labor and doing so would have a substantial impact on a significant number of small businesses.

- **NFIB Member Input:** In a 2016 NFIB Member Ballot, 82% of NFIB members opposed requiring employers to pay overtime to salaried workers making less than \$50,440 per year.<sup>xiv</sup> In a recent survey, 46% of small business owners report raising prices due to inflationary pressures; 7% of those increasing prices did so because of higher compensation related to staffing shortages.<sup>xv</sup>

## REGULATORY REFORM

**NFIB supports proposals to reform the regulatory process by strengthening small business input and increasing transparency and accountability in the regulatory process.** NFIB believes Congress must reassert its role in the regulatory process by writing clear statutes, conducting oversight, using the Congressional Review Act to disapprove harmful rules, and restricting appropriations where necessary.

- **NFIB Member Input:** According to NFIB's 2020 *Small Business Problems and Priorities* survey, "Unreasonable Government Regulations" ranked as the sixth-most burdensome problem facing their small businesses.<sup>[1]</sup>

## REGULATORY REFORM (CONTINUED)

NFIB supports regulatory reform proposals, including the *Small Business Regulatory Flexibility Improvements Act*, the *Guidance Out of Darkness (GOOD) Act*, the *Guidance Clarity Act*, the *Independent Agency Regulatory Analysis Act*, and expanding Small Business Advocacy Review (SBAR) Panels to all agencies (currently only EPA, OSHA, and CFPB must conduct SBAR Panels).

- **NFIB Member Input:** In an NFIB Member Ballot, 85% of NFIB members support requiring regulatory agencies to consider the indirect cost and impact of regulations on small businesses.

**NFIB supports further empowering the Small Business Administration Office of Advocacy (Advocacy).** NFIB recommends that the Advocacy approve Regulatory Flexibility Analyses (RFAs) prior to an agency issuing a proposed or final rule (both Interim Regulatory Flexibility Analyses and Final Regulatory Flexibility Analyses). This consultation and approval will prevent Advocacy from being ignored by agencies when they identify deficient RFAs. Additionally, under the RFA, agencies must consider regulatory alternatives for small businesses, but too frequently, agencies reject the alternatives. NFIB recommends Congress require agencies to not only consider, but issue less burdensome alternative rules for small businesses.

- **NFIB Member Input:** In an NFIB Member Ballot, 90% of NFIB members believe all federal agencies should be required to consult with impacted small business owners before implementing major regulations.

## BURDENSOME REGULATIONS

**NFIB opposes adding new regulatory burdens on small businesses.**

- **Regulatory Economic Impact:** According to a recent analysis, the Biden administration imposed more than \$200 billion in regulatory costs in 2021, the largest first-year total on record. Additionally, there are another 311 proposed rules in progress that could cost another \$191.2 billion.<sup>xvii</sup>

**NFIB led the opposition to the *Corporate Transparency Act (CTA)*, which requires corporations and limited liability companies (LLCs) with 20 or fewer full-time employees to file new forms with the Treasury Department's *Financial Crimes Enforcement Network (FinCEN)* beginning January 1, 2024.**<sup>xviii</sup>

These reports will contain the personally identifiable information of small business owners. NFIB remains concerned that FinCEN's final rule implementing the CTA reporting requirements failed to strike an

### REGULATIONS TO WATCH:

- Financial Crimes Enforcement Network - Beneficial Ownership Reporting Requirements FINAL Rule (December 2022) and Database PROPOSED Rule (December 2022)
- Environmental Protection Agency – WOTUS FINAL Rule (December 2022)
- Department of Labor – Overtime Exemption PROPOSED Rule (anticipated spring 2023)
- Department of Labor – Independent Contractor FINAL Rule (2023)
- National Labor Relations Board – Joint Employer FINAL Rule (2023)
- Securities & Exchange Commission – ESG FINAL Rule (2023)
- Occupational Safety & Health Administration – Heat Standard PROPOSED Rule (2023)

## BURDENSOME REGULATIONS (CONTINUED)

appropriate balance on which businesses must report, what information must be reported, and when the information must be reported. NFIB urges a full repeal of this legislation, and absent a repeal, supports legislation to hold FinCEN more accountable and responsive to Congress and the public, such as the *Financial Crimes Enforcement Network Improvements Act*.

- **NFIB Member Input:** In a recent NFIB Member Ballot, 80% of small business owners oppose Congress requiring small business owners to file paperwork with the Treasury Department each time they form or change ownership of their businesses.

**NFIB supports a commonsense interpretation of navigable waters by the Environmental Protection Agency (EPA).** NFIB opposes the Administration's Waters of the United States (WOTUS) rule that increases uncertainty and regulatory burdens on small businesses and landowners. Any small business owner who owns land with any sort of water on it, no matter how minor, may be affected by this rule. EPA jurisdiction will largely be determined on case-by-case basis, which offers no certainty for most landowners who will need to hire consultants to navigate the lengthy and expensive permitting process. EPA should have waited for the Supreme Court to rule in *Sackett v. EPA*, since the WOTUS definition is likely to shift again once the Court rules further adding to the uncertainty of small businesses.

- **NFIB Member Input:** In a recent NFIB Member Ballot, 84% of NFIB members oppose giving the EPA expanded authority to regulate creeks, ponds, streams, ditches, and temporary or local bodies of water.

**NFIB opposes the Securities and Exchange Commission's (SEC) proposed rule requiring public companies to calculate and report the greenhouse gas emissions of the private companies with which they do business, also known as "Scope 3."** NFIB is concerned that small businesses are not equipped to calculate this information and may have to contract with consultants to provide accurate estimates or risk losing business. NFIB is also concerned with larger businesses voluntarily requiring similar ESG reporting by small businesses without a government mandate. Not every small business will be able to afford these services and this requirement can act as a new market barrier for small businesses.

- **NFIB Member Input:** In a recent NFIB Member Ballot, 94% of NFIB members oppose the SEC requiring small businesses to calculate and report their greenhouse gas emissions to the publicly traded companies with which they do business.

**NFIB opposes saddling small businesses with additional regulatory and paperwork burdens related to data privacy, such as writing highly prescriptive data privacy plans and informing every customer of data breaches.** As Congress continues pursuing legislation intended to protect the private data of consumers, NFIB urges Congress to consider the impact these efforts may have on small businesses, which are not the target of data privacy restrictions. Legislation that is not properly targeted will have negative downstream effects on the small business community.

## HEALTHCARE

**NFIB supports affordable, flexible, and predictable health insurance options for small business owners and their employees.** Small business owners are burdened by rapidly escalating healthcare costs, negatively impacting their employees, their business, and the U.S. economy.

## HEALTHCARE (CONTINUED)

- **NFIB Member Input:** According to the NFIB's 2020 *Small Business Problems and Priorities* survey, the cost of health insurance is the number one small business problem, a position it has held for almost 40 years. Moreover, 51% of small business owners cite the issue as critical, generally unchanged since implementation of the *Affordable Care Act*.<sup>xix</sup> In the last decade, health insurance costs for small firms have risen 45%, outpacing wages and inflation. As costs have increased, the number of small firms offering health insurance has steadily declined from 39% in 2010 to 32% in 2021.<sup>xx,xxi</sup>

**NFIB supports making health insurance more affordable by revising and expanding the Small Employer Health Insurance Tax Credit; expanding access to Health Savings Accounts (HSAs); and equalizing the tax treatment between employer sponsored health insurance and individual coverage.**

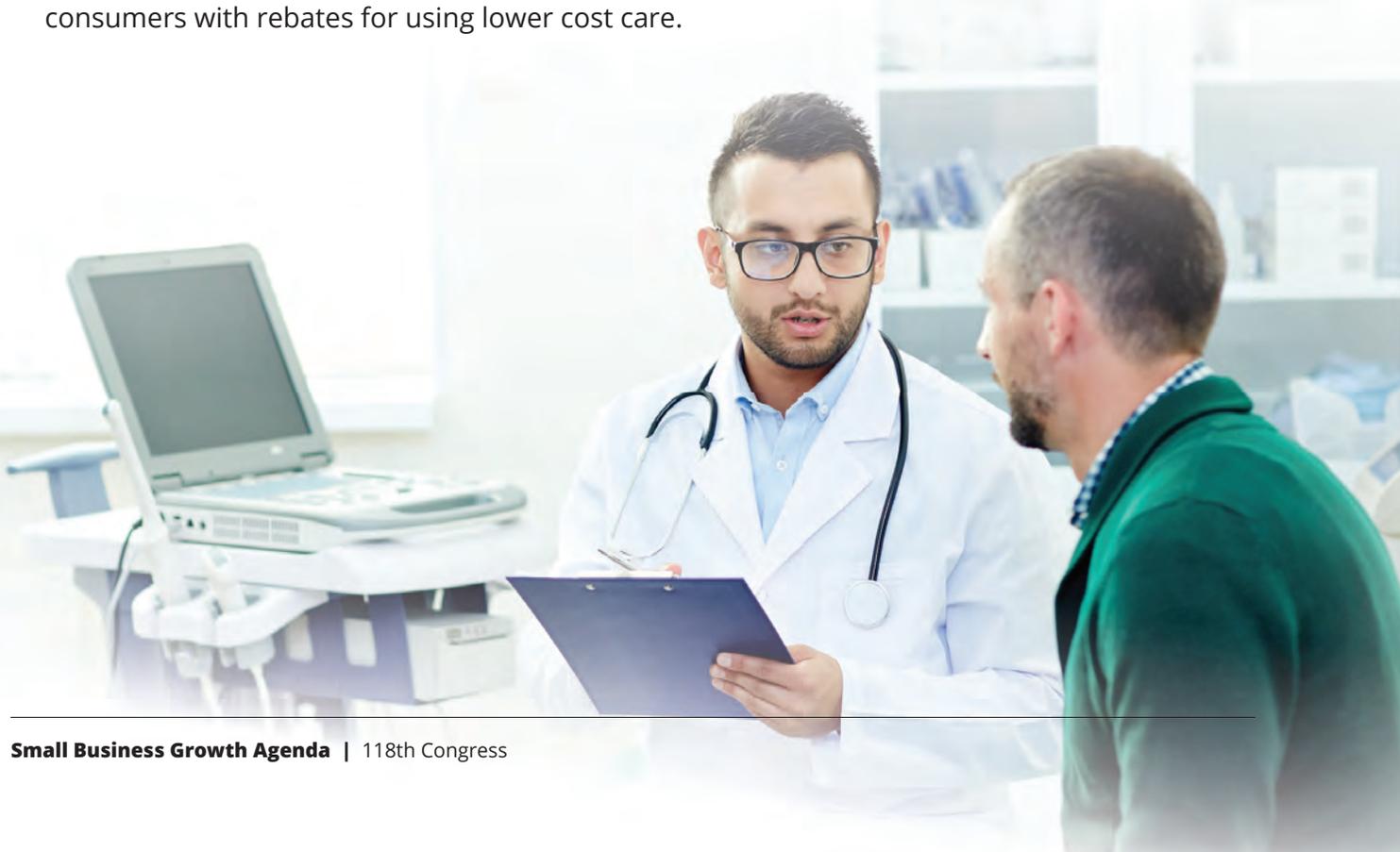
- **NFIB Member Input:** In a recent NFIB Member Ballot, 68% of NFIB members support creating a substantial tax credit to help small businesses purchase insurance for themselves and their employees.

**NFIB supports increasing health insurance options by codifying the ability of small businesses to provide contributions for employees through Individual Coverage Health Reimbursement Arrangements (ICHRAs) and authorizing Association Health Plans (AHPs) that allow national business groups to offer health insurance to members.**

- **NFIB Member Input:** In a recent NFIB Member Ballot, 67% of NFIB members support expanding the ability of businesses to provide tax-preferred, defined-contributions for employees to purchase their own health insurance.

**NFIB supports promoting affordability through transparency, competition, and innovation.**

- **NFIB Member Input:** In a recent NFIB Member Ballot, 77% of NFIB members support requiring health insurers to provide price information for healthcare services and provide consumers with rebates for using lower cost care.



## COMPETITION

**In recent years, NFIB believes certain large businesses have used their market dominance to take advantage of small business owners, hindering the growth of small businesses.**

NFIB supports commonsense legislative solutions that seek to provide small businesses a level playing field against big business anticompetitive practices.

**NFIB supports increased competition in the credit card network processing market and supports concepts such as those in the *Credit Card Competition Act*.** NFIB believes credit card companies should have to compete for customers in the same way small businesses have to compete for customers.

- **NFIB Member Input:** 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 supports legislation to ensure equality for small businesses and options for consumers.** NFIB opposes big technology companies engaging in practices such as promoting their products over higher reviewed products from a small business and supports adding accountability so small business owners can trust their products will be sold impartially, such as the *American Innovation and Choice Online Act*.

- **NFIB Member Input:** In a recent NFIB Member Ballot, 84% of NFIB members support Congress passing new laws to protect small businesses from anticompetitive practices of big tech companies.



- <sup>i</sup> *Frequently Asked Questions About Small Business*, SBA Office of Advocacy, 2021, <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/12/06095731/Small-Business-FAQ-Revised-December-2021.pdf>.
- <sup>ii</sup> *Ibid.*
- <sup>iii</sup> *Ibid.*
- <sup>iv</sup> Holly Wade and Andrew Heritage, *Small Business Problems and Priorities*, NFIB Research Center, July 2020, <https://assets.nfib.com/nfibcom/NFIB-Problems-and-Priorities-2020.pdf>.
- <sup>v</sup> Section 199A was created by Section 11011 of the 2017 tax law. (*SEC. 11011. DEDUCTION FOR QUALIFIED BUSINESS INCOME, Tax Cuts and Jobs Act*, Public Law 115-97, December 22, 2017, <https://www.congress.gov/115/plaws/publ97/PLAW-115publ97.pdf>).
- <sup>vi</sup> Above those thresholds, there are restrictions for certain businesses.
- <sup>vii</sup> Table 2. Legal Form of Organization, 2018, *Frequently Asked Questions About Small Business*, SBA Office of Advocacy, 2021, <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/12/06095731/Small-Business-FAQ-Revised-December-2021.pdf>.
- <sup>viii</sup> *The Tax Cuts and Jobs Act, One Year Later, Part II*, NFIB Research Center, September 2019, <https://assets.nfib.com/nfibcom/TCJA-Part-2.pdf>
- <sup>ix</sup> Table 2. Legal Form of Organization, 2018, *Frequently Asked Questions About Small Business*, SBA Office of Advocacy, 2021, <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/12/06095731/Small-Business-FAQ-Revised-December-2021.pdf>.
- <sup>x</sup> *Small Business Introduction to the Tax Cuts and Jobs Act: Part 1*, NFIB Research Center, 2018, <https://assets.nfib.com/nfibcom/TCJA-Part-1.pdf>.
- <sup>xi</sup> Holly Wade, *COVID-19 Small Business Survey Part 22*, NFIB Research Center, March 2022, <https://www.nfib.com/content/press-release/coronavirus/new-nfib-covid-survey-inflation-pressure-and-lost-sales-opportunities-challenge-small-businesses/>.
- <sup>xii</sup> *NFIB Jobs Report*, NFIB Research Center, December 2022, <https://www.nfib.com/foundations/research-center/monthly-reports/jobs-report/>.
- <sup>xiii</sup> *Economic Effects of Enacting the Raise the Wage Act on Small Businesses and the U.S. Economy*, NFIB Research Center, January 25, 2019, <https://www.nfib.com/content/analysis/economy/minimum-wage-increase-to-15-00-per-hour/>.
- <sup>xiv</sup> In 2015, the Obama Administration's DOL proposed expanding the overtime eligibility threshold to \$50,440, but ultimately finalized a threshold of \$47,476 on May 23, 2016. That rule was declared invalid by the United States District Court for the Eastern District of Texas, and an appeal of that decision to the United States Court of Appeals for the Fifth Circuit was held in abeyance pending the completion of the Department's rulemaking. Due to the district court's decision, the Department is currently enforcing the regulations in effect on November 30, 2016. In 2019, the Trump Administration's DOL finalized an overtime eligibility threshold of \$35,568. The Trump Administration final rule became effective on January 1, 2020. In that final rule, the Department formally rescinded the 2016 final rule.
- <sup>xv</sup> Holly Wade, *Covid-19 Small Business Survey, Part 23*, NFIB Research Center, January 2023, <https://assets.nfib.com/nfibcom/Covid-Survey-23.pdf>.
- <sup>xvi</sup> Holly Wade and Andrew Heritage, *Small Business Problems and Priorities*, NFIB Research Center, July 2020, <https://assets.nfib.com/nfibcom/NFIB-Problems-and-Priorities-2020.pdf>.
- <sup>xvii</sup> Dan Bosch, 2022: *The Year in Regulation*, American Action Forum, January 4, 2022, <https://www.americanactionforum.org/research/2022-the-year-in-regulation/>.
- <sup>xviii</sup> The *Corporate Transparency Act* was added as an amendment to the House-passed *National Defense Authorization Act (NDAA) of 2021*. It received one-minute of debate and was included en banc with 176 other amendments. There was not a similar amendment included in the Senate-passed NDAA of 2021. (*TITLE LXIV—ESTABLISHING BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS, WILLIAM M. (MAC) THORNBERRY NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2021*, Public Law. 116-283, January 1, 2021, <https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf>).
- <sup>xix</sup> Holly Wade and Andrew Heritage, *Small Business Problems and Priorities*, NFIB Research Center, July 2020, <https://assets.nfib.com/nfibcom/NFIB-Problems-and-Priorities-2020.pdf>.
- <sup>xx</sup> *MEPS Insurance Component Chartbook 2010*, Medical Expenditure Panel Survey, Agency for Healthcare and Research Quality, [https://meps.ahrq.gov/data\\_stats/summ\\_tables/insr/national/series\\_1/2010/ic10\\_ia\\_g.pdf](https://meps.ahrq.gov/data_stats/summ_tables/insr/national/series_1/2010/ic10_ia_g.pdf).
- <sup>xxi</sup> *MEPS Insurance Component Chartbook 2021*, Medical Expenditure Panel Survey, Agency for Healthcare and Research Quality, [https://meps.ahrq.gov/data\\_stats/summ\\_tables/insr/national/series\\_1/2021/ic21\\_ia\\_g.pdf](https://meps.ahrq.gov/data_stats/summ_tables/insr/national/series_1/2021/ic21_ia_g.pdf).

