



The NFIB Small-Business Growth Agenda  
for the 109<sup>th</sup> Congress

**NFIB**

The Voice of Small Business.®

# Formula for Small-Business Growth

Small-business owners are at their best when they are running their firms, hiring people and contributing to the strength of the nation's economy. But at times they are frustrated by the intrusion of government in their business.

They do look to government to address problems affecting their businesses. But they also know that too much government interferes with what they are trying to accomplish—running a successful operation that will help the economy grow.

“The NFIB Small-Business Growth Agenda” is intended to give members of the 109<sup>th</sup> Congress and other policymakers a blueprint of what will help and what will hinder small-business growth. It describes the impact of current and proposed legislation on small business. It also offers suggestions for how to change some laws and draft new ones to create a more favorable environment in which small firms can prosper.

The information in this publication represents the opinions of America's small-business owners. Since 1943, NFIB has been polling its members regularly and making their views and concerns known to members of Congress. In addition, the NFIB Research Foundation conducts extensive surveys throughout the year—including “Small-Business Economic Trends,” which, for more than 30 years, has been providing one of the most consistently accurate forecasts of the direction of the nation's economy.

America's entrepreneurs look to Congress to improve the climate for small business. They want affordable health care, a tax system that is fair and simple, relief from excessive regulation and the elimination of frivolous lawsuits. Like most Americans, they are concerned about the future of Social Security.

We at NFIB know and understand the needs of small-business owners. “The NFIB Small-Business Growth Agenda” will help you to appreciate their concerns and suggest how you can help.



Jack Faris  
*President, NFIB*



# Table of Contents

Who Is NFIB? .....	1
Amazing Facts About Small Business .....	4
Simplify the Code and Reduce Taxes .....	6
• Repeal the death tax	
• Make Section 179 expensing limits permanent	
• Make personal income tax reductions permanent	
• Cut payroll taxes and return the unemployment system to the states	
• Simplify the tax code for small business	
Real Social Security Reform .....	9
Ease the Burden of Excessive Regulation and Intrusive Laws .....	10
• Reduce the burden caused by federal paperwork	
• Make regulations less costly and complicated for small business	
• Ensure that property rights of small-business owners are respected	
• Oppose minimum wage increases	
• Oppose expansion of the Family and Medical Leave Act	
• Reform the Occupational Safety and Health Act that governs OSHA	
Make Health Care More Accessible .....	12
• 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 the self-employed to deduct health-care costs	
Curb Frivolous Lawsuits .....	14
• Curb frivolous lawsuits	
• Prohibit obesity lawsuits	
• Cap damages in medical liability lawsuits	
• Limit financial damages for lawsuits	
• Strengthen the Equal Access to Justice Act	
• Establish a product standard to protect sellers	
And Don't Overlook .....	16
Motor Vehicle Right-to-Repair Act, Postal Reform, Government Competition, Interest on Business Checking, Superfund: Service Stations, and the Fax Ban.	
The NFIB Research Foundation, <i>Your Small-Business Resource Online</i> .....	Inside Back Cover



## Any Questions?

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

# Who Is NFIB?

The National Federation of Independent Business is the nation's largest small-business advocacy group. With a membership of 600,000 business owners, NFIB is a melting pot of commercial enterprise, manufacturers, family farmers, neighborhood retailers and service companies. It has some of the world's most sophisticated high-tech firms and some true "mom and pop" businesses.

Founded in 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 at \$2,400. Second, the members determine NFIB policy. They vote on public policy positions, and set the NFIB official position. Each NFIB member gets one vote.

NFIB's positions advance the consensus of the small-business community rather than the narrow interests of any particular trade group. Once the ballots are tallied—up to 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.

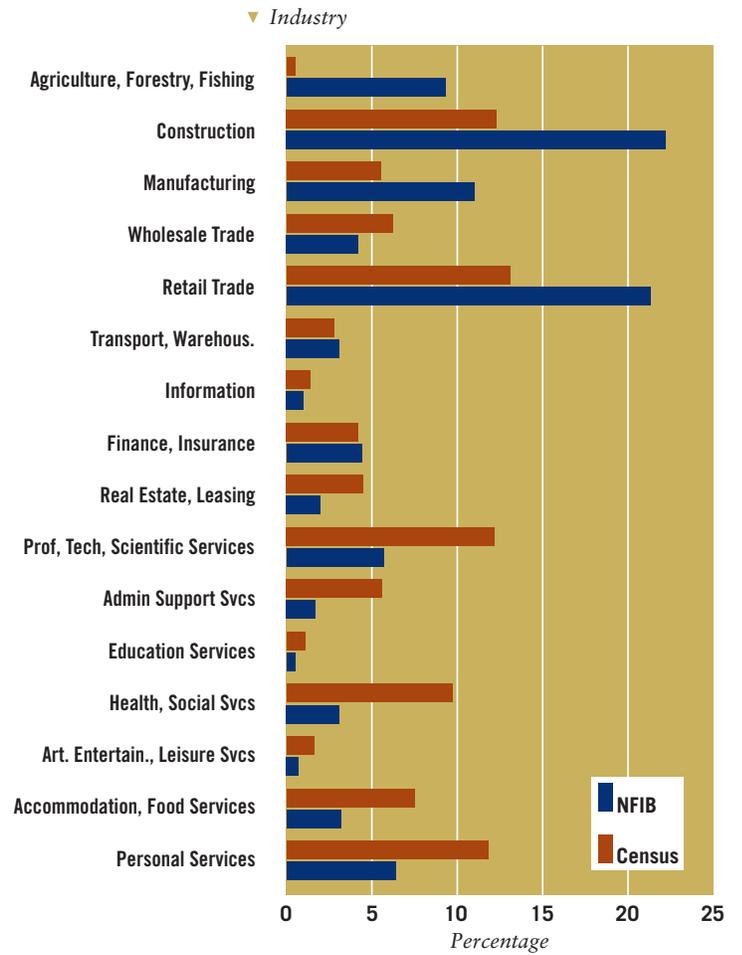
With public policy offices in Washington, D.C., and all 50 state capitals, NFIB ensures small-business owners have a strong voice in the development of legislation and regulatory policy. The NFIB Small Business Works for America Support Center is located in Nashville, Tennessee.

## 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. While there is no standard definition for a small business, the typical NFIB member employs five people and reports gross sales of around \$350,000 per year. However, all NFIB members have one thing in common; their businesses are independently owned.

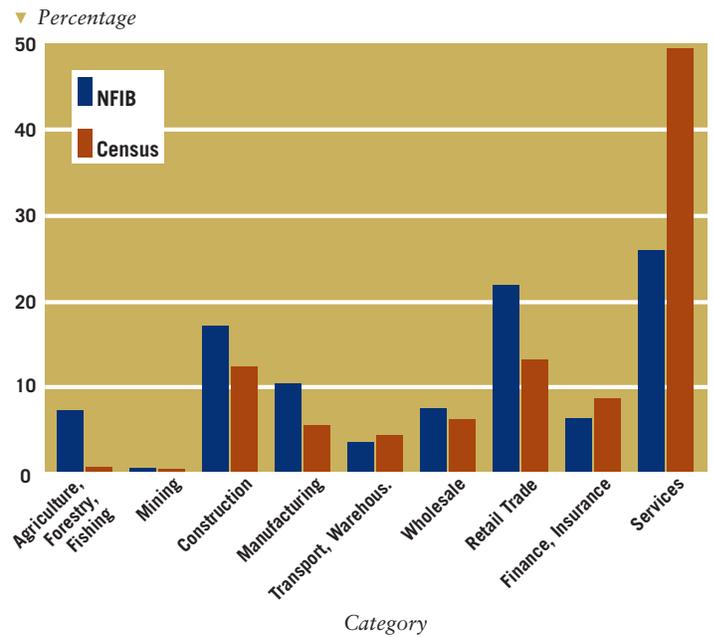
The NFIB membership very much reflects the face of American small business overall, as evidenced by the following comparisons between NFIB members and Census Bureau data prepared for the Small Business Administration (next page):

### Distribution of NFIB/Census by NAICS Codes

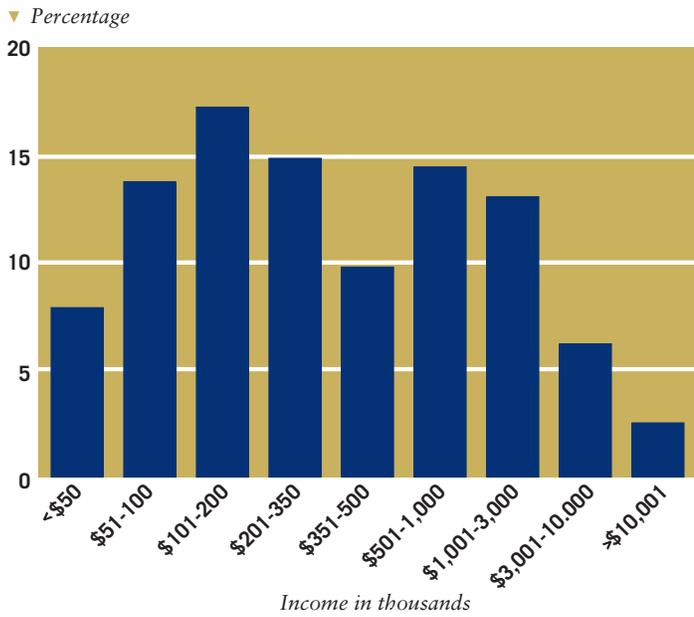


*Note:* Detail may not add to 100.0 due to rounding  
*Sources:* NFIB membership distribution is from respondents to "Small Business Problems and Priorities," June, 2004  
 Census data is from [www.sba.gov/advo/stats](http://www.sba.gov/advo/stats) for 2001.

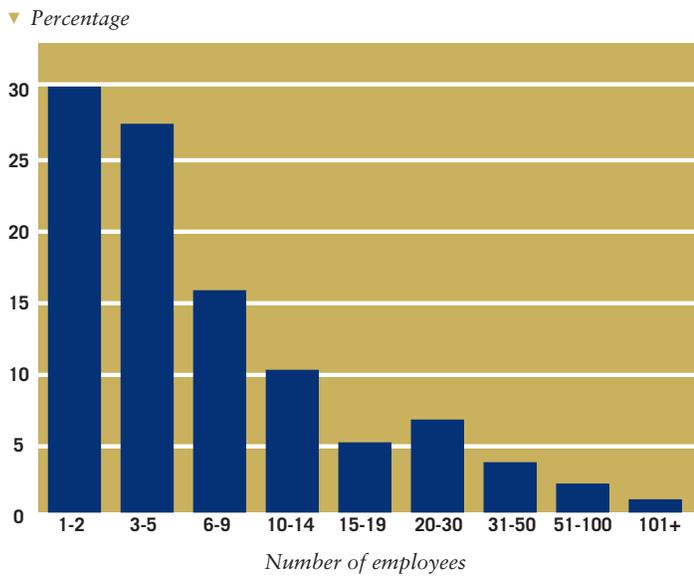
### NFIB/Census SIC Codes



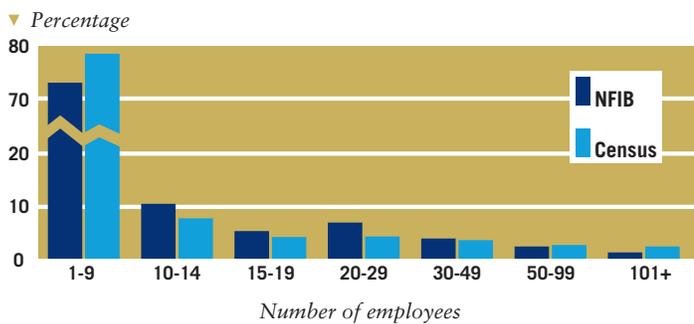
### NFIB Membership by Gross Receipts



### NFIB Membership by Number of Employees



### NFIB/Census by Number of Employees



\* Includes zero employees firms with reported payroll  
 Sources: NFIB- Nashville Operations Census: Derived from data prepared for SBA's Office of Advocacy  
 Data prepared for SBA's Office of Advocacy at [www.sba.gov/advo/stats](http://www.sba.gov/advo/stats)

# 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.



*“The way I look at it is: what is good for small business is good for America.”*

—PRESIDENT GEORGE W. BUSH

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, continuous casting, gyrocompasses, insulin, lasers, optical scanners, pacemakers, personal computers, turbojet engines, xerography and search engines. 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 unique subsidies or targeted 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

- In 2003, there were approximately 23.7 million businesses in the United States, according to SBA Office of Advocacy estimates.
- 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)

- More people are working for themselves. From 2002 to 2003 the number of self-employed increased from 9.926 million to 10.295 million or 3.7 percent. (SBA Office of Advocacy, *The Small-Business Economy* [GPO, 2004], table 1.2.)
- In 2001, there were 2.7 million employer firms with 1-4 employees and 1.0 million with 5-9 employees (78 percent of total employing businesses); 616,000 had 10-19 employees or 11 percent of the total. Companies with 20 or more employees made up the remaining 11 percent of total firms. ([www.sba.gov/advo/stats](http://www.sba.gov/advo/stats))
- 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 or 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, NFIB Research Foundation)
- According to the Census Bureau, 33.5 percent of self-employed individuals were female, 7.4 percent were Hispanic, 5.1 percent were African-American, and 5.0 percent were Asian Americans and Native Americans. (SBA Office of Advocacy, *The Small-Business Economy: 2004*, table A-10)
- At the end of 2004, the Optimism Index from NFIB's Small-Business Economic Trends series was at its highest level in 30 years. With few financing problems in sight, members look forward to solid growth in 2005.
- According to the federal National Women's Business Council, as of 2002, there were an estimated 10.1 million privately held businesses in which a woman or women own(s) at least 50 percent of the company. These firms employ 18.2 million people, and generate \$1.2 trillion in sales. (National Women's Business Council, *Key Facts About Women Business Owners and their Enterprises*" [www.nwbc.gov](http://www.nwbc.gov).)
- Among important small firm innovations in the 20<sup>th</sup> century are the airplane, audio tape recorder, double-knit fabric, fiber optic examining equipment, heart valve, optical scanner, pacemaker, personal computer, soft contact lens and the zipper. (SBA Office of Advocacy, *The Facts About Small Business*, August 2000).
- The share of private non-farm gross domestic product (GDP) produced by small business has remained relatively stable over the past two decades, varying between 50 and 52 percent. (Joel Popkin and Company, for the SBA, 2001)

## Small Business and Jobs

- According to data prepared by the Census Bureau for SBA, small firms with fewer than 500 people employed 49.8 percent of private non-farm workers in 2001, the latest year for which figures are available. (This does not include non-employing self-employed people.)
- Small firms provide most 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, women and immigrants.
- There have been approximately 2.6 million net new jobs created in the economy from August 2003 to November 2004. (Bureau of Labor Statistics) Over the last 30 years, approximately a net two out of three new jobs have been created by small businesses. (Source: SBA)
- Between 2000 and 2001, the latest period for which firm-size information is available, firms with 1-4 employees created 73 percent of the jobs generated in the small-firm sector (fewer than 500 employees). Large firms did not create any jobs during the recession as they continued to downsize. (SBA Office of Advocacy, derived from dynamic data provided at [www.sba.gov/advo/stats](http://www.sba.gov/advo/stats))

# Simplify the Code and Reduce Taxes

## 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 2003 (total tax burden from all levels of government) was 28.5 percent—higher than at any time since 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. (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 enormous compliance costs associated with the death tax are of the same magnitude as the revenue produced by the tax: about \$22 billion in 2003. (The Economics of the Estate Tax: An Update—Joint Economic Committee Study, June 2003)

### 1. Eliminate 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. Make Section 179 expensing limits permanent

Section 179 of the Internal Revenue Code allows small businesses to elect to deduct all or part of the cost of certain qualifying property in the year it is placed in service. Small-business owners can do this instead of depreciation deductions over a specified recovery period. However, there are limits on the amount that can be deducted in a year and on the types of properties that qualify.

The new law, signed by the president in 2003, increases the maximum dollar limit from \$25,000 to \$100,000. The investment limit is increased from \$200,000 to \$400,000. Both of these figures are indexed for inflation. The limits will revert to \$25,000 and \$200,000 if they are not made permanent before 2008.

The growth of many small firms is limited because they exceed the limits early in the year. Allowing small firms to immediately expense critical investments is a key component to the expansion of the economy. It will put money back into the hands of small-business owners so they can hire new employees and it will put money directly into the economy as owners purchase new equipment.

### **The Legislative Solution:**

**Make expensing limits permanent.**

---

## **3. Make personal income tax reductions permanent**

What Individual Rate Cuts Mean for Small-Business Owners:

- Approximately 85 percent of small businesses file their tax returns as individuals—so any tax refunds and increased earnings will go back into their business. (NFIB Small-Business Policy Guide, p.63)
- According to the latest Department of Commerce Economic Census (published 1998), 58.8 percent of businesses used personal assets as a capital source.
- In its newest study, NFIB found that 58 percent of small-business members listed after-tax earnings as their most important source of working capital. In addition, more than half cited earnings as one of the top sources of capital outlays. (Jonathan A. Scott, William C. Dunkelberg and William J. Dennis, Jr., *Credit, Banks and Small Business—The New Century*, NFIB Research Foundation)
- The NFIB study also found that 62 percent of firms owned by women use after-tax earnings as a source for working capital.

A series of studies by four top tax economists examined the effect of tax rate cuts on sole proprietors. Their results indicate that a 5 percent point cut in rates would increase capital investment by about 10 percent. And they found that dropping the top tax rate from 39.6 percent to 33.2 percent would increase hiring by 12.1 percent. (Economic Policy and the Start-up, Survival, and Growth of Entrepreneurial Ventures by Douglas Holtz-Eakin, Syracuse University and Harvey S. Rosen, Princeton University)

If Congress does not act to make the 2001 rate reductions permanent, small-business owners will face an income tax increase in 2010.

### **The Legislative Solution:**

**Make tax cuts permanent.**

---

## **4. 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 revenue 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.**

---



NFIB MEMBER JUNE LENNON (SECOND FROM LEFT), CPA AND CO-OWNER OF MARTIN & LENNON, CPAs, GREENVILLE, S.C., SPOKE ABOUT SMALL-BUSINESS ISSUES AT THE WHITE HOUSE ECONOMIC SUMMIT IN DECEMBER 2004. AT A SESSION CHAIRED BY TREASURY SECRETARY JOHN SNOW, SHE SAID, "A COMPLEX TAX CODE DOES NOT HELP MY BUSINESS SUCCEED AND I KNOW IT DOESN'T HELP MY CLIENTS EITHER."

## 5. 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 Solutions:

- **Relief from the Alternative Minimum Tax (AMT):** The individual alternative minimum tax is a remarkably complex and obtuse provision in the 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, because of the combined effects of inflation and individual rate cuts, the AMT is beginning to reach into the middle class.

It is now estimated that the number of taxpayers subject to the AMT will increase from about 1.8 million in 2001 to over 41 million by 2013. (The Alternative Minimum Tax From Individuals, CRS Report for Congress, by Gregg Esenwein, January 15, 2004)

Households with income of less than \$100,000 will account for 52 percent of AMT taxpayers in 2010, up from 9 percent today. They will account for 23 percent of AMT revenue, compared with just 5 percent in 2003. In 2010, the tax will affect 37 percent of households with income between \$50,000 and \$75,000 and 73 percent of households with income between \$75,000 and \$100,000 (compared to about 1 percent for each group in 2002). (The AMT: Projections and Problems, by Leonard Burman, William Gale and Jeff Rohaly, July 7, 2003).

As time goes on, the problem will only become more difficult to fix. Some projections suggest that by 2008 it will be less costly to repeal the regular income tax than to repeal the AMT.

- **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.
- **Update Automobile Expensing:** Depreciation of automobiles, minivans and sport utility vehicles (SUVs) is limited by law. The maximum depreciation allowed by business owners for these assets is \$15,300. 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. Congress should update the law to reflect the changes in the marketplace by raising the depreciable amount to \$40,000.

# Real Social Security Reform

## The Problem for Small Business

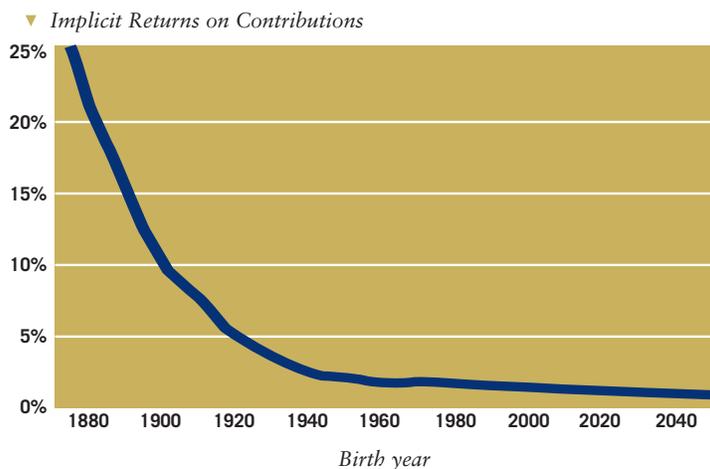
- According to Social Security trustees, if nothing is done to fix the problem with Social Security, the program is expected to become insolvent by 2052.
- Over the next 50 years, the number of workers available to support each Social Security beneficiary will drop from a rate of 3.4 to 1 to only 2.1 to 1. The cost of supporting the current system will increase 69 percent during that period. (Strengthening Social Security and Creating Personal Wealth for All Americans, Report of the President's Commission, December 2001, p.34)
- According to the Congressional Budget Office, approximately 80 percent of Americans pay more in payroll taxes than in federal income taxes. (Congressional Budget Office, *Economic Stimulus: Evaluating Proposed Changes in Tax Policy*, January 2002, p.12, footnote 7)
- A 25-year-old male with an average income is predicted to receive a -0.82 percent rate of return on his Social Security taxes. In other words, he will pay more into the system in taxes than he will receive back in benefits. (How to Fix Social Security, by David C. John, The Heritage Foundation, November 17, 2004)

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:

- Individually controlled Personal Retirement Accounts (PRAs) should be a major part of any Social Security reform. A NFIB member ballot question in 1999 found that 74 percent of members believe that Social Security should be reformed to allow individuals to invest in PRAs.
- Payroll taxes must not be increased. Small-business owners not only pay their own Social Security payroll taxes, they also contribute taxes on behalf of their employees. Reform will cost money, however NFIB members oppose increasing payroll taxes as a financing option.
- Social Security reform should not increase paperwork burdens on employers. A principal small-business concern about Social Security is administrative complexity. Reform plans must take steps to ensure that paperwork burdens on employers are not increased.
- Social Security should continue its commitment to provide benefits to retired workers. Eighty-five percent of NFIB members believe that even with private accounts, the program should remain mandatory and that retirees should receive a minimum benefit.

Social Security's Implicit Rates of Return



Source: Government Accountability Office

# Ease the Burden of Excessive Regulation and Intrusive Laws

## The Problems for Small Business

- “Unreasonable Government Regulations” ranked 9<sup>th</sup> of 75 problems in a recent survey of NFIB members. (“Small-Business Problems and Priorities”) It was a critical issue for 20 percent of them.
- Small-business owners are drowning in federal paperwork created by regulations. The problem ranked 18<sup>th</sup> of 75 problems in the NFIB survey, and was critical for 12 percent of business owners.
- The problems for small-business owners are regulations with unclear and confusing instructions, the volume of paperwork, and duplicate information requests. (Sources for the above: NFIB Research Foundation, Small-Business Problems and Priorities, 2004; “Paperwork and Record-keeping,” National Small-Business Poll, 3(5), 2003)
- There are about 150 “economically significant” new rules each year that collectively cost business owners more than \$100 million each in compliance costs. (C. Wayne Crews, “Ten Thousand Commandments,” Cato Institute, 2003)
- Americans spent \$843 billion to comply with federal regulations in 2000, nearly 8 percent of Gross Domestic Product. (Source: Crain and Hopkins, “The Impact of Regulatory Costs on Small Business: A Report for the Office of Advocacy, SBA, December 2001 <http://www.sba.gov/advo/research/rs207tot.pdf>)
- Regulatory costs per employee for small firms are nearly 60 percent more than the cost for large firms. Small businesses employ just over half of the work force, but shoulder nearly two-thirds of total business regulatory costs. (Crain and Hopkins)
- Federal regulations cost small business \$6,975 per employee; they cost large companies \$4,463 per employee. (Crain and Hopkins)

### 1. Reduce the burden caused by federal paperwork

Businesses currently waste precious hours completing page after page of federal forms, hours which on-average cost small businesses nearly \$50 for each of them. The IRS accounts for a majority of this burden and tax paperwork costs small businesses about \$75 per hour. For certain industries, duplicative paperwork is a tremendous time-waster.

#### The Legislative Solution:

**Remove the barriers limiting IRS compliance with the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act (SBREFA). Exercise tougher oversight on federal agencies in how they are meeting their previously mandated paperwork reduction goals.**

---

### 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 nearly 60 percent more than the cost to large firms. Small businesses employ 60 percent of the work force, but shoulder nearly two-thirds of the total business regulatory costs. The greatest part of the problem comes from regulations currently on the books, which are supposed to be reviewed for their small-business impact, but are not.

#### The Legislative Solution:

**Force agencies to engage in their mandated reviews of current regulations, sunseting regulations that are supposed to be reviewed, but are not. Mandate regular reporting from executive branch agencies and the Office of Management and Budget on their review of regulations currently on the books. Extend the economic impact review of proposed regulations to their indirect impact on small business.**

---



FRANK FILLMORE TESTIFIED BEFORE A HOUSE OF REPRESENTATIVES REGULATORY SUBCOMMITTEE IN APRIL 2003. THE NFIB MEMBER OWNS THE FILLMORE GROUP, AN INTERNATIONAL INFORMATION TECHNOLOGY BUSINESS IN BALTIMORE, MARYLAND. "WHILE SMALL BUSINESSES LIKE MINE ARE THE GREATEST SOURCE OF JOB GROWTH IN THE ECONOMY, THEY UNFORTUNATELY BEAR A DISPROPORTIONATE SHARE OF THE REGULATORY BURDEN," FILLMORE TOLD THE COMMITTEE.

### 3. Ensure that private property rights of small-business owners are respected

Regulations, especially those that govern land uses, continue to chip away at the rights of individuals to lawfully use their property. The Department of the Interior, Army Corps of Engineers, the EPA, 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:

Reform the Endangered Species Act to minimize its negative impact on small property owners. Remove the legal hurdles preventing private property rights victims from having their claims heard and redressed. Continue to ensure that federal agencies assess the impact that their regulations have on private property.

### 4. Oppose minimum-wage increases

When the minimum wage is raised, 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 proposals to increase the minimum wage or index it to the cost of living.

### 5. 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.

### 6. Reform the Occupational Safety and Health Act (OSH Act) that governs OSHA

The OSH Act sets standards regarding the safety and health of employees within a workplace and guides the administrative procedures used when employers face an alleged violation of the law. The system invites unfair prosecution and imposes a larger cost to small employers. The OSH Act needs to be reformed to make the rules less ambiguous and to level the playing field for small employers who challenge citations given by the Occupational Safety and Health Administration.

#### The Legislative Solution:

Amend the OSH Act to make the law fairer for small employers by strengthening the OSH Review Commission, eliminating rules that do not allow for due process when contesting an OSHA citation and providing employers the tools needed to fight against frivolous and unfair citations.

# Make Health Care More Accessible

The No. 1 concern of small-business owners is the cost 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.

## The Problems for Small Business

- The United States Census Bureau reported that 45 million Americans were uninsured in 2003, an increase of 1.4 million from the previous year. (United States Census Bureau, August 2004)
- Forty-eight percent of small businesses offered health insurance to their employees in 2003. Forty-one percent of those firms with fewer than 10 workers did so, but 78 percent of those with 20 or more employees provided coverage. (NFIB National Small-Business Poll, Health Insurance, Volume 3, Issue 4 2003)
- In 2004, premiums for employer-sponsored health insurance rose at about five times the rate of inflation. This will be the fourth consecutive year of double-digit increases for health insurance. (Employer Health Benefits 2004 Annual Survey, The Henry J. Kaiser Family Foundation and Health Research and Education Trust)
- Employer-based health coverage is down from 65 percent in 2001 to 61 percent in 2004. Kaiser estimates that there are at least five million fewer jobs providing health insurance in 2004 than 2001. A possible contributing factor is a decline in the percentage of all small firms offering health insurance. (Employer Health Benefits 2004 Annual Survey, The Henry J. Kaiser Family Foundation and Health Research and Education Trust)
- There are now more than 1,800 health insurance mandates operating at the state level. In some markets, mandated benefits increase the cost of health insurance by as much as 45 percent. (“2004 Health Insurance Mandates in the States,” Council for Affordable Health Insurance)
- Insurers’ administration costs and expenses, such as marketing and billing, typically account for about 20-to-25 percent of small employers’ premiums compared to about 10 percent of large employers’ premiums. The smaller the group the larger the share of the premium that goes to pay for expenses other than benefits. (Source: General Accounting Office, “Small Employers Continue to Face Challenges Providing Coverage,” GAO-02-8, October 2001)

## 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 are forced to purchase health insurance on a state-by-state basis, while the large companies that self-insure operate across state boundaries in a uniform manner.

### The Legislative Solution:

Pass legislation allowing associations to offer health insurance to their small-business members through Small-Business Health Plans (also known as Association Health Plans). By joining together, small employers will enjoy greater bargaining power, economies of scale and administrative efficiencies.

---

Any Questions?

Call NFIB’s legislative staff at  
202-554-9000 or log on to [www.NFIB.com](http://www.NFIB.com)

## 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:

- Allow 100 percent premium deduction for individuals who purchase high-deductible health plans and for their contributions to Health Savings Accounts (HSAs).
- 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 45 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 the self-employed to deduct health-care costs

While small businesses are already able to deduct the costs of health care from their annual income, the tax code still prevents entrepreneurs from deducting these costs from the wage base for self-employment taxes (Social Security and Medicare). This means small-business owners 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.



JOHN SLINGLUFF OWNS BALTIMORE BELTING COMPANY, BALTIMORE, MARYLAND. IN MAY 2004, THE NFIB MEMBER SPOKE AT A RALLY AT THE U.S. CAPITOL WITH SEVEN MEMBERS OF CONGRESS. "THERE'S NO WAY I CAN AFFORD TO PAY A HIGHER PERCENTAGE OF THE [HEALTH] PLAN THAN I DO NOW. CONGRESS NEEDS TO TAKE THE WEIGHT OFF SMALL-BUSINESS OWNERS," SLINGLUFF SAID.

# Curb Frivolous Lawsuits

## The Problems for Small Business

- 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. (National Small-Business Poll [Liability], NFIB Research Foundation, Volume 2, Issue 2, 2002)
- Small-business owners rank the “Cost and Availability of Liability Insurance” as the second most important problem facing them today. (NFIB Small-Business Problems and Priorities, June 2004)
- More than 30 percent of small businesses today regard the “Cost and Availability of Liability Insurance” as a critical issue, compared to 11 percent in 2000—nearly a three-fold increase. (NFIB Small-Business Problems and Priorities, June 2004)
- Eighty-eight percent of NFIB members believe that businesses that sell food should not be liable for customer obesity. (NFIB Member Ballot, October 2003)
- Eighty-two percent of NFIB members think that businesses should not be held liable if they unknowingly sell products that are later determined to cause harm. (NFIB Member Ballot, May 2003)

### 1. Curb frivolous lawsuits

Frivolous lawsuits create a climate of fear for America’s small businesses. While some claims are legitimate, a large percentage is completely without merit. However, individuals and entities that are sued still have to defend themselves, and this defense is often costly to both business and consumers. Individuals and attorneys who file baseless claims and victimize innocent people should be held accountable for their actions.

#### Legislative Solutions:

- **Make sanctions against attorneys or parties who file frivolous lawsuits *mandatory* rather than discretionary.**
  - **Remove current law provision that allows parties and their attorneys to avoid sanctions for making frivolous claims by withdrawing them within 21 days.**
  - **Allow sanctions for frivolous or harassing conduct during discovery.**
  - **Allow monetary sanctions, including attorneys’ fees and compensatory costs.**
- 

### 2. Prohibit obesity lawsuits

The small-business community is concerned that the trial bar, in a never-ending effort to find new opportunities for legal exploitation, is turning its sights on the food industry. Already, lawsuits have been filed blaming cookies and fast food for plaintiffs’ weight and health problems, and more suits are expected. While these initial suits have been thrown out of court, as were the first tobacco and asbestos lawsuits, NFIB members are concerned that ultimately some of these suits will be successful.

#### The Legislative Solution:

**Exempt any business that manufactures or sells food from being held liable for their customers’ obesity or weight gain, and for illnesses resulting from obesity.**

---

### 3. 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.



LEFT: NFIB MEMBER CHRIS CAVEY, OWNER OF CAVEY INSURANCE AGENCY, HAMPSTEAD, MARYLAND, TESTIFYING BEFORE A HOUSE OF REPRESENTATIVES SMALL BUSINESS SUBCOMMITTEE IN JULY 2004, TOLD COMMITTEE MEMBERS, "TOO OFTEN THESE ARE FRIVOLOUS [LAWSUITS] WHERE SOMEONE IS LOOKING FOR THE 'BIG PAYOFF' ON THE BACK OF A KIND SMALL-BUSINESS OWNER." RIGHT: ROBERT MAYFIELD, A RESTAURANT OWNER IN AUSTIN, TEXAS, AND NFIB MEMBER, APPEARED WITH MEMBERS OF CONGRESS IN JUNE 2004 AND CALLED ON THEM TO PASS REP. LAMAR SMITH'S (D-TEXAS) LIABILITY REFORM LEGISLATION. "REP. SMITH'S BILL IS CRITICAL TO ENSURING THAT SMALL-BUSINESS OWNERS ARE PROTECTED FROM THE PREDATORS THAN CAN DRIVE BUSINESSES TO FINANCIAL RUIN," MAYFIELD TOLD THE LAWMAKERS.

### 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.

## 4. 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. (Journal of Commerce, March 8, 1999)

### 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.

## 5. 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.

## 6. 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.

# And Don't Overlook...

## Motor Vehicle Right-to-Repair Act

The increase in computer systems in vehicles has allowed manufacturers to prevent small, independent repair shops from gaining access to information necessary to fix their customers' cars. Congress must enact legislation to require vehicle manufacturers to disclose this necessary information so that consumers can patronize the repair facility of their choosing.

## Postal Reform

Small-business owners, particularly in the retail and service industries, depend on stable postal rates to conduct their businesses. According to a June 2002 NFIB Research Foundation study, raising rates to 40 cents would impose a cost of \$2.3 billion on small business. The Postal Commission is expected to raise rates again unless Congress takes action to reform postal operations such as the civil service pension and retirement obligations.

## Government Competition

When allowed to compete for contracts, small businesses can provide the best value and the greatest results by improving efficiency and decreasing costs. Congress should allow the bidding process for commercial services, such as software consulting, maintenance, food service and data processing, to be fair and open to small business. Congress should also stop contract bundling, which combines several small contracts into one large contract that is too large for a small business to handle.

## Interest on Business Checking

Because of a Depression Era statute, small businesses are prevented from earning interest on their business checking accounts. Congress should repeal this ban and allow banks to offer their small-business customers interest on their checking accounts.

## Superfund: Service Stations

Service-station dealers who acted in accordance with the law and used licensed handlers to dispose of motor oil are finding themselves liable for thousands of dollars to clean up Superfund sites. They are being forced to pay for the illegal actions of others. Congress should enact legislation that retroactively extends limits on Superfund liability for small-business service stations that legally disposed of waste oil and are currently involved in Superfund lawsuits.

## Fax Ban

In 2003, the Federal Communications Commission issued "do-not-fax" regulations that required businesses, membership organizations and non-profits to gain written permission before sending faxes to customers. This rule interferes with the ability of businesses to communicate with their customers and creates a substantial paperwork and record-keeping burden. Congress must enact legislation that allows firms with an "established business relationship" to continue faxing their customers and to allow for the customer to opt-out.

## Any Questions?

Call NFIB's legislative staff at **202-554-9000**  
or log on to **[www.NFIB.com](http://www.NFIB.com)**

# The NFIB Research Foundation

*Your Small-Business Resource Online*

The NFIB Research Foundation produces surveys and polls on every aspect of small business. Here is a partial list of the resources available at [www.NFIB.com/page/researchfoundation](http://www.NFIB.com/page/researchfoundation).

*Small-Business Economic Trends*—Since October 1973, NFIB has been surveying its members about hiring, capital outlays, inventory, sales, job openings, credit conditions, expansion plans and their instincts about the direction of the economy. The survey is conducted monthly and has a remarkable track record for predicting the trend of the Gross Domestic Product.

*NFIB National Small-Business Poll*—Conducted eight times a year, each poll focuses on a single aspect of small business (cash flow, use of Internet, workplace safety, etc.).

*Small-Business Problems and Priorities*—Every four years the foundation asks small-business owners to rank severity of more than 70 potential business problems on a scale ranging from “critical problem” to “not a problem.” Both public policy and other problems are included.

*NFIB Small-Business Policy Guide*—A comprehensive reference and policy guide that answers many of the basic questions about small business.

*The Public Reviews Small Business*—The opinions the American public holds about small business.

*Credit, Banks and Small Business, The New Century*—The sixth in the series, which began in 1980 and examines the relationships between banks and their small-business customers.

*Laissez les Bon Temps Roulez (Past State Spending as the Basis for Current State Deficits)*

*Small-Business Indicators of Macroeconomic Activity*—An assessment of how well NFIB’s small-business economic data forecast changes in highly visible measure of macroeconomic activity, such as employment, inflation, investment and real growth of Gross Domestic Product.

## The NFIB Small-Business Growth Agenda for the 109<sup>th</sup> Congress



**NFIB**

The Voice of Small Business®

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

[www.NFIB.com](http://www.NFIB.com)

202-554-9000

The NFIB Small-Business Growth Agenda  
for the 109<sup>th</sup> Congress

