



**Statement of Philip K. Howard
Chair of Common Good**

**U.S. House of Representatives
Small Business Committee
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Chairman Chabot, Ranking Member Velázquez, and Members of the Committee:

Thank you for inviting me to testify before the Committee today about streamlining federal permitting to reduce the regulatory burden on small businesses. Small businesses play an indispensable role in American culture and commerce but are burdened by the dense regulations that have built up over the past five decades. They do not have the time and resources to understand, much less comply with, the many requirements.

Getting a permit to start a business, or to build anything, requires going to multiple agencies, often at federal, state, and local levels. These agencies rarely coordinate their requirements. Often their demands are duplicative, and sometimes conflict with one another. Nor do they honor the practical implications of the regulations—not the costs, time constraints, or diversion of energy.

The regulatory burden on small business extends far beyond requirements to apply for specific permits: Regulatory compliance itself is a form of mandatory permitting because a small-business owner cannot do business without it.

As I will discuss, Congress should advance its interest in promoting small business by examining the permitting and regulatory burdens imposed by state and local law as well as federal law. A new regulatory framework is needed to meet public regulatory goals in a way that is practical for people running small businesses. Small businesses need a separate, simpler regulatory system, focused on meeting regulatory goals, not rote compliance with detailed specifications and prescriptions. Government should make permits and licenses accessible to real people with a “one-stop shop.” I propose principles to frame a regulatory overhaul and specific initiatives to set that overhaul in motion.

Small Business is the Driver of American Prosperity

Small businesses are critical, first, because they are the largest part of the U.S. economy. Companies that have fewer than 500 employees are collectively responsible for almost half of the total GDP and more than half of all sales in the United States.

Small businesses are also the incubator of big businesses—a kind of wetlands which spawns innovation. According to the Kauffman Foundation, the net increase in jobs since 1980 is entirely attributable to newly-started businesses.

Small businesses also provide an open door by which Americans can achieve self-determination and ownership, which is important far beyond its economic consequences. America is the land of opportunity in large part because of its receptivity to individual initiative.

But the pace of growth has slowed: 11 percent fewer businesses opened their doors in 2013 than in 1980. The disjointed regulatory framework is a powerful disincentive to entrepreneurship. According to 2017 World Bank rankings, the U.S. ranks 51st in the world in ease of starting a business. By many accounts, regulatory compliance costs are overwhelming for small businesses. The U.S. Small Business Administration found that companies with fewer than 20 employees faced regulatory costs per employee that were 36 percent greater than the cost for larger firms.

Studies suggest that most of these costs are attributable to federal regulations: 58 percent of small-business owners responded in a 2017 survey that federal requirements are the most burdensome for their business. Nearly half of small businesses report spending more than \$10,000 annually on federal compliance, with 11 percent spending more than \$40,000 in total per year.

The amount spent on compliance does not include the diversion of time of small-business owners and managers towards numerous compliance-related tasks. The paperwork can take one or two hours per week, but the opportunity costs include the constant distraction of worrying about what might be required. 42 percent of small-business owners say that they have delayed or halted business investments due to the uncertainty about existing requirements, while 39 percent did so because of the uncertainty related to a new, pending regulation. *Inc.* Magazine reports that 545 federal regulations affecting small business were issued in 2015 alone.

America's Flawed Approach to Regulation

The onerous burden of regulation is typically met with calls for de-regulation. When push comes to shove, however, most Americans want government oversight over clean water, safe workplaces, and caring nursing homes.

The core flaw of American regulation, in my view, is that it leaves no room for practicality: Bureaucratic detail suffocates everyone, including the regulator. There's no room for balancing different considerations, or, indeed, even for a discussion on what's sensible. Public goals are irrelevant; what matters is compliance with thousands of rules—an impossible task even for large businesses.

Getting permits is the threshold requirement for doing business or constructing infrastructure or buildings. Over the past 50 years, myriad licenses have been required—most for good reasons, such as compliance with fire codes or environmental goals, and some for anti-competitive reasons, such as onerous requirements to get a license to be a hairdresser. In some states, a barber or cosmetologist needs ten times as much training as an emergency medical technician.

Government rarely coordinates all these permitting requirements. The budding entrepreneur is expected to run a gauntlet of different agencies without so much as a roadmap of where to go. Mayor Michael Bloomberg found that opening a restaurant in New York City required permits from as many as 11 agencies. A prospective lessor in Washington, DC must file five forms with three different agencies to obtain permits to rent out a condominium. Sometimes the requirements are duplicative: Getting certified as a home care worker in New Jersey, for example, requires the

same background checks and fingerprinting by two different agencies, adding unnecessary costs and delay before being able to work.

Disjointed permitting and regulation impose painful and unnecessary costs on all Americans. The inability to rebuild America's decrepit infrastructure is a case in point. The accretion of well-meaning review and permitting requirements from all levels of government results in delays of upwards of a decade on major projects. In my 2015 report, "Two Years, Not Ten Years," I found that a six-year delay more than doubles the cost of projects. I also discovered that lengthy environmental review is often harmful to the environment, because it prolongs fixing traffic bottlenecks and inefficient power grids. These delays hurt small construction companies by deterring valuable projects and hurt small business generally by imposing unnecessary blackouts, traffic jams, shipping costs, and other effects of outmoded infrastructure.

The delays in infrastructure permitting are generally not the result of "over-regulation"—greener countries such as Germany give permits in one or two years. The delays are caused by the balkanization of approvals among multiple agencies at all levels of government. A project to raise the roadway of the Bayonne Bridge, for example, required 47 permits from 19 different agencies. The project had virtually no environmental impact, because it used existing bridge foundations, but still required an environmental assessment of 20,000 pages, including appendices. This is not good government; it is regulation devouring the public good instead of enhancing it.

Over the past 50 years, American regulation has grown into a dense jungle of uncoordinated requirements. It fails not because the goals of, say, environmental review or worker safety, are invalid, but because it tries to meet those goals with thousands of detailed dictates emanating from scores of different regulatory agencies. It suffers the mindlessness of central planning—not allowing people to adapt to practical problems on the ground. But, worse, there is not one central planner, but dozens who often make inconsistent demands. Worse still, all those central planners are dead; they wrote the laws and regulations decades ago, and small business must comply even if the rules make no sense anymore.

Studies suggest, for example, that worker safety rules often have had little impact on worker safety. This doesn't mean the federal government should not oversee worker safety. It means it should replace the micro-management model with a goal-oriented oversight that focuses on results. It truly doesn't matter if "material safety data sheets" for common workplace products—say, soap and cleaning products—are kept in plain view. How do we expect someone running a small business to keep straight that and thousands of other requirements?

A fundamental flaw in America's regulatory structure is that no one is in charge. There's no one with the responsibility to ask, "What's the right thing to do here?" No one in government has the job of balancing the demands of different agencies. No one has the job of giving a small business a permit. Instead, American regulation is a dense legal jungle, impenetrable to all except large companies with legal staffs of hundreds of lawyers.

Making Regulation Practical for Small Business

What's needed is a broad overhaul—replacing command-and-control dictates with radically simpler regulatory goals, with clear lines of authority so that citizens do not get whipsawed by conflicting or duplicative requirements.

For small business, the threshold question is the practical ability of a real person to deal with myriad public goals. Government must respect the limited time and resources of Americans who have the spirit and resourcefulness to start businesses that keep America going. It must make clear its goals and allow small business owners to use their common sense in achieving them. The result will be greater compliance with crucial societal norms.

To succeed, regulation must also be understandable. Clear and concise principles and expectations must replace dense instruction manuals. If the language is too complex and voluminous, it undercuts compliance rather than ensuring it. There will always be disagreements, but instead of fights over the parsing of words in Section 526(v)(2), let them argue over the best way to accomplish public goals.

A simpler system requires giving officials the authority to make decisions. This is our choice: either a jungle of thousand-page rulebooks, or a simplified framework where officials make choices to give permits and make regulatory decisions. These choices can be readily second-guessed by other officials, and ultimately by courts, but there's no other alternative. The only cure to dense bureaucracy is human responsibility.

Accepting the role of human responsibility requires overcoming myths that drive bad decisions from both sides of the aisle. The liberal myth about the current regulatory system is that detailed rules make sleazy operators do what's right. But the current system is so dense that enforcement is haphazard, and encourages bad operators to ignore the rules altogether.

The conservative myth is that detailed rules deter officials from exercising arbitrary power. But when laws are unknowable, and demand impractical perfection, regulators wield arbitrary power: a business with exceptional worker safety may be penalized for paperwork violations. Lawyers step in where regulators have left off, bringing lawsuits for minor infractions of detailed specifications that do little to advance desired public goals. A small business was sued for ADA noncompliance after installing a soap dispenser an eighth of an inch above the prescribed height for use by someone in a wheelchair.

Replacing the Regulatory Jungle

Every president since Jimmy Carter has tried to prune the regulatory jungle. But pruning a jungle is a fool's errand. It is too dense. The internal logic of trying to tell people exactly how to comply means that the red tape will immediately grow back.

Small businesses almost universally call for a new paradigm for government regulation. In a 2012 survey conducted for Common Good by Clarus Research Group, 86 percent of small-business leaders said that regulations would be more effective in protecting public health and safety if they gave "clear, certain goals" and "more freedom to use common sense in making daily decisions."

There is also widespread public support for this approach. A national survey of voters conducted in May 2017 also by Clarus Research Group found that 62 percent of voters favor making "laws that give civil servants basic goals and principles on how to do their jobs along with the flexibility to work out the details on their own." 56 percent of Republicans, 63 percent of independents, and 67 percent of Democrats agree.

It is time that Congress heeded their call. Here are three initiatives that would move forward a new simplified regulatory regime, which honors the human scale and capacity of small business:

1. ***Pilot projects for simpler goal-oriented regulations.*** Congress should appoint an independent commission to design pilot projects to test simpler goal-oriented regulations for small business. These pilots could, for example, consolidate into one department all federal, state, and local compliance related to employees: Fair Labor Standards Act, workers' compensation, unemployment insurance, etc. This oversight agency could readily be a state agency, and Congress could condition federal funding on such efforts at the state level. The commission could also identify duplicative and obsolete laws that need to be repealed, such as licensing requirements that mainly serve as barriers to entry for new businesses.
2. ***Establish one-stop shops for permitting.*** Government should do the work of coordinating different agency demands, not require aspiring entrepreneurs to trudge from agency to agency. Congress could create a pilot project for a coordinating department, perhaps within the U.S. Small Business Administration, which would act as the point of contact for small businesses needing a federal permit. Because different agencies often disagree, Congress could also create clear lines of authority up to the White House, to make sure applicants get a decision on a timely basis.¹
3. ***Privatize enforcement.*** No level of government has sufficient resources to check on the over 29 million small businesses. Similarly, few small businesses have the capacity to understand certain complex areas of regulation, such as environmental regulation. A solution here might be to create a safe harbor for businesses that receive a regulatory compliance letter. Just as most businesses have financial auditors who bless their books, they could have a "certified regulatory expert" to monitor their compliance and issue compliance letters. These regulatory experts could work with the business to make sure that they are in substantial compliance.

The spirit of America arises from the sense of personal ownership of life's choices. It is this ownership that empowers people to innovate, to take risks, and to pick themselves up when they fail. Today, it is hard for anyone to accomplish anything without a huge legal staff. The American can-do spirit is bogged down by the accumulation and complexity of regulatory requirements.

The solution is not to abandon important regulatory goals, but to dredge out the regulatory muck and replace it with buoys that make sure people stay within accepted channels. A new simplified system of regulation will not only reduce the monetary costs imposed on small businesses, but open the door, now blocked by countless rules, to the deep store of creativity that resides in current and prospective small-business leaders.

Thank you for this opportunity to appear before you.

¹ In New York City, the NYC Business Acceleration Team helps fledgling food and beverage businesses navigate the city's regulatory system. A similar program was created in Los Angeles that cut the time that restaurants spent on the permitting process in half.