

TESTIMONY BEFORE THE UNITED STATES CONGRESS
ON BEHALF OF THE
NATIONAL FEDERATION OF INDEPENDENT BUSINESS

NFIB
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Testimony of Jack Buschur, Buschur Electric
The House Committee on Oversight and Government Reform
Regulatory Impediments to Job Creation
February 10, 2011

Good morning Chairman Issa, and members of the Committee. I would like to thank you for giving me the opportunity to speak with you today regarding the impact that regulations have had on small businesses.

I am the owner of Buschur Electric, a small electric contracting business in Minster, Ohio. We currently have 18 employees, down from 30 employees in 2009. My business works on commercial, industrial, institutional and residential properties.

There are three specific regulatory issues I want to bring to the committee's attention today – the EPA Lead RRP rule, Project Labor Agreements, and prevailing wage rules. All three of these regulatory burdens have had a negative impact on small businesses and our ability to create new jobs.

In 2008, EPA finalized a rule requiring firms to be certified, and their employees trained, on lead safe practices during home renovations on homes built before 1978. Originally, the rule allowed homeowners to opt out of these requirements if they signed a waiver confirming that there were no pregnant women or children six and under living in the home. In the weeks leading up to the rule's effective date, in April 2010, many NFIB members contacted the organization expressing alarm that they had just heard about the rule or its requirements. Members said that they had difficulty getting their employees into EPA-compliant training classes, and some reported having to pay excessive costs to enroll in compliance classes before the deadline due to the heavy demand.

EPA eventually revoked its opt-out rule, requiring all home renovations in pre-1978 homes to follow lead-safe practices, thus increasing the cost of renovations for homeowners that had no at-risk individuals. Such inflexible standards have the effect of driving down demand for renovation services. Or worse, homeowners could seek to have renovations performed by unlicensed, underground contractors, which increases the safety risk to everyone.

I have found this situation to be a prime example of a regulation that hinders my ability as a small business owner to add jobs and help get our economy growing again. I first found out about this burdensome rule at a recent project. An inspector from the Occupational Safety and Health Administration informed the project's general contractor that all subcontractors were required to have "on the job training" in order to be in compliance with the RRP Rule. I had to have two of my employees go through a seven hour certified training course on site. In addition, the general contractor had to make arrangements such as Lead Air Sample Analysis, OSHA Lead Awareness training, Pre Assumed Lead Exposure Blood Panel, Post Assumed Lead Exposure Blood Panel, Respirator Clearance Exam, Respirator Fit Exam, Medical Exam for each employee, the purchase of the necessary PPE gear and Lead Assessment by a certified professional (the lead assessment alone was \$1,260.00 per day for 3 days). The overall cost for the general was about \$10,000. We eventually learned that we in fact did not need to be certified

or trained to do the work because the concentration of lead dust at the worksite was not high enough to pose a risk to anyone.

As I witnessed the amount of time and money the general contractor exhausted in an effort to be compliant, I decided that my business would not become an RRP-compliant company. I expect many other similar companies will not either. The expenses are outrageous, the amount of paperwork is far too burdensome, and the exposure to liability is too great for my business to take on.

I believe that the RRP rule is a perfect example of a regulation that will limit competitive bidding on projects and increases the cost of projects to property owners and taxpayers.

I am also very concerned about two labor regulations that also adversely impact small business – Project Labor Agreements (PLAs) and prevailing wage. The federal government's insistence on PLAs makes it much more difficult for a business like mine to bid on projects. Typical PLAs are pre-hire contracts that require projects be awarded only to contractors and subcontractors that agree to:

- Recognize unions as the representatives of their employees on that job
- Use the union hiring hall to obtain workers
- Obtain apprentices exclusively from union apprenticeship programs
- Pay into union benefit plans
- Obey costly, restrictive and inefficient work rules

The use of Project Labor Agreements is a discriminatory tactic that prevents non-union construction companies from working on government construction projects. The U.S. Department of Labor's Bureau of Labor Statistics found in their annual report on union membership that from 2009 to 2010 union membership fell from 14.5 percent to 13.1 percent of the U.S. private construction work force. By preventing 86.9 percent of construction companies from bidding, PLAs increase the cost of construction by unfairly reducing the number of companies which can competitively bid. When you consider the fact that the construction industry currently has an unemployment rate of over 20 percent, it makes no sense to impose PLAs or other regulations that serve as impediments to job creation.

We have not been directly affected by PLAs over the last couple years, as the projects have been either too large or too far out of our area. However, I am very concerned that if a right-sized project with a PLA does come up for bid in our area, we will be unable to compete for the work., making it even harder for our company to get back on its economic feet.

Another area that has an adverse impact on small business job creation is the prevailing wage rules. With the slow economy the last couple of years, we have been forced to perform prevailing wage work in order to survive. These projects (we currently have 7 prevailing wage projects) create a lot of additional record keeping that must be sent to the prevailing wage coordinator, along with additional copies to the Division of Industrial Compliance and Labor, for when the unions file an audit request after the job is complete.

At the time a prevailing wage project is awarded, my firm has to issue employee notification forms to employees on the job, advising the wage rate and applicable fringe benefits paid per hour. Then, every week we have to do the following:

- Review prevailing wage updates and prepare updated employee notification forms to all employees working on the job.
- Print and review certified payroll reports for each prevailing wage job.
- Compile applicable spreadsheet, per project, for payment of training fringe benefits to certified training program.
- Compile applicable spreadsheet, per project, for payment of fringe benefits to certified retirement plan.
- Compile applicable spreadsheet for tracking of all prevailing wage hours worked per job, and all prevailing wage fringe benefits due per job, all to prepare for the possibility of a prevailing wage audit.

Then, every month, we must:

- Submit certified payroll reports to the prevailing wage coordinator for each project.
- Submit payment of training account fringe benefits to certified training program
- Submit payment of fringe benefits to certified retirement plan.

I thank you for the opportunity to share my concerns with you, and I urge the committee to take a hard look at how the regulatory environment can stifle small business job creation and growth.