



“Regulatory Impediments to Job Creation”

Testimony of

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Committee on Oversight and Government Reform

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The Honorable Darrell Issa, Chairman

The Honorable Elijah Cummings, Ranking Member

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Protecting Small Business, Promoting Entrepreneurship

Chairman Issa and Ranking Member Cummings, the Small Business & Entrepreneurship Council (SBE Council) is pleased to provide testimony today regarding regulatory impediments to job creation. Our nation's small business owners and entrepreneurs are especially impacted by the burden and cost of regulation, and we are pleased that both Congress and the White House have committed to identifying regulations that impede job creation and small business growth. SBE Council looks forward to working with the House Committee on Oversight and Government Reform on solutions and reforms that accelerate job creation, and encourage investment and entrepreneurship.

My name is Karen Kerrigan, President & CEO of SBE Council, a nonpartisan, nonprofit advocacy, research and training organization dedicated to protecting small business and promoting entrepreneurship. With nearly 100,000 members and 250,000 small business activists nationwide, SBE Council is engaged at the local, state, federal and international levels where we collaborate with elected officials, policy experts and business leaders on initiatives and policies that enhance competitiveness and improve the environment for business start-up and growth.

Currently, business owners remain on edge regarding economic conditions. Uncertainties continue to nag entrepreneurs, and the slow recovery has obviously hampered job creation in the small business sector. A February 4, 2011 report by Gallup's Chief Economist Dennis Jacobo, which analyzed a fourth quarter 2010 Wells Fargo/Gallup Small Business Survey, showed that 42 percent of small business owners hired fewer workers than they needed in 2010. According to the survey, 79 percent remain worried that revenues or sales won't be enough to justify additional employees and 70 percent are concerned about cash flow and their ability to make payroll. In addition, 51 percent are worried about the cost of health care.

While worries about sales and sufficient cash flow remain roadblocks to hiring for small business, government regulation is also a key concern.

In a February 3, 2011 Career Builder survey of 1,350 small businesses, 27 percent of respondents said that government regulation is an impediment to hiring. The cost of health insurance (50 percent) and access to credit (33 percent) were the other chief concerns. (In this survey, 21 percent of small

businesses said they plan to hire full-time employees in 2011, up from 20 percent in 2010.)

On top of tough economic conditions, entrepreneurs are truly alarmed by the tidal wave of new federal government regulations that have advanced or been proposed over the past two years. Many business owners are still trying to figure out what the new health care and financial overhaul laws mean for their costs and business operations. Most believe that costs will go up and there will be unintended consequences that impact their firms.

They are concerned about proposed regulations that are in the pipeline at the Department of Labor, Environmental Protection Agency and other agencies, which they believe will impose direct costs on their firms, add to business costs, and constrain private sector investment. Without robust investment by private sector businesses, revenues and sales are hurt. Such is the interdependency of our economy, and small businesses are often damaged the most by the unintended consequences of regulation.

America's small business owners are disproportionately impacted by regulation. The U.S. Small Business Administration's Office of Advocacy has reported that the per-employee cost of federal regulation has reached staggering levels. Their most recent regulatory impact study found that in 2008, the per-employee regulatory cost for small businesses with fewer than 20 employees was \$10,585 – compared to \$7,755 for firms with more than 500 employees.

Regulation of big business also impacts small firms. The threat of new regulation spawns uncertainty for larger enterprises too, leading to a pull back in investment, which not only hurts innovation and job growth but the amount of business that is conducted with entrepreneurs. The findings of a Business Roundtable report "Mutual Benefits, Shared Growth: Small and Large Companies Working Together," demonstrate the close economic ties between small and large businesses. U.S.-parent operations of the typical U.S. multinational buys goods and services from more than 6,000 American small businesses; buys a total of more than \$3 billion in inputs from these small-business suppliers; and relies on these small-business suppliers for more than 24 percent of its total input purchases, according to the report. In sum, small businesses are critically important partners with large multinationals. Regulations that impose requirements, mandates and new

costs on big business, affect the bottom-line health of small businesses – as suppliers *and* consumers.

As Committee members are aware, state and local governments superimpose an array of regulations over and above those that exist at the federal level. The states vary widely in terms of regulatory scope and costs imposed. For example, a September 2009 analysis “Cost of State Regulations on California Small Business Study” conducted by Varshney and Associates in conjunction with the California State University of Sacramento College of Business Administration, found the total cost of regulation to be \$492.994 billion for the state. So, regulation comes from a variety of government entities, and small businesses experience more hardship in dealing with the cumulative impact.

Mounting regulatory costs from all levels of government are taking their toll on small businesses. With access to capital and credit still tight, along with higher energy and health coverage costs in the picture, small business owners either remain skittish about hiring or lack the resources they need to do so. Of course, this is against the backdrop of a fragile economic recovery. The prospect of additional regulatory burdens and costs drive greater uncertainty. Job creation does not flourish in such an environment.

That is why SBE Council is encouraged about President Obama’s new regulatory reform strategy. We hope this initiative leads to meaningful relief for small businesses, and the spirit of this effort carries over to regulations currently in the pipeline, and those that will be proposed as part of the new health care and financial overhaul laws. The President’s directive includes several steps to re-engage and strengthen the voice of small business in the rule making process, including a reminder to government agencies about their existing obligation to small business when new regulations are proposed. We look forward to working with the White House on ways to go about streamlining the regulatory process, identifying outmoded or duplicative regulations, improving the effectiveness of regulations, and lessening burden on small business.

Of course, the small business community was pleased to see the recent moves by OSHA to reexamine its Proposed Interpretation Regarding Noise Exposure and its record-keeping rule on work-related musculoskeletal disorders so it can receive additional input from small business. This just goes to show that when the White House puts a spotlight on the regulatory

process, and acknowledges that regulations impact the economy and job growth, such leadership can make a difference.

Areas of Concern

The weak economy has restrained hiring in the small business sector. The collective effect of regulatory activity across the federal government has also curbed confidence and business owner outlook. Hopefully, President Obama's new regulatory strategy along with oversight by Congress will improve the policy environment. However, key areas of regulatory activity will continue to cause uncertainty for small business owners. Proposed regulations in the pipeline will have a direct cost impact on their firms. In addition, small businesses that are dependent upon the vigor of specific industries – like the energy sector, for example – share deep concerns about their survivability due to regulatory activity not favorable to energy production and investment in the United States.

Energy and the EPA: The general regulatory thrust of the Administration with regard to the treatment of our traditional and predominant energy sources will lead to less energy, higher energy prices, the disincentive to manufacture in the U.S., and job loss. Caps and restrictions are being imposed on how much America can use and produce, which will drive costs higher. Unfortunately, small businesses and their workforce will bear the brunt of higher costs and job loss if certain initiatives at the Environmental Protection Agency (EPA) move forward.

From EPA's set of rules on electric power generators to greenhouse gas (GHG) regulation, to its reconsideration of the National Ambient Air Quality Standards for Ground-Level Ozone to "Boiler MACT" industrial emission standards, this one agency alone has the potential to undermine the economic recovery while putting our businesses at a competitive disadvantage in the global marketplace. Energy drives business and the economy – it all starts with energy. Higher prices for all forms of energy will mean less capital for jobs and investment. If it costs more to make things here in the U.S., investment and jobs will continue to move overseas.

Energy Development and Production: The U.S. has been blessed with abundant natural resources to support our growing energy needs. Unfortunately, the oil and natural gas sector is getting mixed signals from the federal government in regard to the future of offshore drilling and

development in general. More than 4 million jobs in small businesses are supported by the oil and natural gas industry, according to the American Petroleum Institute (API) but new restrictions and general uncertainty threaten these businesses and their workforce. Conversely, hundreds of thousands of new jobs can be created if the federal government develops a more rational and stable policy toward domestic energy development.

Patient Protection and Affordable Care Act (PPACA): During the debate over PPACA, the new health care law was portrayed as an effort to reduce health coverage costs. But the early outcomes of its implementation show rising premiums, confusion over the grandfather rule, unknowns regarding what type of plans will be available once regulations fully take effect, and serious concern about the employer mandate. New compliance mandates (expanded 1099 and health premium reporting) will drive costs higher, and there is fear that new regulations will curtail the availability of what have been affordable choices in the marketplace.

SBE Council did not support PPACA's passage. We have long advocated an approach that encourages competition, leads to more affordable prices and expands upon what is working in the marketplace (like Health Savings Accounts). Business owners' concerns about the resources they will need to expend to comply with the law, along with their view that health coverage costs will continue to increase under PPACA (as a result of tax increases and additional regulation), add to their general uncertainty about labor costs moving forward. PPACA also establishes a threshold for when the employer mandate kicks in, which may have the effect of retarding job growth.

Federal Government Procurement: Recent actions and proposals by the Obama Administration have the potential to set small business owners back in their efforts to bid on and access government contracts. For small businesses that currently operate successfully in the federal government marketplace, the following new rules and proposed initiatives will undercut their ability to compete, which will lead to job loss in these firms.

Project Labor Agreements (PLAs): In April 2010, President Obama finalized Executive Order 13502, which encourages and authorizes the use of union-only PLAs on federal construction projects. Union-only PLAs restrict competition by requiring that a contract be awarded only to companies who agree to collective bargaining and union hiring. Most small

to mid-size firms can't compete under such a scenario. Federal government procurement rules require a competitive bidding process, and PLAs run counter to the rules of fairness, transparency and best value for taxpayers.

“High Road Initiative”: The Obama Administration has been working on an initiative that would grant competitive advantage to government contractors whose salaries and benefits meet wage and benefit standards established by the federal government. Such standards could be higher than the norm offered by small businesses, which would put small contractors at a competitive disadvantage in the federal procurement space. Taxpayer costs may also escalate. Small business stakeholders have had little input into the initiative, but they need to if the Administration moves forward as it will have an impact on the jobs that small government contractors provide.

3 Percent Withholding Mandate: The mandate, advanced as part of Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222), will increase government costs and bureaucracy at all levels (local, state and federal); raise costs for taxpayers; and restrict cash flow for small firms. If not repealed, small contractors will find it more difficult to compete for contracts, which threaten jobs in this sector.

The Federal Government and America’s Workplaces:

Plan/Prevent/Protect: The U.S. Department of Labor (DoL) asserts it does not have enough resources to ensure that businesses are complying with all federal workplace regulations. Therefore, they are embarking on a "Plan/Prevent/Protect" regulatory initiative which, according to their words, “Employers and others must ‘find and fix’ violations — that is, assure compliance — before a Labor Department investigator arrives at the workplace.” The new regulatory program will require businesses and other regulated entities to develop extensive, time-consuming plans and internal processes with their employees that will serve as a “check” for DoL on how and whether businesses are complying with the law.

The initiative involves several agencies under DoL’s auspices including the Wage and Hour Division (WHD), the Occupational Safety and Health Administration (OSHA), the Office of Federal Contract Compliance Programs, the Mine Safety and Health Administration, and the Employee Benefits Security Administration. Each agency will propose rules that require businesses to develop programs to comply with the law, and submit

them to DoL enforcement agencies. For example, as part of “Plan/Protect/Prevent” WHD is expected to propose a requirement that employers provide workers with information about how their pay is calculated, how they develop job classifications, document the job classifications (identifying who is “exempt” or an independent contractor and why), and hold training sessions to make sure everyone understands the differences in these classifications. For small businesses, the totality of the agency-wide Plan/Protect/Prevent program would be a significant burden – if not a nightmare.

Shift at DoL: A robust change has been underway at DoL. The Wage and Hour Division (WHD) budget has been increased to hire 288 new inspectors (which has already grown from 731 inspectors in 2009, to 894 in Q1 in 2010). Other budget features include the addition of 130 safety and health inspectors, 25 whistle-blowers, and 20 full-time employees to “restore” OSHA’s rule-making capabilities. Certainly, we want the DoL to have the staff and resources it needs to do its job, but we are concerned that the department will move further away from constructive engagement and helping businesses comply with the law toward encouraging employees to file complaints and grievances.

“Bridge to Justice”: The DoL has recently implemented a new partnership with the American Bar Association (ABA) that will refer workers who call to report (or ask questions about) alleged wage and hour violations, or those involving the Family and Medical Leave Act (FMLA), to ABA-sanctioned lawyers. A toll-free number will be provided to individuals, which will connect them to a network of lawyers. The WHD says it does not have the staff resources to review all the incoming complaints, so it has called on the ABA for assistance. Small business owners are very concerned about this new hotline-to-a-lawyer program in that it may very well amount to a feeder system for legal action against business. Dealing with such inquiries by a lawyer will be time consuming and expensive, particularly if a small business owner is forced to hire legal representation. High legal costs can break a small firm. No doubt many small business owners will settle these claims (even if innocent).

Dodd-Frank Financial Overhaul Legislation

New regulations being proposed (and to be proposed) under the auspices of Dodd-Frank have the potential to further restrict access to, and raise the cost

of, capital and credit for small business owners. Proposed Federal Reserve rules regarding interchange fees and forthcoming Consumer Financial Protection Bureau (CFPB) regulations, for example, could make a currently challenging problem much worse for small business owners. Without access to capital and credit, or if costs increase, small businesses will remain reluctant to expand their firms and hire. Small business owners remain unsure as what the financial overhaul law will mean to their firms, although they are beginning to see new monthly fees on bank checking accounts and are being told that changes will occur in the cost and availability of financial services they currently use. Such uncertainty adds to the general sense that it remains a risky time to hire.

Conclusion

As noted previously in my testimony, SBE Council is pleased that the Administration will conduct a comprehensive review of federal regulations. We are pleased that the Committee is hosting this hearing today to shed light on burdensome regulation and its effect on job creation and healthy economic growth. With Congress and the White House both focused on this important issue, SBE Council is hopeful that the efforts will lead to common ground -- particularly on reforms that will place a check on federal regulators, and institutionalize measures that require agencies to more carefully review the cost and impact of their actions on the economy, small businesses and job creation.

Chairman Issa and Ranking Member Cummings, SBE Council appreciates the opportunity to provide input to the Committee. We look forward to providing solutions that will help small businesses create jobs and move our economy back to strong levels of growth. Thank you for your leadership.



Karen Kerrigan Bio

Karen Kerrigan is one of the world's leading experts on policies, training initiatives and programs that benefit entrepreneurs. She is widely known for developing collaborative relationships with business associations, public policy groups, media, government, advocacy organizations, universities, educational foundations and the private sector that have led to substantive reforms and initiatives to help encourage and sustain entrepreneurship across the globe. Ms. Kerrigan is President & CEO of the Small Business & Entrepreneurship Council, a prominent and respected advocacy and research organization. She is Founder of Women Entrepreneurs Inc., an organization dedicated to helping women business owners succeed through education, networking and advocacy.

Ms. Kerrigan travels across the U.S. and the globe conducting training seminars on starting and growing businesses; helping business associations build their capacity; and working with government officials at the highest levels to develop and implement policies and programs to encourage and sustain entrepreneurial activity. She co-hosts the highly acclaimed *Growth Without Barriers* webcast series – an interactive training and educational broadcast that reaches hundreds of thousands of small business owners each year.

Ms. Kerrigan regularly testifies before the U.S. Congress on issues that impact America's small business and entrepreneurial sector. She is frequently called on to advise the White House, and leaders in government agencies about recommendations and strategies to help small businesses and encourage their growth. Working with the U.S. State Department, she meets regularly with global delegations visiting the U.S. who wish to learn about public policy recommendations and Best Practices in entrepreneurial training that will enhance and sustain business start-up and growth. In June 2002 she was appointed to serve on the National Women's Business Council. In September 2002 she was appointed by the U.S. Treasury Secretary to serve on the Taxpayer Advocacy Panel (TAP). In 2003, at the President's Economic Summit in Waco, TX she led the Small Business session, the outcome being the enactment of key legislative and policy ideas identified at the event. She also participated in the December 2004 White House Economic Summit where she served as a speaker on the Affordable Health Care panel.

She helped construct the Women Entrepreneurship in the 21st Century conferences sponsored by the U.S. Department of Labor (DoL) and Small Business Administration, and organized the National Women's Leadership Summit (Oct. 2004) and *Flex Options for Women* with the DoL's Women's Bureau. In May 2005, WE Inc. co-sponsored the first MidEast/North Africa Women's Business Summit in Tunis, Tunisia where Kerrigan also led a delegation of U.S. businesswomen to the groundbreaking event. In July 2005, she was appointed as a member of the National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements to represent the business community. In November 2007, she was appointed to the board of directors of the Center for International Private Enterprise. She serves on the U.S.-Iraq Business Dialog and is an advisory board member of the National Association of Women Business Owners (NAWBO), Moms in Business, Enterprising Women magazine, Verizon's Consumer Advisory Board and the Economic Advisory Committee of Broadband for America. She is a founding member of the World Entrepreneurship Forum. In February 2010, she agreed to join the Bipartisan Debt Reduction Task Force, co-chaired by former Senator Pete Domenici and former OMB Director Dr. Alice Rivlin.

In the February 2006 issue of *Inc. Magazine*, Kerrigan was listed on the "Best Friends in D.C." list for small business owners, profiled as a "**power broker and activist**" with "serious clout" for entrepreneurs. In May 2005 *The Hill* newspaper called Kerrigan "the hardest working woman in show business" and credited her leadership of the SBE Council for making it one of the top 5 influential groups representing small business. *Fortune Small Business* named Ms. Kerrigan to its Power 30 list of key advocates in Washington in September 2000. In 1995, *National Journal* named Ms. Kerrigan to its short list of "K Street" activists most likely to have an impact on Capitol Hill. *Campaigns and Elections Magazine* named her as one of its "Rising Stars in Politics" in its April 1996 issue. In November 2009, she was presented with the "Small Business Advocate of the Year" award by the New York Enterprise Report.

Her commentary, analysis and written work have appeared in many of the nation's leading newspapers. For more than a decade she wrote a regular column for the *American City Business Journals* - an influential network of weekly business newspapers in 50 major markets. She has appeared on *ABC's Nightline*, The McLaughlin Group, *CNN*, *CNBC*, and *Fox News*, *Fox Business* among others. She has been a guest on hundreds of radio talk shows.

Ms. Kerrigan is a native of New York, and holds a BA degree in Political Science from Cortland College (SUNY). She resides in Northern Virginia.

Committee on Oversight and Government Reform
Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name:

KAREN HERRIGAN

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

2010 - U.S. STATE DEPARTMENT, GRANT: \$4,679 (U.S. SPEAKER AND SPECIALIST PROGRAM)
2009 - U.S. STATE DEPARTMENT, GRANT: \$3,185 (U.S. SPEAKER AND SPECIALIST PROGRAM)

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

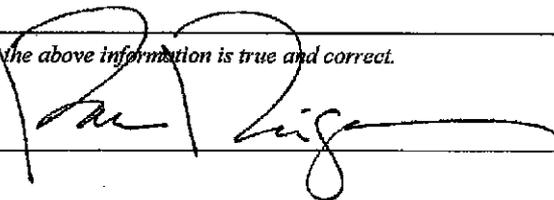
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KAREN HERRIGAN SERVES AS PRESIDENT OF THE
ORGANIZATION

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

NONE

I certify that the above information is true and correct.

Signature:



Date:

2/8/2011