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INTRODUCTION

During the last two years, small businesses have encountered a broad range of challenges, including rising energy prices, the lack of affordable health care coverage, barriers to federal contracts, and widespread economic uncertainty. In response, numerous pro-small business initiatives were launched, including President Bush's Competitiveness Agenda and the National Federation of Independent Business' (NFIB) Small Business Growth Agenda for the 109th Congress. These proposals raised expectations within the business community that the administration and Congress would enact policies that both provided relief for small firms and also encouraged entrepreneurship. As a result, small business advocates endorsed and promoted 196 bills during the 109th Congress, which, if enacted, could affect change across a wide spectrum of policy issues. Of these 196 bills, 165 were introduced by Republicans, while 31 were introduced by Democrats. Ninety bills had the support of both Republicans and Democrats – demonstrating the widespread, bipartisan efforts to assist small businesses.

These calls for action from small businesses were due to a confluence of events that created demanding conditions for entrepreneurs. The economy in particular has tested small firms, with many established businesses losing market share to foreign competitors and others delaying expansion. Moderating economic growth, driven by a slowing housing sector also continues to affect entrepreneurs – deterring many from launching new ventures. This is reflected in recent survey of business confidence by the NFIB, which shows that small business optimism dropped to its lowest level, since March 2003. More than 50 bills were introduced that would improve entrepreneurs ability to compete in periods of economic uncertainty.

Congress was also asked to help remedy the rising cost of operating a business, which has increased dramatically in the last years, while competitive pressures – both from foreign companies and larger U.S. corporations – forced many to keep prices stable. As a result, many small firms were faced with lower profit margins or, in the worst cases, operating losses. Health care was the subject of 12 bills introduced by members of Congress. Reducing cost of health insurance coverage – which has increased annually by significant amounts - is a top priority among small businesses.

The most notable cost increases facing small businesses have been higher gas prices, which remain nearly 40 percent higher than they were two years ago. Lawmakers introduced seven energy-related bills that would assist small businesses. Financing costs have also increased, as the Federal Reserve raised interest rates 17 straight times in the last two years – creating cost pressures within the financial services industry. To address financial services issues relevant to smaller firms, policymakers introduced 26 bills. Reducing the burden for both small financial institutions and small business borrowers will encourage greater economic growth in local communities.

On the regulatory front, business owners clamored for the administration and Congress to reduce regulatory burden, as the federal government enacted more than 4,000 new regulations last year alone.¹ These new regulations result in substantial compliance expenses for many small firms. According to a recent study, compliance costs for small businesses are nearly \$600 billion per year.² Lawmakers introduced 22 bills that would address regulatory barriers facing entrepreneurs, helping many reduce compliance expenses.

In many policy areas, small businesses appealed to Congress to modernize laws, which have hampered small businesses, constraining their growth and limiting their ability to adapt to the new challenges with which they are confronted. For many, the failure to update the tax code is resulting in financial challenges and caused lawmakers to introduce 19 tax reform bills that would impact small firms. Long over due reforms in labor laws, procurement policies, and immigration statutes are further contributing to an environment where small firms often lack the tools to compete effectively. For Congress, there were many opportunities to provide entrepreneurs with legislative relief. Given that small businesses form the foundation of the U.S. economy, it is not surprising that policymakers introduced such a substantial amount of legislation seeking to improve the prospects for entrepreneurs.

In order to assess the small business legislative record during the last two years, the Democratic Staff of the House Small Business Committee compiled the following report. The report's purpose is not to indicate support or opposition for specific legislation, but rather to provide an assessment of Congress' action and performance regarding small businesses' legislative top concerns. The report, which reviews the legislative priorities of 98 small business trade associations, analyzes and evaluates the response from Congress to these priorities, including those related to tax, health care, regulation, contracting, and immigration. In these and other policy areas, small businesses championed several notable reform efforts and the report provides an update on Congress' recent progress.

¹ Testimony of William Kovacs, US Chamber of Commerce, before the US House of Representatives Committee on Small Business, July 13, 2006.

² Small Business Administration, Office of Advocacy. *The Impact of Regulatory Costs on Small Firms*. October 2005.

ACCESS TO CAPITAL

Rising interest rates and tightening credit conditions continue to hamper small firms access to capital. These trends, when combined with the traditional disadvantages that small firms face in the marketplace, have made it more difficult for entrepreneurs to secure the affordable capital they need to startup or grow larger.

Small firms – particularly early stage companies – are more likely to lack ready access to capital markets. Often times, these firms must pay higher rates for short-term loans or finance their operations through higher-priced credit cards. As a result, many entrepreneurs indefinitely delay or postpone capital improvements, including those that may create new jobs and increase local tax revenue.

Given the positive economic impact of entrepreneurship, policymakers must seek to implement policies that encourage, rather than deter, capital formation. Doing so promotes small business startups and the real and tangible benefits that come with them. During the second session of the 109th Congress, policymakers did little to increase small business access to capital and in some instances took action that will only make it more challenging for business owners to secure the financing they need.

KEY SBA FINANCING PROGRAMS REMAIN IN LIMBO

The SBA has been able to meet the constantly changing capital needs of entrepreneurs through a variety of lending and equity investment initiatives. These programs provide entrepreneurs with the full spectrum of financing alternatives, including small loans to startups, long-term debt financing to maturing businesses, and venture capital to high-growth companies. Together, these programs provide more than \$20 billion in financing to U.S. small businesses. Unfortunately, Republican leadership has failed to advance legislation, including *HR 5352, the Small Business Reauthorization Act of 2006* that would reauthorize these critical programs. If these programs are not reauthorized before October 1, 2006 they will cease operation, leaving thousands of small businesses without access to affordable capital.

Among the programs that would cease operation is the 7(a) loan program, which is responsible for 30 percent of long-term small businesses financing. Without this initiative, entrepreneurs would have to turn to high-priced credit cards to finance their businesses. In many cases, it is likely that entrepreneurs would not seek financing at all, and instead postpone their ventures or expansion plans. Another program that would be unavailable is the 504 program, which is an essential source of capital for growing companies and manufacturers. Given the larger loan amounts available and the 504 program's focus on job creation, the loss of this initiative could mean less economic growth in many of our nation's communities. Republican leadership must act to ensure that these vital programs remain available to local entrepreneurs.

LACK OF ACCESS TO AFFORDABLE BUSINESS FINANCING

Small firms with fewer assets to pledge as collateral and uncertain earnings have had a more difficult time than larger businesses when it comes to securing necessary capital. Research has indicated that small businesses struggle in the start-up phase because they lack sufficient access to capital during key growth cycles. To fill this void in the capital markets, Congress created the 7(a) program as the nation's primary business loan guarantee program. The 7(a) program has achieved widespread success and now provides 30 percent of all long-term, small business financing.

Unfortunately, through a series of four consecutive fee increases beginning in FY 2005, the complete cost of the program was shifted to small businesses and their community lenders. For small and mid-size loans fees were raised by approximately \$1,500 to \$3,000, and for larger loans this fee can now exceed \$50,000. As a result of these costs, many small businesses are unable to access the capital they need to hire new employees or expand their operations.

These actions – most notably the recently imposed higher fees on business owners – have drastically reduced small business lending across the country. Small firms received \$160 million less – and 1,000 fewer loans – through the 7(a) program for the first half of FY 2006 when compared to the same time the previous year. This is less capital for small businesses and less investment in our local communities.

HR 1868, the Access to Capital Act of 2005, which would have lowered the fees charged under the 7(a) loan program, was not enacted. The legislation would reduce the cost for small businesses and their lenders to use the program and permit entrepreneurs to make use of more flexible financing packages.

By shifting the 7(a) program's full cost to the business community and failing to pass HR 1868, entrepreneurs are now paying higher fees to secure capital. Combined with recent increases in interest rates, the higher costs that businesses are now paying to access capital will constrain economic growth in local communities.

LOW-INCOME ENTREPRENEURS ARE NEGLECTED

During the past few years, many Americans weathered the economic downturn by starting their own businesses – many relying on key federal programs for funds and assistance. In its most recent budget, the Bush administration proposed to terminate two of these critical initiatives – the Microloan program and the Program for Investment in Microentrepreneurs (PRIME). The Microloan and PRIME fill an important need in the capital markets – small loans and technical assistance to startups owned primarily by low-income entrepreneurs. Microloan lenders work with potential borrowers to fully develop their business proposals, greatly increasing the likelihood of an entrepreneur's success.

The PRIME program works in concert with the Microloan initiative and allows the SBA to award grants to assist in the training and development of entrepreneurs in low-income communities. By cutting these low-income entrepreneurship programs, the administration is limiting the potential for many individuals to become self-sufficient and will prevent communities from adding the new jobs they need to grow.

AVAILABILITY OF VENTURE CAPITAL FOR STARTUPS IS IN JEOPARDY

While the Small Business Investment Company (SBIC) program plays an important role by encouraging venture capital investment in smaller growth-oriented businesses, the Bush administration has failed to support this important initiative. Due to the administration's lack of support of the SBIC program, hundreds of new venture capital funds, representing millions of dollars will be lost. Legislation has been introduced in the House and the Senate (*HR 3429 and S 1923*) that would restart the program, but remains stalled by the Republican leadership.

This action will devastate small businesses that were hoping to secure equity investment and venture capital. In the year before the program was terminated, more than 2,000 investments in small businesses totaling over \$1.1 billion were made, with an average investment of almost \$550,000. Not restarting this important initiative will create difficult challenges for transportation, manufacturing, information technology, and scientific research companies that often rely on this program for venture capital.

The decay of the SBIC Participating Securities program will also make it more difficult for minority-owned firms to access venture capital. Minority-owned firms already face great obstacles in accessing venture capital, receiving less than 4 percent of venture capital investment. In the year before the program was terminated, 14 percent of the total number of SBIC program financings totaling \$145 million went to minority-owned firms. An erosion of the SBIC program will likely lead to a substantial decline in investment in minority-owned firms.

FUNDING FOR TECHNOLOGY AND LIFE SCIENCES COMPANIES

While many small businesses have new and innovative ideas, they often lack the resources to take them from the drawing board to the factory floor. The Small Business Innovation Research (SBIR) program fills this gap by providing seed funding to help small firms research and develop cutting-edge products and technologies. The SBIR funding provides much needed investment in these firms, permitting them to further their work with the goal of bringing these new innovations to the marketplace. Given the capital-intensive nature of applied research and development, SBIR companies often must look to external, non-governmental sources of financing as well. Biotechnology – and in particular drug design – often require significant financial resources for product development, testing, and production.

Venture capital companies help fill this void in the capital markets and provide SBIR companies with the necessary investment to enable these firms to fully carry out their research and bring their products to market. However, a recent regulatory decision by SBA has prevented many venture-backed small firms from accessing the SBIR program. This has created capital shortfalls for many companies that require substantial capital resources and can benefit from both federal and non-federal funding. As a result, the ability of small firms to pursue and develop cutting-edge, next generation research has been limited.

HR 2943/S. 1263, the Save Biotechnology Innovative Research Act of 2005 was introduced to solve this problem and to permit venture-backed small companies to carry out their innovative research and development under the SBIR program. However, this effort has stalled – even though hearings have been held in the House of Representatives that support such action. Until policymakers take action on this issue, small firms will be less able to carry out critical research and development.

CAPITAL FORMATION IS IMPAIRED

Small companies rely on capital to startup, expand, and enter new markets. However, due to the new requirements and the failure to update antiquated guidelines, entrepreneurs' ability to secure business financing has been deteriorated. These regulations – which relate to venture capital, business development companies, access to financial services, and public company compliance costs – have all created barriers that prevent small businesses' from readily and equitably accessing the capital markets and basic financial services.

The Sarbanes-Oxley Act (P.L. 107-204) continues to severely hamper small companies in several critical areas. Due to the significant costs associated with meeting the terms of Section 404 of the Act, small businesses are spending a greater portion of their available financial resources on compliance activities. The magnitude of these expenditures has caused small companies to forgo growth opportunities, constrained their financing options, and diverted funds from research and development. Most troubling is the potential for compliance activities to crowd out research and development in smaller companies, which serves as the foundation for future economic and job growth.

The burden associated with Section 404 of Sarbanes-Oxley is creating additional barriers for small companies – both public and private – to access the capital markets. This could compel many smaller public companies to delist from U.S. exchanges, go private, trade on the less regulated over-the-counter market, or even seek to raise capital in foreign markets such as London Exchange's Alternative Investment Market (AIM). In many regards, this outcome makes it more difficult for small firms to raise capital, potentially limiting the economic growth of these companies.

For many private companies, compliance with Sarbanes-Oxley is no longer a choice, as many of these firms must adhere to the Act's requirements if they are to preserve their ability to go public or to be able to merge with a public company. In addition, venture capital-backed companies are being forced to expend scarce resources earlier in the process in order to maintain the future ability of their portfolio companies to go public or to be acquired. Not only does this resource allocation adversely impact innovation, but it is also causing smaller firms to reconsider whether the benefits of going public, merging with a public company, or securing venture capital is worth the attendant costs.

In order to reduce the burden associated with Section 404 of the Sarbanes-Oxley Act, ***HR 5405/S. 2824, the COMPETE Act*** was introduced. This legislation, which would permit small firms to opt out of providing Section 404 certifications, continues to receive little attention in Congress. To date, no hearings or markups have been held on either bill, even though this issue remains a top priority for small companies throughout the nation.

LACK OF PARITY IN FINANCIAL SERVICES

Small firms continue to endure challenges to their ability to receive interest on deposits held in their checking accounts. This persists even though it is the widely held view that this prohibition is no longer necessary. A report issued by the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision stated that the law barring payment on business checking accounts "no longer serves a public purpose."

Small businesses would receive relief from this problem if ***HR 1224, the Business Checking Freedom Act of 2005***, which has already passed the House, were enacted into law. This bill, which repeals the outmoded prohibition on paying interest on demand deposits for small businesses, remains stalled as Senate Republican leadership and the White House refuse to advance the proposal.

The final passage and enactment into law of ***HR 1224*** would provide financial relief to small businesses. The bill would provide small firms with additional funds, which could be used to cover expenses or for future growth. While individuals have been able to receive interest on checking accounts for some time, small businesses have not. This change is even more important given that smaller firms are more likely to use basic checking account services than larger companies, which can often leverage their broader business relationship for more preferential deposit services. Until this solution is enacted, small businesses will continue to lack access to important financial service products.

BUSINESS DEVELOPMENT COMPANIES

The SEC's antiquated business development company (BDC) regulations continue to hamper capital formation for small firms. Created in 1980, BDCs were created to channel capital to small companies via the public equity markets, providing a unique and much needed source of financing for small businesses. Unfortunately, BDC regulations have not evolved with the capital markets; as a result, small companies may be unable to secure the capital they need to expand, modernize, and grow larger.

HR 436, the Increased Capital Access for Growing Businesses Act provides a solution to this problem and modernizes BDC regulation. HR 436 expands access to business financing for small companies by enabling BDCs to invest in a broad range of companies. As a result, BDCs will be better able to serve to the economic development of communities, enabling these small firms to bring their products to market, expand their operations, and hire new employees. This legislation has repeatedly passed the House, but has failed to pass the Senate. As a result, many small companies must look to higher cost sources of financing or forgo capital improvements altogether.

CONCLUSION

Entrepreneurs face many challenges including rising interest rates, uncertain economic conditions, and tightening credit markets. In the last year, little attention has been paid to these challenges, and in many regards, policy decisions have worsened small businesses' economic situation. The higher cost of capital, more burdensome regulations, and the elimination of startup financing initiatives are the result of a year marked by inaction. Until policymakers reverse course, entrepreneurs will be unable to achieve the success that they deserve.

AGRICULTURE

The US agriculture industry is critical to the country's economy. It is responsible for 15% of the country's GDP and more than 25 million jobs. Small farmers dominate the industry, operating 70% of farm enterprises. They also function as the cornerstones of their local communities – supporting agribusiness-related economies in rural regions. The industry, however, has faced many challenges in recent years. Due largely to global economic shifts, the US trade balance in agricultural goods has decreased from a \$27 surplus in 1996 to just \$3 billion today. The sector has also faced major disruptions recently from natural disasters and interest rate hikes. These factors threaten to permanently undermine the competitiveness of the sector.

Small farmers have suffered severe hardships from these economic conditions. Due to intense corporate and global competition, between 2004 and 2005, nearly 17,000 small farms were closed in the country. The loss of family farmers reduces the diversity and capacity of the sector as well as growth in their communities.

Due to the many natural and economic factors that typically impact the industry, national governments across the globe are involved in the agricultural sector. Unfortunately, even as global pressures and catastrophic events threaten the stability of the industry, the 109th Congress has failed to enact legislation that protects the capacity of US farmers to adjust to new market conditions. Without the tools to compete and expand in the market, current Congressional leaders have reduced the future viability of family farmers and small agribusinesses. These producers consequently have fewer resources to contribute to national economic growth and help sustain rural communities.

DECLINING FEDERAL COMMITMENT TO RURAL COMMUNITIES

The agricultural industry is dependent upon a stable economic system in rural communities. Independent farmers particularly depend upon adequate community resources to efficiently operate their enterprises due to their limited financial reserves. Given their isolation from major urban centers, farmers and agribusinesses benefit from the ability to affordably obtain resources that increase their competitiveness in global markets.

Physical resources are an important component of this foundation. Infrastructure, such as transportation facilities, connects businesses and farmers with the market. Firms require access to transportation, particularly railroad networks that can affordably move large quantities of freight. Yet, non-metropolitan areas generally lack adequate access to extensive railroad networks and services. The private market has few incentives to invest in the infrastructure to serve these regions. Public support for freight rail carriers to expand these services has been offered through *HR 2047, the Railroad Competition Improvement and Reauthorization Act of 2005*, but was neglected by the 109th Congress. Inaction will stifle competition in the freight industry, resulting in higher rates and reduced service, hindering growth throughout the country.

Without adequate infrastructure, farmers will be constrained in the consumers they can reach. They will have to shift revenues to obtain these benefits leaving fewer resources to expand their enterprises, and placing them at a competitive disadvantage in the market. These communities will also continue to suffer from diminished growth due to a lack of services with which they can attract businesses.

Economic development has been considerably weakened in rural regions damaged by recent natural disasters, including major hurricanes and droughts. As a consequence, small farms have suffered major losses and many temporarily or permanently terminated operations. Given the integrated nature of the food supply, the ripple effect from these events will spread throughout the nation.

The economic impact in these regions will be severe unless adequate resources are targeted to provide relief and aid to recover from natural disasters. Since last fall Democrats in the House proposed emergency agriculture disaster relief measures, including *HR 5099, the Emergency Agriculture Disaster Assistance Act of 2006*, which would compensate farmers and ranchers for weather related losses. Republican leaders and the administration continue to block these efforts, impeding relief for impacted producers across the country while delaying the recovery of these communities.

Without assistance to redevelop after a disaster, rural communities will have to forego investments and strategies designed to promote business and industry development. The lack of Federal support at this crucial time will slow the nation's productivity while creating economic hardship and instability in rural regions across the country.

WEAKENING OF POLICIES THAT SUPPORT US FARMERS

Falling commodity prices and global competition have also impacted the economies of rural areas. Family farmers face serious difficulties addressing these factors while remaining competitive with corporate domestic counterparts as well as foreign producers. Given their limited profit margins and financial reserves, small farmers particularly benefit from federal programs that reduce the burden of regulations or decrease production input costs. Conservation assistance programs, for example, provide incentives and resources to operate lands in accordance with environmental standards, enabling small farmers to comply with the rules while generating profits. These resources help to ensure that rural communities and agricultural producers will remain viable even as conditions change.

The 2002 Farm Bill provides needed support for farmers who otherwise would see declining income and land prices. However, many of the farm programs upon which US producers rely are facing significant cuts or termination. Several of the Farm Bill's provisions, including farm income and commodity price supports expire in 2007. International pressures to reduce farm programs also threaten the future of the industry's support structure. Through these policies, US producers have had access to a form of economic insurance and the country has demonstrated its commitment to the agricultural industry.

To ensure that producers can remain viable as conditions change, farm policies must be stable. Legislation, including **HR 4332**, which extends funding for omnibus farm policies, provides certainty that resources will be available to support the sector even as global pressures mount. The administration and congressional Republicans, however, have rejected extending current farm policies and have advocated for significant reductions in farm subsidies. This stance will reduce the competitiveness of the country's agricultural producers in the global marketplace.

Domestic small business producers are assisted through labeling requirements that inform consumers of the origins of their purchases. Many initiatives have been proposed this year to establish Country of Origins Labeling (COOL) provisions which mandate that products are labeled with the location of where they are manufactured. Legislation introduced this year, **HR 384**, instates a mandatory date for the implementation of origin labeling. The initiative would help to ensure that domestic family farmers maintain their share of the market and help to establish a precedent in which domestic small businesses benefit from the creation of high-quality products.

As prices decline and expenses increase, family farms are on the decline. Without a comprehensive set of policies to regulate agriculture programs, price changes will destabilize and hinder a significant number of independent operators.

LIMITING OPPORTUNITIES TO DEVELOP FUELS FROM FARMS

Burdens from rising energy costs have depressed farm incomes over the past few years, while also creating new economic opportunities in rural regions. Increases in energy expenditures have driven many farmers and farm support businesses to the brink, with a significant rise in natural gas prices, propane gas, diesel fuel, gasoline, and electricity. Yet agricultural crops offer a promising alternative to these fossil fuels, when transformed into biofuels and ethanol. Renewable energy through domestic resources provides many benefits including higher profits, economic growth, and an increased supply of affordable energy for all Americans.

To take advantage of this opportunity, small farmers require the capacity to grow and transform their crops into energy sources. To ensure these sources can compete in the market against fossil fuels, renewable resources require marketing assistance and incentives for development. Policies and incentives to encourage the use of renewable fuels will increase demand and marketability of these products.

Supporting the construction of facilities to develop renewable resources will hasten their success in the market. **HR 5372, the Biofuel Act of 2006**, provides capital for the creation of expansion of facilities to convert agricultural commodities into fuel and increases federal research and development funds to bring these products into the market. Yet leaders in the 109th Congress have failed to act on this legislation, preventing small farmers from expanding their economic prospects and the nation from becoming energy independent.

CONCLUSION

Small farmers are integral to local and national economies, yet the 109th Congress has failed to protect them as global pressures drive prices down and increase production costs. Without ensuring that all farmers and agribusinesses have the resources to help themselves; for example, to recover from disasters or harness their crops into new economic opportunities, the industry, its geographic regions, and the national economy as a whole will suffer.

DISASTER RELIEF

The federal government's response to domestic disaster has left many small businesses without the support they need. Among the government's failures, according to the GAO and congressional investigators, was the SBA's response to several high profile disasters, which was marked by significant delays in making financial assistance available to small businesses. The SBA, tasked with providing financial assistance to small firms affected by disasters, has not performed up to expectations. As a result, businesses throughout the nation were left without the capital they need to start anew.

Unfortunately, the Bush administration and congressional Republican leadership have not acted on important legislation that would remedy many of the problems recently identified, many of which came to light during the SBA's response to 2005 Gulf Coast hurricanes. Seven bills have been introduced that would improve the SBA's response to disasters, but not one has been passed by the House of Representatives or by the Senate.³

STRENGTHENING THE DISASTER LOAN PROGRAM

Recent disasters – such as the 2005 Gulf Coast hurricanes – highlighted the significant problems facing the SBA's disaster loan program. The problems included loan amounts that were insufficient, a lack of more flexible financing options, and the requirement that loans begin repayment shortly after the disaster. To rectify these and other problems *HR 4234, the Small Business Gulf Coast Revitalization Act of 2006*, was introduced. This legislation would resolve many of the problems facing the program; however, the administration has failed to support this initiative, essentially stalling the bill's advancement. The legislation would provide for more flexible financing options to provide financial assistance to economically viable businesses. If adopted, the legislation would have channeled financial assistance to the Gulf Region more quickly, and helped spur a quicker more responsive federal role in the rebuilding process.

³ House bills include: HR 5924, HR 5334, and HR 4234. Senate bills include: S 3664, S 2482, S 1807, and S 1724.

Legislation that attempted to make similar improvements was introduced in the Senate, *S 1807, the Small Business Hurricane Relief and Reconstruction Act of 2005* and *S 1724, the Small Business, Homeowners, and Renters Disaster Relief Act of 2005*. These bills increased disaster loan amounts, provided for the deferment of repayment, and increased the types of projects that disaster loans could be used for. Congressional leaders and the administration failed to act on this legislation as well.

While the SBA's failures in responding to large disasters are well documented, changes to the disaster program are also needed for smaller scale disasters. Often, due to the limited nature of smaller disasters, local small businesses are not permitted to draw on the SBA's disaster program. *To reverse this policy, HR 5334 was introduced, which ensures that small businesses damaged by a disaster of any size can draw on assistance from the SBA.* This legislation remains stalled in the House.

ENSURING THE SBA PLANS FOR FUTURE DISASTERS

SBA's response to recent disasters fell short due to the agency's lack of planning and preparedness. The agency does not employ a robust planning mechanism, which has resulted in an agency's that is more reactive than proactive in its approach to major disasters. A more proactive approach that is built on a strong plan would likely result in higher quality and more timely assistance to small businesses affected by large-scale disasters.

Without such planning capabilities the agency is unable to project how it would operate under severely strained conditions. Any planning activities should include contingencies for securing additional office space in emergency situations, arranging alternative transportation strategies for workforce and equipment, and access to telecommunication infrastructure. To further strengthen the agency's knowledge of large scale disasters, it must participate in disaster simulation exercises – something it has failed to do in the past.

Legislation has been introduced that would implement a formal disaster planning mechanism within the SBA. This legislation, *S 3664, the Small Business Disaster Recovery Assistance Improvements Act of 2006*, would require the SBA to hire a full-time specialist with responsibility for planning the agency's response for catastrophic events, including participating in disaster simulations. Even though the 2006 hurricane season is well underway, the administration and Republican leadership have failed to act on this important legislation.

IMPROVE CRITICAL INFRASTRUCTURE

During the height of the 2005 hurricane season, the SBA was mired in severe computer problems – including 45 system outages during its response to the Gulf Coast hurricanes. According to the GAO, SBA employees experienced outages, difficulties connecting to the system, and slow response times in completing loan processing tasks. This was largely due to SBA’s poor implementation of its disaster processing system – which it chose to install during the middle of hurricane season and did not fully stress test.

The poorly implemented system caused massive processing delays of up to 100 days – leaving small business owners without the financial assistance they needed so urgently. With backlogs of more than 200,000 unprocessed applications, the SBA’s system was incapable of handling high volumes of loan applications.

While the SBA has attempted to address these failures, it is unclear what the administration has used as its basis for its recent changes to the disaster program. Capacity was added to its processing system, but *it is unclear whether the arbitrary levels chosen will be sufficient as Congress has not provided oversight on this important issue*. Without congressional oversight, it is unclear if similar system outages will occur again during high-volume usage. Until the administration takes action to base its capabilities on documented demand projections – and Congress takes steps to oversee this issue, small businesses cannot be certain that the SBA will be able to meet their needs should disaster strike.

IMPROVE PRIVATE SECTOR PARTNERSHIPS

As a result of the massive delays small businesses experienced in waiting for assistance, the SBA must draw on the private sector’s expertise in this area. To ensure small businesses can access the capital they need after disaster strikes, the SBA must authorize qualified financial and lending institutions to make disaster loans to small businesses affected by a disaster. Doing so draws on the local knowledge and experience of these private sector lenders.

While the agency has finally attempted to improve its processing delays by entering into agreements with the private sector, it appears that these agreements are too limited to help small businesses. In actuality, these agreements – which do not provide full loan-making authority to local lenders – may lead to further delays for small businesses seeking assistance from the SBA.

To strengthen these private sector partnerships, several bills have been introduced including *HR 5924, which would provide lenders with complete authority to make low-interest rate disaster loans*. In addition, other legislation including *HR 4234, The Small Business Gulf Coast Revitalization Act of 2006*, would have permitted SBA to fully utilize experienced lenders to help process, approve, and disburse disaster loans. Unfortunately, neither of these bills has been acted upon as the administration continues to resist increased private sector involvement in the disaster loan program.

CONCLUSION

Small businesses affected by disasters need immediate financial assistance to recover and remain a part of the local economy. Congress' inability to enact key legislation that would improve its disaster response capabilities will leave small firms, and the communities they are located in, without the resources they need.

ENERGY

The ongoing energy crisis disproportionately impacts the nation's small businesses. Skyrocketing energy prices, rising nearly 25% in the last year, coupled with volatility, in which nearly 75% of Americans expect future fuel shortages, have depressed the economic outlook of our country's entrepreneurs. In fact, two-thirds of recently surveyed small business owners anticipated lower profits due to the rise in energy costs. Without affordable and reliable access to energy resources, these firms will be squeezed by the new economic conditions.

Small businesses are less able to absorb or pass on energy price hikes due to their comparatively higher production costs and tighter profit margins. They also lack the resources to invest in technologies that mitigate their energy use. Since corporate counterparts generally have the resources to "weather the storm," the energy crisis will reduce the competitiveness of entrepreneurs.

Adequate commitment by the federal government and other partners can increase small businesses' capacity to adjust to energy trends. A key objective for these firms is to obtain tools to better manage the supply of these materials and therefore protect against their current market volatility. They also benefit from incentives to reduce energy consumption and thereby mitigate the impacts of price inflation. The development of renewable energy resources and efficient technologies would also create new economic opportunities for these firms. Unfortunately, the 109th Congress has not enacted legislation to contribute to these objectives. Consequently, the economic conditions driven by energy trends will become increasingly harsh for the country's small businesses - depressing their profits, investments and opportunities for growth.

MISMANAGEMENT OF THE ENERGY SUPPLY

As energy resources remain dynamic in price and supply, small firms must work to avoid the disruptive impacts of volatility. Mechanisms to control their access to affordable energy allow small businesses to follow a business plan and commit to contracts for the purchase and sale of goods/services.

Since unrest in the middle east, natural disasters, and refining problems have caused much of the instability in natural gas and oil supplies, entrepreneurs can be protected from these disruptions by relying upon a more diverse set of energy resources. One approach has been to increase the type of energy sources available in utility programs, which promotes more stable production and transmission of electricity.

There have been several legislative initiatives during the 109th Congress to diversify energy systems and thereby mitigate the impacts from the energy crisis. **HR 983** requires utilities to generate a portion of their power from renewable resources. During the current congressional session, leaders have placed legislative priorities on the generation of conventional resources, which has allowed the energy in the market to remain unreliable in its supply and pricing.

As the supply of these resources shifts in dramatic waves, small firms will have difficulties balancing rapid price spikes against long term revenues and sources of capital. Without increased certainty in their business plans and more constant cost projections, they cannot invest in other aspects of their enterprises without significant risk. The lack of federal initiatives to help establish a system in which businesses can stabilize their supply of these raw materials, will limit their growth plans and productivity.

FAILURE TO APPROVE ENERGY EFFICIENCY MEASURES

Energy conservation is a critical strategy in which small businesses minimize the risk from volatility in the energy market. With limited expendable income, the consumption of fewer resources will significantly cut operating costs. As demand decreases, inflated prices are likely to fall accordingly.

To reduce their resource demand and expenditures, it is critical that these firms invest in energy-saving technologies. Since entrepreneurs possess fewer resources, such as staff and training opportunities, to adopt products and practices which reduce their input costs, they benefit from accessible information and technologies to make their production processes more affordable.

Increased access to conservation technologies can be promoted through federal initiatives. An incentive-approach would increase the productivity of these businesses boosting national productivity level. Yet, the 109th Congress has failed to enact initiatives that would decrease the demand for these resources.

Federal policies and incentives to decrease energy consumption encourage small businesses to invest resources in products that will result in future financial savings. Incentives can promote the adoption of technologies that reduce energy consumption. The bill, *HR 424, the Energy Efficiency Investment Act of 2005* provides a tax credit of up to 25% of the cost of products installed in business and residential properties to conserve energy resources. *HR 1212, the Save America's Valuable Energy Resources Act of 2005*, also provides a tax deduction for energy efficient expenditures in commercial buildings. Both bills, however, have been stalled in the 109th Congress while entrepreneurs struggle to offset additional energy costs.

Without access to tools that promote investment in ways to reduce their energy use, small business profits will fall accordingly as their operating costs grow. If the nation's entrepreneurs are restrained from adopting cutting edge technologies and practices, their prices and final products will become less competitive in the market.

IMPEDING PRODUCTION OF RENEWABLE RESOURCES

To reduce energy demands, new technologies must be developed that more efficiently utilize raw materials. However, as energy prices fluctuate and investments in new energy systems are costly, there are few incentives in the private sector to develop more efficient technologies. Consequently, efficient products and energy produced from alternative resources, such as water or solar power, are most costly to develop and less valuable to investors.

Entrepreneurs are the leading creators of alternative energy resources and efficient technologies. Promoting the development of such products is key to successfully resolving the energy crisis and aiding these businesses remain at the top of their industries. Small business sectors are leading innovators in solar, wind, and hydrogen technologies. However, it is often difficult and expensive for individual small businesses to develop energy-saving inventions. With limited access to affordable financing, they are impeded from researching and developing these products. Further, as they have limited start up reserves available for advertising their products, they are restricted access to domestic and international markets.

To achieve energy efficiency, it is critical that the public sector supports the emergence of new products and technologies in the market. The federal government could help achieve this goal by committing to programs that provide resources for research and development into innovative energy solutions and market incentives for the private sector to creating cutting edge products. Investments in small developers of innovative energy technologies provide high public returns. In fact, for each \$1 invested by the Federal government to promote small business energy innovation, the return on investment is \$73.85 worth of energy saved.

Many alternative energy products have emerged as a result of federal programs designed to support advanced research and development projects. New legislation is critical to ensure advancements are supported as the energy crisis persists. To ensure our country makes gains in technology, conservation, vehicle efficiency, and the use of alternative fuels, *HR 5965, the Progress Act, or Program for Real Energy Security Act*, would coordinate public and private efforts to meet these goals. *HR 612, the Energy Basic and Applied Sciences Act of 2005* supports research and development funding for energy programs, that would significantly benefit small businesses inventors or merely consumer of energy. However, Congress has not pursued efforts to advance these technologies nor the firms leading such industries.

Support for the industry and its leading firms is critical at this juncture. Without support and incentives, the US will fall behind global competitors. Yet the 109th Congress has failed to implement legislation that will ensure these firms can contribute to this industry. Industry efficiency will be less competitive with global counterparts as well, as cutting edge products are developed and utilized abroad.

CONCLUSION

The system of energy supply and demand is not at an equilibrium, creating instability and financial havoc. Businesses operating within these conditions require relief, protection and the tools to function over the long term. Yet as the energy crisis continues unabated, Congress has remained neglectful of small business needs. Without the capacity to mitigate the impacts from the destabilized market, small businesses will be impeded from making improvements to how the whole country uses energy resources. Reduced efficiency will also make our industries and our small firms less competitive in domestic and global markets.

FEDERAL CONTRACTING

This year, federal buying of goods and services continues its expansion. From 2004 to 2005, the federal marketplace grew by 7 percent. Since 2000, the U.S. government's buying has expanded by nearly 60 percent to a record total of \$314 billion in goods and services. Unfortunately, contracting opportunities for small businesses have continued to lag and, because of the failure of the government's tracking system, are likely worse than the available data shows.

Small companies owned by women and minorities face ever-growing challenges in contracting with the federal government. Initiatives to assist these businesses have either been stalled or neglected.

Agencies are relying on contract bundling and other procurement practices that artificially shut small businesses out of the federal marketplace. One example is the growth in contracts to government-sponsored corporations.

Equally concerning, as evidenced by the lack of disaster recovery contracts going to local companies in the aftermath of the Gulf coast hurricanes, are efforts to expand harmful small business contracting practices. New methods of government buying that have the potential to put taxpayer money at risk are flourishing.

Government contracts are being structured so that the only avenue for participation by small companies is as a subcontractor where they are left with few protections. Overall, small businesses continue to lose out on federal contracts, which has negative impacts for taxpayers in the form of reduced quality and increased costs.

INACCURATE REPRESENTATION OF SMALL BUSINESS CONTRACTS RESULTS IN LESS OPPORTUNITY FOR ENTREPRENEURS

In 2006, the extent of the disintegration of the federal government's small business contract tracking system was fully confirmed. This government-wide repository of contract award information is the foundation for congressional small business procurement policy-making and has been consistently overstating the ability of small companies to obtain federal contracts.

The SBA reported in June that the small business accomplishment was 25.36 percent. When contracts actually awarded to large corporations and other ineligible organizations – such as non-profits and state and local governments – were removed, the small business achievement for FY 2005 was reduced to 21.57 percent. This represented the lowest small business accomplishment in more than 11 years. Because the government-wide 23 percent goal was not accomplished, small companies lost \$4.5 billion in lost opportunities – a record loss. Equally concerning is the decline in contracting dollars to women and minority-owned businesses.

A review by Democrats on the Small Business Committee released in July of 2006 found almost \$12 billion in miscoded contracts for FY 2005. With the geometric increase in the amount of misidentified contracts, it is becoming increasingly difficult for policy makers to identify whether policies designed to increase small business access to the federal market are effective.

At the same time, Democrats identified that minority- and women-owned businesses continue to miss out on federal contracts as evidenced by increasing losses. Minority business owners lost \$4.5 billion in contracting opportunities from FY 2004 to FY 2005. Women entrepreneurs lost \$5.2 billion in opportunity.

While there are initiatives in place to assist these businesses, they have either not been modified or implemented. The Women's Procurement Program was enacted in December of 2000, but is still not available to the nation's 7.7 million women-owned companies. The United States District Court has already determined that the SBA has violated the law by unreasonably delaying this program from getting up and running.

For minority entrepreneurs, the situation is equally concerning. The 8(a) program – which is the primary way that minority entrepreneurs enter the federal marketplace – has not received legislative attention for nearly 20 years. *HR 4474, the Minority-Owned Venture Empowerment Act of 2005* has nearly 50 co-sponsors and is supported by a number of business groups. Unfortunately, this important legislation that makes many over-due changes to the 8(a) program, has languished in the 109th Congress.

Revamping the 8(a) program is particularly critical given the rise in contracts to Alaska Native Corporations (ANCs) that now threaten the viability of the 8(a) program to develop other deserving entrepreneurs. ANC contracts represent 22 percent of 8(a) contracting dollars – an increase from 13 percent in 2004. Agencies are more increasingly likely to consolidate contracts and award these giant packages to ANCs than to resolve the root problem of contract bundling.

PRACTICE OF CONTRACT BUNDLING HARMING SMALL BUSINESSES

Over the last five years, agencies have greatly expanded their use of contracts that combine work small businesses could perform into giant packages that exceed the capacity of small firms. Despite an increase in total government contracting dollars of 60 percent since 2000, the total number of contracting actions received by small business has declined by 55 percent.

Notwithstanding a small business agenda that included talk of contract bundling, the administration has yet to take definitive action. Meanwhile, small business contracts continue to be phased out and combined with larger projects, which are beyond the reach of small firms. These contracts are more expensive to taxpayers and provide lower quality goods and services. Proposals have been introduced that would ensure that consolidated contracts are reviewed for their potential negative impact on small companies, yet they have not been heard.

By virtue of their size, small businesses are placed at a competitive disadvantage when agencies rely on contracting actions that artificially change the federal marketplace. Bundled contracts are one type of this manipulation. Another practice is contracting with Federal Prison Industries (FPI).

FPI is afforded the ability to receive government contracts well ahead of small companies – even when the small firm offers better quality goods and services at more reasonable prices. Advantages held by FPI include financing by the Department of the Treasury, staffing by federal employee marketing specialists, and work performed by inmates making less than a dollar an hour. The *HR 2965 the Federal Prison Industries Competition in Contracting Act* would require FPI to compete for contracts in the same way that small businesses have to. Because this bill has still not been enacted, small companies are not only competing with large corporations but also with government-sponsored companies for contracts.

FAILURE TO AWARD LOCAL, SMALL BUSINESSES WITH DISASTER RECOVERY CONTRACTS

In response to the Gulf region hurricanes, giant projects were awarded to large corporations that had little, if any, ties to the area. Meanwhile, local small businesses were left out.

The rush to award contracts after the hurricane disasters of 2005 highlighted a new contracting practice that further threatens taxpayer money: reverse auctions. Using this buying option, an agency solicits prices for the work, and there is an incentive for contractors to provide the lowest possible price. While commodities are generally recognized as benefiting more when purchases are driven by price alone, there are often too many variables in construction projects, which are widely recognized as more complex buys. A provision in *HR 2067, the Acquisition System Improvement Act* would prohibit construction services from being purchased through reverse bid auctions. The language of this proposal was ultimately included in *HR 1815, the National Defense Authorization Act for Fiscal Year 2006*, but was not made part of the final law. As a result of the failure of the Congress to finalize this provision, both government and industry remain exposed to fly-by-night companies that would willingly provide federal agencies with substandard work in order to make a fast buck.

To ensure that small businesses are able to participate in future disaster recovery contracts, it was recommended that agencies enter into contingency contracts with small firms so that a ready force of companies – particularly those based in future disaster areas – would have a fair opportunity to receive work. Unfortunately, despite this proposal, no lessons were learned. Instead, the Federal Emergency Management Agency (FEMA) recently announced that it had entered into contingency contracts with some of the nation's largest corporations, thus ensuring a repeat of small businesses losing out on disaster contracting opportunities in their own backyards. And, if small businesses will be able to participate at all, they will be forced to the bottom of the subcontracting chain, making far less than the prime contractors and receiving few protections.

PROTECTIONS FOR SMALL BUSINESS SUBCONTRACTORS LACKING

Subcontracting can provide an important training ground for small companies to familiarize themselves with the government contracting process. Increasingly, small firms are becoming subcontractors not by choice, but by necessity.

Most recently, the Department of Homeland Security is moving forward with initiatives to expand U.S. border security. It was recently announced that one of the top recipients of government contracting dollars won a new contract to provide a “virtual fence” along the U.S. border. The \$67 million contract covering a 28-mile stretch of the border near Tucson, Arizona is for three years, and is the first phase in a multibillion-dollar government plan – the Secure Border Initiative – designed to reduce entry along the 6,000 miles of the southern and northernmost borders.

If small firms are able to participate in this work, it will only be as a subcontractor. Equally concerning, by the time small firms heard about this work, it was already too late to participate.

Another part of the effort to enhance border security involves the construction of a massive fence along the southern border – at a cost of at least \$2.2 billion. As we saw with the contracts awarded after the disaster in the Gulf Region, small businesses will be shut out. For the few who are fortunate enough to participate, their protections will be nonexistent.

Subcontractors are not afforded the same rights as companies that have a direct contract with the government. These include prompt payment, appeal rights, and transparency. *HR 2834, the Construction Quality Assurance Act* is an attempt to enhance these rights, particularly with respect to bid shopping. Shopping occurs when a prime contractor – after winning a bid – returns to its subcontractors forcing them to reduce their prices or face expulsion from the winning team. The remedy proposed by the legislation is the termination of the subject contract, or an assessment of substantial damages against the shopper. This bill did not receive any consideration in the 109th Congress.

CONCLUSION

Rather than harnessing the cost savings that small business can provide, the federal government increasingly turns to large corporations to fulfill federal contracts. And, the situation is getting worse rather than better. The 109th Congress ended without enacting even one meaningful proposal to expand the ability of small firms to penetrate the federal marketplace.

HEALTH INSURANCE FOR SMALL BUSINESSES

For small businesses, the costs of offering employer-provided health insurance has skyrocketed. Since 2000, health insurance premiums have gone up 78 percent. According to the Kaiser Family Foundation, health insurance premiums rose at a rate of 9.2 percent in 2005. This represents the fifth year in which premiums have risen by nearly double digits and equates to about a seventy percent increase during that time.

The rising cost of health insurance has had a disproportionate impact on small businesses. The rate of annual increase in premiums for small businesses has been larger than that of their large corporate competitors. According to a study by the Commonwealth Fund, Employees in the nation's smallest firms pay, on average, 18 percent more in health insurance premiums for the same benefits than do those in the largest firms.

The report found some of the reasons were “the inefficiencies of the small-employer market—a result of the higher administrative costs from marketing, medical underwriting, greater risk, and other factors associated with small size.” These problems are translating to more and more small employers who are choosing to drop coverage or pass on the costs to their employees.

In terms of legislative solutions introduced in the 109th Congress, there have been a myriad of proposals – these include tax credits for small business, high risk pools for entrepreneurs, state pooling mechanisms, reinsurance in small group market, and allowing small employers to buy into the federal employees health benefit plans.

While there is broad agreement that there needs to be reform, no major legislative changes were made to address the rising costs of health insurance. This failure has contributed to a lower percentage of small businesses offering coverage, more costs being passed on to employees, and an increase in the number of those that have health insurance.

NO REFORMS TO ADDRESS UNIQUE OBSTACLES FOR SMALL BUSINESSES

The rising costs of health insurance, particularly for small businesses, have proved to be a drag on the U.S. economy. This is one of the reasons a number of measures have been introduced during the 109th Congress to address some of the underlying causes why small employers are unable to offer affordable health care coverage. Many of these reforms are aimed at the small business health insurance market in recognition that small firms pay up to 10-15% more for identical health insurance to their corporate counterparts.

One of the biggest issues for small businesses is that they lack options when it comes to health insurance for their employees. In a majority of the states, there are fewer than three insurers that dominate the small group insurance market. Proposals have been introduced to give these small businesses another choice or expanded options when it comes to health insurance. The desire is to both foster greater competition, as well as address some of the issues that are the cause of higher costs for small businesses – as found in the study by the Commonwealth Fund.

A bill that has long languished has been legislation to create so-called “association health plans or small business health plans.” Legislation was introduced in both the Senate and the House, but neither bill has been sent to conference in the 109th Congress or any of the previous two Congresses when similar bills were introduced. *HR 525, the Small Business Health Fairness Act of 2005* passed the House in 2005, but saw no action in the Senate. Chairman Enzi introduced his own version of Small Business Health Plans in the Senate, the *Health Insurance Marketplace Modernization and Affordability Act*. This bill was marked up out of committee on a party line vote and failed to move in early 2006 due to the fact the debate on the bill was strictly limited by Republican leadership when the bill was brought to the floor. The failure to allow open debate has meant these bills saw no action and there were no changes or improvements to the health care system for small businesses.

Some of the proposals not considered as part of efforts to help small businesses obtain health insurance were other efforts to expand the health insurance options for small businesses. This included the *S. 1329, the Small Business Health Care Act of 2005* which would create a tax credit for offering employer-based health insurance coverage and to provide for the establishment of health insurance purchasing pools. The legislation would also direct the Internal Revenue Service, in conjunction with the Small Business Administration, to develop and implement an educational program to inform businesses of the health insurance tax credit provided by this Act.

Another proposal that was not considered was *HR 5288, the Small Business Health Plans Act of 2006* that would allow for small businesses to purchase health insurance through a program operated by the Health and Human Services. The bill would allow for small businesses to purchase health care in much the same as way as the federal government which is able to purchase affordable health care for its employees.

NO TAX INCENTIVES CREATED TO ENCOURAGE HEALTH COVERAGE

Another way to encourage small employers to offer health coverage is to reduce the overall costs through tax credits. Congress had \$70 billion in tax relief that it could have used for small employers, but H.R. 4297, the Tax Relief Extension Reconciliation Act that was passed into law in 2006 included no such relief. Instead, it included a dividend tax cut that provides virtually no benefit to small business owners.

Tax incentives are solutions to help alleviate the rising costs for small firms so that the most vulnerable have health insurance costs. The tax credit would not disrupt - and would build on - the current employer-based health insurance system by giving the credit to the employer. The health care reforms would assist firms currently offering traditional coverage (so that they can continue to afford such coverage) as well as encourage other (or new) firms to offer coverage for the first time. It would also not produce the adverse selection risks resulting from health savings accounts (HSAs) that could significantly increase premium costs for traditional group health insurance coverage.

Rep. John Barrow (D-GA) introduced *the Small Business Health Insurance Promotion Act* that targets uninsured working Americans by offering self-employed individuals, or any small business owner with 50 employees or less, a tax credit equal to 50 percent of the employer's cost of health insurance coverage. By offering a tax credit, employers will have an incentive to offer health care to their employees and it may also reduce the rising costs being borne by employees. In addition to the tax credit, the bill creates permanent state and national multi-insurer pools to provide comprehensive and affordable health insurance choices to small employers and the self-employed participating in the plan. This legislation has yet to receive a hearing in any of the committees with jurisdiction.

CONCLUSION

Although, Congress has been discussing ways to bring down the health care costs since the inception of the double digit increases in 2000, there have been no major reforms to address the issue. The Kaiser Family Foundation report not only found that many small employers are experiencing rising costs, but that many small firms are choosing to drop coverage or pass on costs to their employees. From an economic standpoint, it is of concern that small firms would begin to drop coverage as they will be able to compete against large corporations that typically offer coverage.

Without reform, the prospect for continuing increases is likely. Reports have shown that while medical technology will continue to improve, the costs will also rise. The way the current small group market works, it is a near certainty that these costs will be passed in the form of health insurance costs.

Small businesses view health insurance for their employees as an effective way to provide a benefit to their employees. According to a study by the Employee Benefits Research Institute, *"Most small employers offer sound business reasons for offering health benefits to workers. Many report that it helps with employee recruitment and retention, and increases productivity. More than three-quarters report that offering health benefits is "the right thing to do."* Unfortunately, the current climate has made "doing the right thing" extremely hard on their bottom line.

IMMIGRATION

AMERICA'S BROKEN IMMIGRATION SYSTEM HURTS SMALL BUSINESS WORKFORCE

While there was significant discussion about comprehensive immigration reform in the 109th Congress, it has been declared by congressional leadership there will be no comprehensive bill brought to the floor of the House. While there is broad agreement for the need for reform, no bill has yet to reach the House floor to address the issue despite the fact that a comprehensive immigration bill passed in the Senate in the 109th Congress. There are approximately 8 to 11 million undocumented immigrants living and working in the U.S. who fill essential gaps in the small business labor market. Currently, the business and immigrant communities continue to be trapped in a system that lacks fair and comprehensive outlets to a legal workforce that has the potential to contribute significantly to economic productivity. Small businesses are in need of comprehensive immigrant reform. The failure to pass any legislation that provides steps to modernize the current system will decrease the competitiveness of our businesses.

In terms of immigration and small businesses, the most important component of such reform would address the situation of people living and working in the U.S. to earn a permanent adjustment of their status, create an innovative worker program that would allow essential workers to safely enter the country, and ensure backlog reductions in family-based immigration. Proposals that fail to embrace these components and seek only to increase enforcement of the current unworkable system will only exacerbate problems for business owners seeking opportunities and advancement in the local and national marketplace.

The bipartisan *HR 2330/S. 1033 Secure America and Orderly Immigration Act of 2005* was introduced in the 109th Congress to provide the very comprehensive reform that is critical to small business owners and immigrant workers across the country. In an effort to make the immigration process safe, orderly and legal, this legislation would go a long way in addressing the problems that have overwhelmed the current system. Such reform is critical to America's national security and addressing the problems that have overwhelmed the current immigration structure.

It is an economic reality that America's small businesses depend on an immigrant workforce to produce and fulfill their labor demands throughout various sectors of the marketplace. Unfortunately, the Republican majority has decided not to bring *H.R. 2330/S. 1033* to the House floor for a vote prior to the end of the session. Instead of embracing this bipartisan call for reform and addressing the challenges faced by business owners and the immigrant workforce, small businesses will continue to face difficulty in meeting their current labor needs, staffing essential positions, and remaining competitive.

TEMPORARY WORKER PROGRAM WOULD IMPROVE WORKFORCE OUTLOOK FOR SMALL BUSINESSES

Small business owners continue to face major challenges in hiring employees to fulfill a variety of industries – ranging from food service and landscaping to manufacturing and construction. The solution would match willing immigrant workers both in the U.S. and abroad with willing employers to fill these vacant jobs. While this initiative is still in the development stages, a recent Pew Hispanic Center survey of nearly 5,000 undocumented Mexican migrants showed that 71 percent of these workers would like to become permanent U.S. residents, but would be willing to participate in such a program.

The development of a program that matches workers to small businesses for employment is essential in creating new channels for future workers to enter safely and assist in building the employee base of our nation's small businesses. Creating a legal mechanism for immigrants in the American workforce is a step toward addressing the much larger immigration reform debate.

While an amendment addressing this proposal was filed to *HR 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005*, House Republican Leadership refused to allow a vote on the initiative, excluding any mention of the temporary worker issue in their immigration reform proposal. Unless legislation is adopted to allow this population to enter into the workforce in a safe and legal manner, America will only continue to face the same challenges in controlling the millions of undocumented workers that currently flood the labor force.

In addition, legislation to address industry specific workforce concerns have not been addressed. In particular, the *Save our Small and Seasonal Small Businesses Act of 2006* to address the work shortage for H-2B visa workers. The bipartisan legislation has yet to see floor action despite the crippling effect it could have on seafood processors, shrimpers, crabbers, and fisherman as well as many of those workers in the tourist industry.

RESTRICTIONS ON CROSS BORDER TRAVEL DAMAGING TO AMERICA'S ECONOMIC SECURITY

The terrorist attacks of September 11, 2001 forced the U.S. to rethink its national security agenda and immigration policies – including the issuance of immigration documents and cross-border travel procedures. While these initiatives seek to bolster the security of citizens, it is essential to take into account the fact that America's borders are an entrance for a host of people, goods and services that help to fuel our national economy.

In an effort to strengthen security on the border, the ongoing rulemaking of the Western Hemisphere Travel Initiative (WHTI), an initiative established in the Intelligence Reform and Terrorism Prevention Act (IRTPA), has proposed requiring additional forms of identification for cross-border travel from Canada and Mexico. While it is necessary to strengthen these protections in the interest of national security, a growing number of small businesses across the nation will be impacted by cross-border travel policies and the effects the initiatives have on their customer base.

Any regulatory change in the documentation or identification required for cross-border travel, as suggested in the proposal, will have a major impact on thousands of small businesses. With a significant portion of their customer base located across the border, it is vital that any changes made to current cross-border travel regulations take into account the needs of these small firms – including many of the most important small business industries such as travel, tourism, manufacturing, and local border towns. Imposing steps such as passport requirements for potential customers may greatly impede the success of these businesses, when less costly alternatives may be available.

Despite these concerns, the Department of State (DOS) and the Department of Homeland Security (DHS) have yet to announce a satisfactory review of the rule for WHTI that would include a complete analysis of the economic impact on small businesses, so that Congress and the public can better understand the impact of this initiative on cross border travel between the U.S., Canada, and Mexico. The initial review delivered in the summer of 2006 fell. It is essential that this review be accurately completed before the proposals are formally published so that less costly, and less burdensome proposals can be examined to ensure the small business community will understand the full ramifications of what they are expected to comply with.

CONCLUSION

With immigration continuing to increase at record levels, as shown in recent U.S. Census Bureau statistics, this trend has important implications for the future of America's small business labor force. The American economy is creating a diverse array of jobs requiring a variety of skill levels and abilities to perform. Immigrant participation in the workforce is rapidly spreading beyond traditional employment areas. However, without the comprehensive immigration reform that is so critical to the success of our nation's small businesses, entrepreneurs will only continue to struggle to access the available workforce due to the mismatch between current immigration laws and their need to hire essential employees.

REGULATORY & PAPERWORK BURDENS ON SMALL BUSINESS

Complying with overly burdensome regulations and filling out redundant or unused reports is a costly problem that diverts a business owner's time and money from productive investments. Assets that could be deployed to bolster employment or strengthen competitiveness are wasted. During the 109th Congress, the Bush Administration and the Republican leaders in the House and Senate ignored the expressed concerns of millions of small businesses, failing to address repeated requests to take action to reduce regulations and paperwork.

THE REGULATORY AND PAPERWORK BURDEN ON SMALL BUSINESS CONTINUES TO INCREASE

Burdensome regulations affect small business' ability to compete in today's global marketplace. The Office of Advocacy's latest study shows complying with regulations and paperwork costs businesses and individuals over \$1.1 trillion each year. At hearings and roundtables focusing on these small business priorities every major small business group including the Chamber, NFIB, NSBA, WIPP and scores of small businesses associations listed the regulatory and paperwork burden as one of their most pressing problems.

This is reinforced by study after study that examines the impact these regulations and paperwork requirements have imposed on small businesses. SBA found that small businesses pay at least 45% more to comply with government regulations than their larger competitors, meaning they start every day with a government-imposed handicap. Compliance costs for small businesses average about \$7000 per employee; often more than they pay in taxes.

THE BURDEN IS INCREASING AT AN ALARMING RATE

The regulatory and paperwork burden continues to increase at a record pace. For example, for the past few years, Congress has mandated specific annual reductions of paperwork from the executive branch but instead the GAO recently found that federal paperwork has increased in each of the last 5 years. According to OMB records and a GAO report, it now takes Americans 8.5 billion hours to prepare reports required by federal regulations. Last year alone the burden increased by half a billion man-hours, the largest increase in our history.

The burden seems unstoppable and Congress seems to treat it as beyond its control. Each year the administration publishes an average of 75,000 new pages of regulatory proposals, notices and rulings. In 2005 federal agencies issued 4400 new rules. The Office of Information and Regulatory Affairs (OIRA) testified that out of the 110,000 regulations in existence, only a few thousand have ever been reviewed for their compliance burden as the law requires. Groups such as *American's for Tax Reform* point out Americans work 8 more days than they did before President Bush took Office to pay off all their government obligations and a day and a half longer than last year. Clearly this impairs the ability of small businesses to compete with large businesses and foreign firms.

PROMISED ACTION ON REGULATORY AND PAPERWORK BURDEN IS UNFULFILLED

In an effort to confront the problem, Congress ordered the OMB's Office of Information and Regulatory Affairs (OIRA) to undertake what they called a major review project as part of the "Regulatory Right-to-Know Act" (passed during the Clinton Administration) that required an annual report to Congress of the costs and benefits of regulations and a list of regulations that should be revised or eliminated. The OIRA collected a total of 576 recommendations and specified 100 of those priority issues "ripe for action", which should have been a good start, but, as the participants reported in a hearing last July, nothing much seemed to happen. After the effort these companies had expended to make recommendations most felt it simply wasted their time. Others testified that the opaque OIRA status reports were a disappointment because it did not allow the public to know what, if anything, was happening. Congress neglected to insist that tangible action be taken.

CONGRESS FAILED TO HELP SMALL BUSINESSES DEFEND THEMSELVES

Over-burdensome regulations make small businesses less competitive. The Regulatory Flexibility Act, the foundation for small business regulatory review efforts, was enacted in 1980 during the Carter Administration to ensure that federal agencies analyze the impact of regulations on small businesses and consider less burdensome alternatives. Since then, a series of reports and oversight hearings have demonstrated that agencies are still reluctant to live up to the analytical requirements of the RFA. Action needs to be taken to help agencies "build in" the discipline to do their homework rather than having the Office of Advocacy and the small business community repeatedly challenge them.

One of the ways to help solve these problems would have been the **HR 682, the Regulatory Flexibility Improvement Act** and a more focused Senate Bill, **S. 1388, the Regulatory Flexibility Reform Act** which would take the lessons learned over the last 10 years and use them to strengthen regulatory review. These proposals specify greater detail for the criteria used in agency analysis; require IRS and other agencies to open up their regulation writing system to earlier and more effective small business participation and eliminate barriers to judicial review once a final rule is published. Small businesses should not have to wait to be damaged by the action before forcing agency compliance with the law. Every small business group has recommended that the original Regulatory Flexibility Act be tightened. Unfortunately, the Small Business Committee held one brief hearing and a Judiciary Subcommittee also held a perfunctory hearing but that resulted in no movement of either bill. Without these changes, agencies will still be able to avoid doing the homework and research they should to develop effective regulations.

Small businesses many times through no fault of their own face fines for failing to file reports they did not even know were required. To address this problem, **HR 5242, the Small Business Paperwork Amnesty Act** was proposed to help small businesses by changing the procedures for agency enforcement of filing and reporting requirements. The bill directs agencies not to impose civil fines for first time failures-to-file reports. Exceptions are spelled out in the bill in cases where there could be serious harm to the public interest, or to public safety or health; where detection of criminal activity is impaired; where the violation is not corrected or where there is a violation of tax law or collection. Except for one Government Reform subcommittee hearing, no action was taken by Congress on this small business bill.

Another formerly very useful law that helped many small businesses but has now become hopelessly out of date is **the Equal Access to Justice Act. (EAJA) (PL 96-481)** Even when a small business is in the right, getting the federal government to admit a mistake is a daunting task. The Act allows small businesses to recover attorney's fees in the cases they win against federal agencies. Just about every responsible, nationally known group supports the effort to bring the payments in this law up to date. Unfortunately under the current time-worn provisions of the EAJA, many small businesses choose to forego the time and expense of litigation or can not find a lawyer willing to assume the risk and accept the small fees to provide legal advice. Also, agencies have found a number of ways to escape payment. With this in mind, **HR 435, the Equal Access to Justice Reform Act (EAJRA)** was introduced to tighten the law and close the loopholes. The bill expands the definition of "prevailing party" to include litigants who obtain out-of-court settlements against the federal government or achieve their result through other means. A *pro forma* Judiciary subcommittee hearing was held but no further action was taken and as a result small businesses may find it prohibitively expensive to defend themselves from unfair federal actions.

Finally, the 109th Congress did bring up a similar (but very limited) measure, ***HR 742, the Occupational Safety and Health Small Employer Access to Justice Act***. This bill would provide the relief to small business owners who challenged administrative or court-based OSHA enforcement actions. Although this is a halfway measure that only addresses a small portion part of the EAJA problem, it would provide some relief to small business owners. It died without becoming law.

CONGRESS FAILED TO HELP INFORM SMALL BUSINESS OF THEIR REGULATORY OBLIGATIONS

Small businesses need help to know how to comply with thousands of laws and regulations affect them each year. It is a core government function to organize and disseminate the information necessary for a business to find, understand and make the reports as required by the law. One proposal to prod the executive branch to do a better job of communicating with small businesses, ***the Small Business Paperwork Relief Act of 2002 (PL 107-198)***, would require the OMB to list compliance assistance resources on the internet and compel each agency to establish one point of contact to help small businesses with paperwork requirements. The OMB was also to create a task force to make recommendations for an interactive Internet program to identify regulations that apply to small businesses and facilitate small business recordkeeping. These two goals are seen as the crux of what the federal government must do to bring its communications with small businesses up to modern standards. Unfortunately, oversight hearings on this law revealed that agencies were slow to publish their compliance materials and points of contact. Now after four years of “priority” effort, small businesses still have a tough time getting help with compliance. A couple of bills were proposed that would have found ways to proactively help businesses with their compliance and plugs the gaps in the SWPRA.

The growing and constantly changing federal, state and local regulatory requirements have often times overwhelmed small businesses. They fear they will either overlook some obscure requirement or spend so much time and money it will detract from their business. Yet they are reluctant to seek compliance assistance directly from the agencies for fear their errors will be revealed and their business punished. Small businesses need assistance programs that are consistent nationally and targeted to them. ***HR 230, the National Small Business Regulatory Assistance Act of 2005*** would have established a pilot program to fund Small Business Development Centers (SBDCs) to provide regulatory compliance assistance to small businesses. It also created a reporting system that brings particularly complicated and unnecessarily burdensome regulations to the attention of the government to be reviewed and revised or eliminated. It could have been a big help to small businesses because they would have received the help they need from a neutral source they have grown to trust but the bill died without action.

Early in the 109th Congress, *S. 769, the Small Business Compliance Assistance Enhancement Act* was introduced to clarify the kinds of material that agencies must make available to comply with existing requirements to explain laws and regulations. The bill would amend and supplement the SBREFA Act that already directed the agencies to publish sufficient compliance guidance to assist small businesses. The bill would require the guides to be available at least by the publication date of the final rule. Further, it clarifies that agencies should use very clear language and collect and publish all the requirements at a convenient location on the web. In spite of strong support from the small business community, neither the House nor Senate has scheduled action on the bill, nor has there been sufficient oversight of past requirements Congress put in place to supposedly solve the problem.

CONGRESS AGAIN POSTPONES ADDRESSING THE INDEPENDENCE OF THE OFFICE OF ADVOCACY

Although small businesses have many different interests, one thing on which they agree is the need for an independent federal advocate like the SBA's Office of Advocacy to help them participate in policy decisions in the federal executive branch agencies and Congress. In recent years, the Office's manpower has been reduced and its budget cut. A top priority mentioned for the 109th Congress at the Committee's Small Business Priorities hearing and at the Democratic Regulatory Roundtable was providing for a truly independent Office of Advocacy. The Committee's Oversight Plan included a goal to conduct hearings on how to "*strengthen its voice and make sure that the Office of Advocacy continues to effectively represent the interests of small business.*" The Committee never followed through on this goal, failing to even hold a hearing on this issue.

CONCLUSION

Regulations are necessary for public health, safety and to enforce fair competition and order in the marketplace. That said, small businesses deserve the least intrusive regulations possible that will still achieve these goals. Our businesses cannot expand and create jobs if the regulations and paperwork that federal agencies impose on them make them uncompetitive. While professing to make burden reduction a top priority, the regulatory burden has grown dramatically under the Bush Administration to the detriment of small business.

It is not a question of technological capability or even lack of support. There are good proposals with strong small business backing that make use of the best new ideas and incorporate the latest technology. There is no good reason why comprehensive, straightforward and searchable compliance assistance should not be available on demand to every small business owner today using existing resources. The real problem has been inability of Congress and the administration to take action on these ideas and make needed improvements to the federal regulatory and paperwork process.

TAX RELIEF AND SIMPLIFICATION FOR SMALL BUSINESSES

For small business owners, the tax code can serve an important role in creating incentives that will encourage them to invest and grow their businesses. With targeted tax relief for small firms, it can serve to stimulate this sector to hire new employees or purchase new equipment or develop a new product. These incentives can encourage risk taking by entrepreneurs while providing the necessary cash flow for these companies to maintain operations when making these expenditures. Given the right tax deduction or credit, it will serve to encourage these small businesses expand and benefit the overall economy.

Tax policy aimed at helping the small businesses is sound fiscal policy as it caters to a sector that is the most successful at creating jobs. Though these business owners continue to place tax relief and simplification as a top priority, this Congress has left much to be done in this area. Instead of passing incentives and measures to simplify the tax code for small businesses in the 109th Congress, a vast number of important provisions aimed at entrepreneurs that have been introduced have not been enacted into law. The end result is this Congress has failed to deliver legislation that has provided significant benefit and stimulus to this sector.

The remaining tax issues that have not been addressed cover a broad array of areas and impact businesses in nearly every industry. These include the following: no permanent fix to the estate tax problem, more small businesses are being subject to the Alternative Minimum Tax (AMT), compliance costs are rising, small business equipment expensing is set to expire, and numerous targeted small business tax breaks proposed that have failed to pass or be made permanent. The result is that the overall economy continues to lag due to fiscal tax policies ignoring the needs of small businesses. At the same, it has created uncertainty for these businesses because they are unable to plan effectively due to the failure to pass these measures.

ESTATE TAX REFORM FOR SMALL BUSINESSES REQUIRES ACTION

A top priority for the small business community has been addressing the situation related to the estate tax. While there have been many bipartisan proposals that would create an exemption to ensure all small businesses and their families can pass on their companies, the debate has been ensnared by advocates who want to make sure the ultra-wealthy pay no estate tax. The unwillingness to compromise on this legislation that would protect small businesses has created an unnecessary stalemate with the estate tax. It has led to increased estate planning costs for small businesses who are forced to predict what Congress will do next because of the failure to pass a permanent solution.

Under current law, the estate tax is set to expire in 2010 and then reappears the next year at 2001 levels. Proposed legislation to completely repeal the estate tax has created concern because it would not only have severe budget consequences, but would make small businesses worse off than a system with an exemption for small businesses. For these reasons, complete repeal has failed to pass. However, there have been bipartisan proposals to raise the exemption for small businesses to up to \$10 million, but this effort has been shelved by Republican leaders in favor of complete repeal. This includes **HR 1568**, a bill introduced by Rep. Leach and Rep. Abercrombie that would raise the exemption and lower the rates paid by all estates. In the Senate, **S. 3626 Estate Tax Relief and Reform Act of 2006** was also introduced by Senator Landrieu that would also raise the exemption. Neither of these bills have been considered.

At the tail end of the 109th Congress, estate tax repeal legislation was tied with an increase in the minimum wage. These two very different proposals were tied together to create a poison pill for passage of a minimum wage hike and has likely meant that the issue will fail to be resolved. The result has been that small businesses are left with a situation where they cannot effectively plan to pass on their business to their families and must spend more on accountants and lawyers.

COMPLEXITY OF THE TAX CODE CONTINUES TO RISE

One of the primary reasons that small businesses are frustrated when it comes to tax reform and relief is the growing complexity in the tax code. Early in the 109th Congress, there was some reason for optimism that meaningful changes may occur that would simplify. In 2005, the President commissioned a bipartisan panel to examine the tax code and propose reforms to simplify it for individuals and businesses. While it provided for a number of recommendations to simplify the tax code for small businesses, virtually none of the recommendations have been passed into law.

Rather than decreasing complexity and using some of the recommendations of the panel, it has become clear that the tax code has grown even more complex. The tax policies passed since 2001 have created a system where taxpayers, particularly business owners, cannot effectively plan ahead. The constant changes to the tax code over the past five years accompanied with a variety of sunsets (whereby a provision expires) have meant that small businesses simply are unaware what certain investments and/or expenditures could increase or decrease their tax liability.

Despite the fact that the administration has recognized that there is a problem, the last two tax bills in 2003 and 2004 have both increased the complexity of the tax code. According to a report published by the Democratic staff of the House Ways and Means Committee, there were 900 changes to the tax code in the 108th Congress. The FSC/ETI legislation passed in 2004 provided for 561 changes and added 250 pages of tax law changes. The tax bill passed in 2006 did nothing to simplify the tax code, but was merely an extension of these failed efforts.

TARGETED TAX RELIEF FOR SMALL BUSINESS REMAINS ELUSIVE

A number of other measures that would provide significant benefit to the small business sector have been ignored as priorities when it comes to tax legislation moving through Congress. The most notable has been the failure to make Section 179 a permanent part of the tax code. In the 109th Congress, legislation to make it permanent, ***HR 1388, the Small Business Expensing Permanency Act of 2005***, has yet to be considered. While a two year extension of expensing was passed in May 2006 as part of the Tax Increase Prevention and Reconciliation Act, only a permanent solution will allow for small businesses to effectively plan ahead to grow their business.

Another important issue that has arisen for small businesses relates to valuing the goodwill of a small business and the ability to depreciate it. ***HR 4960, the Tax Fairness for Small Business Act of 2006***, is a bipartisan bill that would amend the tax code to allow 5-year amortization of goodwill (accelerating from current levels) for qualified small businesses. This bill has yet to be considered even in committee.

Additionally, there are a number of proposals that have been introduced that are designed to boost investment and growth in some of the various small business sectors. These include revising schedules of the lifetime of a restaurant building, to changing how long a roof will last, to reforming the length of time that an energy system in a building is useful for the purpose of tax code depreciation. Bills like ***HR 1510, the Realistic Roofing Tax Treatment Act of 2005***, ***HR 1241, the Cool and Efficient Buildings Act***, and ***HR 3841, the Small Employer Tax Relief Act***, are just a few examples of bills that have provisions aimed at small businesses who have these issues. None of these bills has yet moved out of committee nearly two years after introduction.

ALTERNATIVE MINIMUM TAX

The other growing issue that affects millions of small business owners across every sector is the Alternative Minimum Tax. The tax cuts passed over the past five years has only increased the number of small business taxpayers who will likely be paying the Alternative Minimum Tax (AMT). While the AMT has a broad impact on individual taxpayers, it is a major concern for small businesses. A top priority for the small business community has been the elimination of the AMT. Legislation to eliminate the AMT continues to be pushed aside in favor of extensions of provisions like the dividend tax cut which provides relief only to the larger corporations and investors. ***HR 1186, the Alternative Minimum Tax Repeal Act of 2005***, would eliminate the AMT that has a severe impact on smaller firms who are more prone to this tax, but it has yet to move. Instead a one-year fix was passed in May of 2006 that will put the burden to correct this problem on the next Congress.

CONCLUSION

Without changes to the current system, the small business sector will end up spending dollars on compliance rather than investment in their business. For small businesses, the burden is particularly severe as the report found that the typical taxpayer with small business income spent an average of 45 hours and \$360 in out-of-pocket compliance costs, compared with 20 hours and \$105 in out-of-pocket costs for the ordinary taxpayer. According to an Office of Advocacy report, for small businesses with less than 20 employees, the cost of tax compliance is nearly double that of their larger counterparts.

While there is unanimous recognition that there needs to be changes to the code, the failure to change directions when it comes to tax reform means that small business growth will continue to suffer. Targeted tax cuts and simplification for small businesses can accomplish two goals – provide incentives and cash for small businesses to grow while at the same time keeping the federal budget in check. The failure to provide small business relief means that entrepreneurs will not have the incentive to re-invest and expand their businesses. These failures will stifle innovation and expansion and means that this country will continue to see continued weak economic growth and a lack of job growth.

TECHNOLOGY

The nexus between technology and small businesses has many different aspects – a vast array of small businesses are a dominant force in the technology industry as producers and many rely on technology to provide their services or produce their goods. While many small businesses are investing in research for new technologies, others rely on technology such as internet access as a critical to the growth and development of small companies. In many ways, it is the leveler that allows small businesses to reach and serve a broader customer base in the same way as their larger counterparts. Nearly 40 percent of high-tech jobs are in small companies.

Given the broad scope that small businesses are involved and integrated with technology, it is critical that the federal policies that impact technology address how they will impact small businesses. As consumers of technology, congressional policies must ensure that small companies have access to technology options at affordable rates. As producers and innovators and providers of technological services, small businesses need an environment that promotes competition, which will propel new technologies into the next generation. Unfortunately, as discussed below, very little was done in the 109th Congress to address the pressing issues in technology.

CONTINUING EXPANSION OF COMMUNICATION TOOLS FOR SMALL BUSINESSES THROUGH TELECOM REFORM

Telecom affects small businesses as consumers who are concerned about access and costs. It also affects those small businesses who are in the telecom industry who are able to provide such technological services such as internet, phone, and digital access. A

much overlooked aspect of federal legislation is that a large percentage of telecom providers, particular in rural areas, are small businesses.

The last major piece of legislation governing the way that businesses large and small communicate with each other and with their clients was the 1996 Telecommunications Act. While an attempt was made to modernize the 1996 Act, it fell far short for small companies in terms of producing affordable products and services for these firms. As a result, it is time to revisit our nation's telecommunications policy to not only take into account new ways of doing business, but also to establish new priorities.

Two bills, ***HR 5273, the Network Neutrality Act of 2006***, and ***HR 5417, the Internet Freedom and Nondiscrimination Act of 2006*** were attempts to ensure that Internet content providers are not stifled in their delivery of information. The approximately 7.3 million business Internet subscribers, which include providers of all sizes, pay at least \$13.1 billion a year to make their content available on the Internet. Without assurances that small businesses who are content providers will not have to pay more for expedited Internet delivery, the Internet will become a forum for only profitable large corporations, thereby reducing this as an option currently available to small business consumers.

Another important policy left without action in the 109th Congress is the viability of the Universal Service Fund (USF). The USF was designed to offset the costs of telecommunications, expenses in rural and other high cost areas by charging a fee for users to ensure access in areas where there may be none provided if strict markets were allowed to control. The USF helps Telecom providers in these areas defray the costs for necessary investment. Telecom providers in these areas are, more frequently than not, small businesses themselves, and the clients they service are also predominantly small companies. ***HR 5072, the Universal Service Reform Act of 2006*** is one attempt to stabilize the viability of the fund but it has yet to move. ***HR 2533***, another bill to address the USF issue, addresses a pressing problem that will have an immediate impact on the ability of the Fund to assist in wiring small businesses in rural areas. Failure to stabilize the USF will not only jeopardize the existence of the small rural telecom companies, but it will also threaten the livelihood of hundreds of thousands of small businesses in rural America who rely on the service.

Because the 109th Congress failed to act on these measures, the goal of providing high speed Internet access to all Americans by 2007 could be disrupted. It has been estimated that it will cost nearly \$200 billion to achieve this goal without changes. Continual failures to find a solution to this \$200 billion problem will also have an impact on the future of U.S. competitiveness.

TECHNOLOGY WORKFORCE

Small businesses in the high tech industry are a major source for innovation and job creation in this country. The United States has a long history of being the world leader in technological advancements through small startups. However, if we do not take critical

steps to shore up federal investment in technology and its small businesses that create new technologies, our leadership will wane.

A major issue that has not been addressed is the access to a quality workforce. Given the dominance of small businesses in the employment of high tech workers, it is critical that these companies are able to hire qualified employees in the United States. As such, a substantial effort must be placed on our education system to ensure that young people are choosing careers in technology fields such as math and science. The U.S. still leads in the conferral of doctoral degrees in science and engineering, however, a substantive percentage of these go to foreign nationals. ***HR 4434, the 10,000 Teachers, 10 Million Minds, Science and Math Scholarship Act***, is a proposal to expand the numbers of math and science teachers. Without action to enhance the technology-related skills of the next generation of tech workers, companies in the industry will lack the able workforce necessary to move advancements forward.

No comprehensive proposals have been considered in the 109th Congress that take a proactive approach to the factors that threaten U.S. competitiveness in the field of technology. As a result, we continue to face increased outsourcing of valuable high tech jobs abroad, and a corresponding decline in advancements created by small businesses that rely on employees with strong technology-based skills.

PROTECTING THE INVENTORS

Not only do we face challenges in retaining high-technology preeminence over other countries due to workforce issues, we also must ensure that inventors here have an environment that promotes the development of new technologies. While small business owners are leaders in this regard, the current patent system threatens the livelihood of the small technology company that is seeking to create the next breakthrough because of a patent process that is broken and discouraging innovation.

The technology industry is currently plagued by what are commonly referred to as “patent trolls” who can stifle economic growth by creating hurdles for a company being rewarded for its investment. These so-called “trolls” get patents for products they never plan to make, just so they can sue for infringement if a company produces a similar product. Given that the average court challenge to a patent costs nearly \$1 million, small businesses can ill afford to address this increasing practice.

HR 2795, the Patent Reform Act of 2005, was an attempt to revamp and modernize the patent process, but action was not finalized in the 109th Congress. The high-tech industry is particularly concerned about patent reform because their complex products often have hundreds of patented or patentable features contained within them. Research-intensive industries depend heavily on patents to safeguard their intellectual property.

Continued inaction on patent reform leaves small businesses – the source of most patents – unprotected from potential harmful litigation. As a result, entrepreneurs will be less inclined to pursue patents, resulting in fewer technological enhancements.

CONCLUSION

The failure of the Congress to move legislation affecting small businesses as both technology users and providers sets the stage for their higher costs of doing business, a less viable national communications system, increased reliance on foreign technologies, and an environment that threatens the development of new products. Instead, the 109th Congress should have solidified the structure for expanding technologies that will benefit small business consumers and entrepreneurs alike for generations to come.

TRADE

Today's economy is increasingly becoming global leaving small businesses with a unique opportunity in this environment to enter into new markets and expand their domestic operations. Today 97 percent of all export firms are owned by small businesses and their number is growing at twice the rate of corporate counterparts. They also dominate many export sector industries, including 94 percent of machinery manufacturers and 93 percent of computer and electronic producers. With the appropriate tools to export goods and meet the new challenges in the economy, small businesses can continue to be successful and contribute to the country's economic productivity.

Small firms' adaptation to globalization is hindered by many factors. The benefits of operating in the US, such as the availability of an educated workforce and comprehensive infrastructural resources result in higher production costs. This creates disadvantages for US producers, requiring them to shift expenditures from investments, charge consumers higher prices, or receive lower profits. As a result of these business decisions, US firms become less competitive with low cost producers in domestic and global markets. The playing field is consequently not level between foreign competitors and US businesses.

Entrepreneurs are critical to the nation's continued productivity - dominating many export sectors, such as metal manufacturing, and helping to maintain strong domestic industries. Ensuring these businesses remain globally viable is imperative for the US economy. Unfortunately, during the 109th Congress, national trade policies have not been designed in accordance with small business needs. As a result, entrepreneurs have fewer opportunities in the global economy thereby depressing the country's overall trade performance.

DECLINING COMPETITIVENESS OF US INDUSTRIES IN THE GLOBAL ECONOMY

Recent trends indicate that critical sectors of our economy are becoming less competitive with foreign producers. The national trade deficit has recently skyrocketed to an unprecedented level and today is over \$800 billion. Deficits are persistent in the country's manufacturing sector, particularly in advanced technology products such as computers and electronics, indicating that our innovation-based sectors are losing their share of the world market. As these industries decline, the infrastructure, technology, and research spurring innovation significantly deteriorates and becomes more costly. Consequently, firms in these industries become more susceptible to global pressures and the national economy is further weakened.

To reduce the trade deficit and ensure that our industries remain competitive with foreign producers, US businesses require access to resources, such as technology, training, and skilled employees that support entrepreneurial advancements. Small firms, with limited resources to expand their enterprises, in particular would benefit from affordable access to competitiveness tools. Without incentives supporting entrepreneurial advancements, they will have fewer resources to expend upon investments that increase the productivity of their industries.

Several initiatives have emerged this year in response to the nation's lagging performance in the global economy. The administration's American Competitiveness Act was designed to maintain the nation's global leadership in innovation by creating incentives for technological development, education, and entrepreneurial opportunities. However, the 109th Congress has failed to implement nearly all components of the initiative. Neglected legislation that would have advanced this objective includes **HR 1454** which expands and makes permanent the research and development tax credit. Inaction on this initiative demonstrates the difference between leaderships' objectives and level of commitment to strengthening US industries.

By failing to aid all US businesses in adjusting to the new demands created by globalization, smaller firms will be disadvantaged in domestic and international markets. Legislation has been proposed, such as, **HR 5043, Restoring America's Competitiveness Act of 2006**, to ensure that international engagements demonstrate benefits for all of the country's firms. The legislation requires analysis of the industrial impacts of further trade liberalization and establishes more protections for US companies engaged in international trade disputes. Unfortunately, congressional leaders have not pursued the legislation, neglecting potential small business opportunities in international commitments.

US trade policies have failed to ensure that all US businesses have the resources to develop innovative goods and processes. As national borders disappear, policies and incentives must support competitive domestic industries. Otherwise, foreign and large domestic corporations will utilize their resource advantages to adjust to and benefit from globalization, threatening the viability of the nation's entrepreneurs.

LIMITING EXPORT OPPORTUNITIES

Small businesses have immense potential to boost industries' competitiveness in global markets, yet many face significant obstacles exporting their goods and services. Due to limited production processes, small exporters have higher transaction costs and are therefore constrained in the volume and risk that they can undertake with foreign companies. Consequently, they enter foreign markets with more difficulty than large firms. In 2002, 62 percent of these firms posted sales to only one foreign market while more than half of large firms exported sales to 5 or more markets. By increasing the capacity of all businesses to export their goods/services, the benefits of international trade will expand.

To export products, all businesses require access to capital which aids in financing the development, marketing, and transportation of goods abroad. Since affordable financing is difficult to obtain in the private market, particularly for small firms with high risk and minimal credit, export financing programs are critical for businesses to expand their market share.

To increase export opportunities for all US firms, *HR 5068, the Export-Import Bank Reauthorization Act of 2006*, was drafted to ensure small businesses have the tools to participate in the international marketplace. The legislation requires the Export-Import Bank, which provides affordable capital for US exporters, to expand financing opportunities by establishing a small business division as well as customized decision-making procedures to meet these exporters' needs. Since the bank has failed to fulfill its statutory mandate to prioritize small businesses in lending decisions, the legislation would ensure that financing opportunities were available to all entrepreneurs. Inaction on the bill has effectually postponed efforts to increase the accountability of the bank to meet small business export financing needs.

Small exporters would directly benefit from the expansion of resources to affordably access foreign markets. However, until federal policies support export opportunities for all US firms, entrepreneurs will lack the ability to capitalize on new trade opportunities. Without federal initiatives to help fill the gap created by large companies having a greater share of international business affiliates, marketing tools, and capital, entrepreneurs will be at a disadvantage in the global economy.

INADEQUATE ENFORCEMENT OF INTERNATIONAL OBLIGATIONS

While export limitations create significant burdens for small firms, globalization has permitted surges of imported goods to flood domestic markets. With higher unit costs, these firms face steep competition from foreign companies with the capacity to cut production expenses. As imported products exponentially increase in the US, many of these firms and the industries they dominate have disappeared from local and national economies.

To maintain a share of the market, small businesses require greater equity in the price of production inputs. Industries suffering from the sudden influx of significant quantities of inexpensive imports require relief or they will be priced out of the market. Trade remedy laws are critical in protecting firms from goods imported below the typical cost of production in the country.

To protect US industries from import surges, *HR 1498, the Chinese Currency Act of 2005*, was drafted to counteract the advantages gained by foreign companies employing unfair trade practices such as currency devaluation. Thus far, congressional leadership has not provided for its consideration on the House floor. Without effective trade protections, US firms fall behind companies from countries that provide substantial aid to strengthen their industries' positions in the global marketplace.

To provide a more equal playing field for small businesses in the global economy, *HR 4733, Stand Up for America Act of 2006*, requires Congress to enforce the international obligations of its trading partners. The legislation establishes a Congressional Trade Enforcer which protects US firms from unfair trade practices, such as intellectual property violations. By neglecting this legislation, entrepreneurs will have fewer incentives and capabilities to pursue innovations and industry advancements.

Small firms, in particular, depend upon the enforcement of international obligations. Without adequate patent protections, for example, these firms would lose significant portions of their revenue from the production of novel goods. By not implementing substantive trade protection policies, the 109th Congress has failed to ensure that free trade is fair for all.

CONCLUSION

The benefits from the country's participation in the global economy have decreased for small businesses. Yet given their innovativeness, small businesses have significant potential to boost the country's international trade performance. By failing to establish adequate policies and market incentives to aid these firms as they operate in the new economy, the 109th Congress has placed small businesses at a disadvantage in domestic and global markets – consequently impeding their growth and contribution to the national economy.

SMALL BUSINESS “WINS” THAT WEREN’T

During the 109th Congress, there were several legislative initiatives signed into law and touted by the House Congressional leadership and the Bush administration as “wins” for small business. But in reality, many of these wins have only a minor impact on small enterprises while others are actually big business wins. In addition, many of the changes made could have done more to address some of the challenges that are facing small businesses. This section of the report will discuss these so-called “small business wins” and whether these addressed the real needs of entrepreneurs in America.

PENSION REFORM BILL

In August of this year, *HR 4 the Pension Protection Act of 2006 (P.L. 109-280)* was signed into law. This made a number of changes to traditional pension plans as defined contributions such as 401(k) plans. The legislation likely provided the sole opportunity to make major changes to the nation’s retirement plan system for probably the next decade and perhaps longer. These changes will affect pension plans for the next twenty years for both large and small employers. While there were some provisions in the bill that will certainly ease the ability of small firms to offer retirement plans, many critical proposals to improve the system were not included in the final bill.

While the legislation continued a tax credit for small employers who set up a new pension plan and made permanent higher contribution rates for 401(k) and SIMPLE plans, it is clear that more is needed to encourage sponsorship of pension plans by small businesses. Coverage rates for small employers have essentially remained flat since the first introduction of the tax credit in 2001, and it is clear that the \$500 credit per year is not enough to increase small business participation.

A primary reason small businesses do not offer retirement plans is due to complexity. According to a report by the Small Business Administration (SBA) Office of Advocacy, it showed that the per-participant administrative costs of defined-contribution pension plans (such as 401(k) plans) are as much as 14 times more for the smallest firms than for their largest counterparts. The cost of operating a 401(k) plan is high, costing about \$300 a year per employee to offer a plan for a ten-employee firm. For this reason, many small business owners choose not to offer plans.

Without reform that simplifies the plans offered by small businesses, the savings rates for employees of small firms will continue to be much lower than those in large firms. This is due to the fact that participation rates in retirement plans for small businesses, a strong indicator of overall savings rates for these employees, continue to lag. With improvements in the retirement system, it will reduce the poverty levels for seniors, as well as the reliance on Social Security as a primary source of retirement income. While the Pension Act made sweeping changes to define benefit plans that are generally offered by large companies, many measures to simplify reporting and disclosure requirements for small businesses and plans they offer were left out.

TAX PACKAGE IN 2006

In 2006, the president signed into law the *HR 4297, Tax Relief Reconciliation Act, (P.L. 109-222)*. The legislation was a holdover from 2005 and provided for \$90 billion in tax cuts with \$20 billion in revenue raisers – essentially tax increases – for a total budget cost of \$70 billion. Unfortunately, a vast array of small business priorities were cut out of the final \$70 billion tax bill to make room for other priorities. Instead, the bill included an extension of the controversial dividend tax cut – a costly tax measure that provides no benefit to the vast majority of small businesses. In terms of small business relief, the legislation fell short in the amount of the \$70 billion that actually went to small businesses.

The most obvious shortcoming for small businesses was the bill's failure to make permanent many of the top priorities for the small business community. The legislation failed to make permanent an increase in Section 179 expensing for small businesses. It also failed to address the looming issue of the Alternative Minimum Tax beyond 2006 and the impact it will have on small businesses. Other small business priorities such as leasehold improvements, depreciation schedule changes, and research tax credits were either left out or are set to expire under the bill. In addition, the bill included a revenue raiser by imposing withholding requirements on federal contractors, many of them small businesses. The three percent withholding requirement was adamantly opposed by the business community, but was inserted as an offset.

KATRINA EMERGENCY TAX RELIEF ACT AND GO ZONE ACT

HR 3768, the Katrina Emergency Tax Relief Act of 2005, (P.L. 109-73) and HR 4440, the Gulf Opportunity Zone (GO Zone) Act (P.L. 109-135) made a number of changes that affected both businesses and individual taxpayers. The most relevant for small businesses was the changes that allowed for certain businesses affected by the devastation in the Gulf Region to take advantage of expanded Work Opportunity Tax Credits as well as an employee retention tax credit for those who kept their employees. The GO Zone Act also provided for bonus depreciation for new investment and increased expensing for small businesses.

While these provisions were much needed, the overall legislation failed to provide for adequate tax relief for those that saw their businesses devastated. In order to properly recover, firms need refundable tax credits for investment and rebuilding, as it is clear that many small businesses may see no profits or losses for the foreseeable future. These credits would help them access cash to get their business off the ground and keep local economies running. In addition, greater tax relief was even more critical given the failures of the disaster loan program.

While these tax deductions will provide some assistance, there needs to be incentives for new businesses to open up in the Gulf Region. The difficulties facing entrepreneurs on the ground include work supply shortages, lack of retail space and identifying companies to help them in the process of physically rebuilding work space.

CLASS ACTION REFORM

S. 5, the Class Action Fairness Act of 2005, (P.L. 109-02) was passed into law in 2005. For small businesses, class action suits are apparently not that much of a problem despite the fact this was proclaimed to be a big issue by the bill's legislative supporters. For example, in a survey members of the NFIB were asked to rank the problems they face. Lawsuits ranked near the bottom (64 out of 75). Entrepreneurs may be among the losers under the Class Action Fairness Act rather than the winners. The Class Action Fairness Act makes it more difficult for small businesses to band together and take their grievances against big businesses to court. By definition, such suits are generally brought against large organizations (that have had an impact on a large number of customers). Indeed there have been a number of significant cases where small business owners sued large businesses such as where 500 blueberry growers sued a cannery for price fixing or where 600,000 doctors sued medical insurance companies. It is these types of large, powerful businesses that have the ability to manipulate markets that are the real beneficiaries of cutting back class actions suits.

TRANSPORTATION BILL

On August 10, 2005, the President signed the \$286 Billion Highway bill, *HR 3, Safe Accountable Flexible and Efficient Transportation Equity Act, A Legacy for Users (SAFETEA-LU or the Highway Bill) (P.L. 109-59)*, which included 6,371 earmarked projects that allocated \$24 billion to items based on local, parochial interests rather than investments for urgent national needs. Museums, low priority bridges, bike paths, parks were green-lighted for funding, while many important provisions that would improve the business conditions for small business were left out.

Investments that reduce traffic congestion and fatalities, repair and replace aging infrastructure, and keep citizens and commerce rolling smoothly across the country are desirable for the economy. However, many provisions were left out for some of these other programs. While the highway bill contains so many necessary investments that virtually every Member of Congress had to vote for it, it also included hundreds of pork-barrel earmarks along with vital projects. The 6,371 earmarks unnecessarily help create a substantial increase in the federal deficit which can lead to higher deficits. Since small businesses have very little access to equity markets and, therefore, depend far more heavily on loans, anything that increases the deficit and reduces capital available to small businesses will hurt their growth through higher interest rates.

GUN MANUFACTURER LIABILITY

In the 109th Congress *S. 397, Protection of Lawful Commerce in Arms Act, (P.L. 109-92)* passed. This bill prohibits a civil lawsuit for damages and other relief from being brought against gun manufacturers, dealers or sellers of firearms and accessories (like ammunition) for the misuse of the firearm. It also requires that all pending actions be dismissed. The only exceptions are in cases where the manufacturer knew or should have known (to a greater standard than mere negligence) that the weapon would be misused or that the gun was defective. The bills impact on small businesses will be minimal. There are roughly 180 small arms and accessories manufacturers in the U.S, while the large corporations tend to dominate the industry. While there are many small business sellers of guns, the primary intent of the legislation was to address the concerns of large gun manufacturers.

JUNK FAX BILL

Congress also passed the *S. 714, Junk Fax Prevention Act, (P.L. 109-21)* in the 109th Congress. While there are portions of the bill, which were welcomed by some small businesses – for example the right to send fax messages if an existing business relationship exists or if the fax number is publicly published – this sword cuts both ways. Other businesses can now be legally sent faxes they have not requested from sources they do not expect, costing these businesses time and money. The law (which overturns a remarkably effective junk fax ban) allows fax communication in the case of an existing business relationship without the written permission that would normally be required. Businesses (and individuals) with fax machines could continue to receive unwanted faxes unless they affirmatively “opt out.” While the bill provides that any fax that is sent must have clear instructions for how to “opt out” it will still require small business owners to use time and resources to contact the faxer and exercise their option. In the meantime, anyone who can point to some connection can now blanket potential customers with their advertisements again. Though potentially helpful to some businesses, this falls short of real protection and may create a new junk fax headache for some small business owners.

DR-CAFTA

Congress approved the *Dominican Republic-Central America-United States-Free Trade Agreement (DR-CAFTA), S. 1307/HR 3045 (P.L. 109-53)* one year ago to increase U.S. businesses’ access to foreign markets and decrease consumer prices for imported goods and services. Although the agreement was promoted as one solution to overcome the significantly imbalanced global account balance, the nation’s trade deficit is at an all time high (over \$800 billion) with the 6 DR-CAFTA countries importing a surplus of \$2 billion into the country. The nation’s small businesses, including those in the manufacturing, service, and agricultural industries will suffer significant losses from a weakened global position as a result of these trade activities.

DR-CAFTA's regional Free Trade Agreement (FTA) framework fails to consider the needs of small businesses in the country and thus places them at a competitive disadvantage in the domestic and global marketplace. DR-CAFTA works against the interests of small business by allowing a large portion of U.S. exports to be reassembled in other countries and potentially imported back into the U.S. Outsourcing harms small businesses who provide manufacturing and service-based functions to other businesses and institutions. By opening domestic markets, DR-CAFTA also allows low priced foreign producers to access the US market. Tariff reductions from the agreement have thus far increased total US agricultural exports by less than one percent, while market access to foreign sugar and cotton/textile producers threaten our domestic industries. The agreement has shifted the competitive advantage to the lowest cost producers, including foreign producers with lower environmental and labor standards, as well as large US producers with lower average production costs. By not taking into consideration their needs, small businesses have been less able to benefit, and in some cases harmed, by the implementation of DR-CAFTA.

BAHRAIN TRADE AGREEMENT

HR 4340, US Bahrain Free Trade Implementation Act, (P.L. 109 -169) was signed into law by President Bush on January 11, 2006, and attempts to expand commerce between the countries. The agreement represents an initial step in the administration's effort to integrate the US and Middle East's economies. These two countries have had a minimal trade relationship and, in 2003, Bahrain represented the 64th largest market for US goods. The commitment has not substantially improved the US's position as it currently operates over a \$5 million trade deficit with the Bahrain.

With its limited market opportunities, the benefits to the US small business sector from the agreement will likely be insignificant. The final Free Trade Agreement (FTA) excluded provisions that protect the small business sector, perpetuating their disadvantages with corporate counterparts in the global economy. The agreement fails to include trade capacity policies, such as reduced regulatory requirements, which ensure small firms can access new customers. Without market assistance programs, these firms will continue to face problems selling their goods overseas.

Drafted over two years ago, administration and congressional leaders had the opportunity to lobby for the implementation of provisions that support small businesses in the agreement. Leaders relinquished an opportunity to raise the standards for these agreements and to level the playing field by overlooking Bahrain's inadequate compliance with internationally-agreed upon labor requirements. Without integrating small business needs in the final treaty, the Republican-controlled administration and Congress failed to insist upon an equitable and efficient solution to globalization.

ENERGY POLICY ACT

Over a year ago, Congress enacted the *HR 6, the Energy Policy Act, (P.L. 109-58)* as a comprehensive set of measures to overcome the crisis in the resources that fuel our nation's homes and businesses. The bill has failed to provide immediate relief and a long-term solution to the ongoing national problem. Energy prices hit record highs this year, particularly gasoline which doubled from its 2001 level. This has created significant burdens for small businesses unable to lower their energy costs. Rather than adequately funding grant programs that provide business owners with resources for weatherization, heating and cooling products, and energy efficient equipment and lighting, the bill provides tax breaks for giant corporations already benefiting from record profits.

Although congressional leaders and the administration have touted that they are committed to eradicating the energy crisis, the legislation implements a short-sighted strategy. It provides minimal resources to invest in efforts to develop new technologies and resources. By neglecting renewable energy initiatives, the legislation fails to capitalize on the knowledge of small businesses, which are on the cutting edge of the creation of new technologies and alternative resources. Leaders have also failed to implement all of the statute's provisions thus far, providing nearly 50% less for research on renewable energy than was promised in the law. The policy has taken the country in the wrong direction, burdening our businesses while preventing them from working toward affordable, independent and sustainable energy choices.

INTELLECTUAL PROPERTY RIGHTS FOR U.S. COMPANIES

In an effort to provide relief for US businesses suffering from intellectual property (IP) rights violations, President Bush signed into law *HR 32, the Stop Counterfeiting in Manufactured Goods Act (P.L. 109-181)*. The focus of the law is to enforce sanctions for the sale of products using counterfeit labels. While it will benefit corporations with the resources to secure trademark rights and prosecute entities that infringe upon them, the law fails to adequately protect small businesses' from the theft of ideas and innovations.

In contrast with larger companies, small businesses have a more limited capacity to protect their intellectual property rights due to the high cost and complex process of securing patents. By focusing solely on the protection of labeled goods, the law fails to provide assistance to companies attempting to earn or defend their inventor status. Enforcement strategies should be complemented by efforts to provide technical assistance for patent protections and to ensure trade partners comply with international obligations. Without enacting a comprehensive approach to IP violations, entrepreneurs will continue to face disadvantages developing and marketing innovative products.

TERRORISM RISK INSURANCE REAUTHORIZATION ACT

S. 467, the Terrorism Risk Insurance Act, (P.L. 109-144) was created to provide a federal insurance backstop for acts of terrorism, ensuring that businesses would be able to have access to affordable coverage for these types of events. While the reauthorization extended this Act through 2007, it creates several key problems for small businesses.

The reauthorization did not expand the Act's coverage to apply to many of the types of terrorist attacks that could potentially impact our country. By not doing so, business owners will be unable to access affordable insurance coverage for these types of events – which are a growing possibility in today's world. Without such coverage, small firms could be deterred from locating in downtown, urbanized business districts, where the perceived threat of such an attack is higher. This could undermine economic activity in many communities.

By only extending the Act for two-years, the administration has created great uncertainty in the marketplace for terrorism insurance. While the private sector is playing a greater role, the federal government must be a long-term partner. Doing so will supply terrorism insurance in the amounts and types of coverage necessary to provide for economic stability. Until Congress and the administration act to expand terrorism insurance coverage through a long-term solution, small businesses will not be able to secure the cost-effective insurance coverage they need.

BANKRUPTCY

During the 109th Congress, President Bush signed into law *S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (P.L. 109-08)*. The core provision of this Act is a means test for consideration through Chapter 7, under which existing personal debt is often discharged. The new law affects small businesses because most are unincorporated and, when and if financial crisis arises, the owner often files for personal bankruptcy under Chapter 7. By establishing tougher requirements for Chapter 7 bankruptcy protections, this law creates disincentives for risk-taking in our economy and has the potential to limit entrepreneurial activity.

Previously, Chapter 7 provided entrepreneurs with numerous protections essential to preserving an entrepreneurial climate in the United States. This provision enabled small business owners to readily protect future earnings, which permitted a “fresh start” for future entrepreneurial pursuits. In addition, the provision allowed entrepreneurs to shield current assets, allowing the owner to be more financially able to launch a new venture. By restricting access to Chapter 7, as the new law does, business owners are essentially given one opportunity to succeed. If they fail, the new law will deter subsequent entrepreneurial endeavors. By creating disincentives for risk-taking, individuals will be less likely to start up new companies, pursue innovative ideas, or take the economic risks that are central to the strength of the U.S. economy.

PATIENT SAFETY BILL

Congress passed *S. 544, Patient Safety and Quality Improvement Act (PSQIUA) of 2005 (P. L. 109-41)*. The PSQIUA attempts a laudable goal by creating a national patient safety center to address medical errors within the health care system. Information reported for analysis and feedback would be immune from the legal discovery connected to civil suits and the Freedom of Information Act. Patient Safety Organizations would be certified by HHS and individuals and entities can voluntarily report medical errors which can be analyzed and used to provide feedback.

The lack of sufficient funding for the program will likely make it difficult for many small providers to participate in the voluntary program despite the fact they may be able to supply the most valuable information. The Act will not become effective until regulations are issued and no one is sure how long that process will last what the regulations will look like. It is unclear as written whether all health care activities could be classified as patient safety activity and fall under the Act and many small providers will be concerned that they are protected under the immunity clause under the bill. The reality is that this bill will provide little benefit to small providers because it is likely that the program will mostly be made up of hospitals and large entities in the health care industry.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2006

HR 1815, the National Defense Authorization Act for Fiscal Year 2006, (P.L. 109-163) fell short in some of the ways it could have helped small government contractors. Unfortunately, three proposed changes that would have helped small businesses, as well as improved the overall contracting process, were ultimately left out of the final bill.

During House consideration, a provision was included that would have protected the government from its existing exposure to poor quality work. This section provided a statutory prohibition against what are commonly referred to as “reverse bid auctions” for construction work. Under this contracting option, companies bid the lowest for a particular type of product or service. While this can be beneficial for commodities, where pricing is often the over-riding factor in selecting a winning contractor, construction is a much more complex purchase. More than ever, agency procurement officials are looking for the fastest and easiest way to acquire goods and services. Reverse auctions are not the best way to go for construction contracts as they leave agencies at risk to unscrupulous companies. This would preserve the good names of small businesses who perform quality work.

Two important small business amendments were also offered to this legislation during its Senate consideration, but were ultimately left out: “*Small Business Contracting in Overseas Procurements*,” and “*Fair Access to Multiple-Award Contracts*.” Under the current interpretation of the law, the SBA subtracts contracts performed overseas from small business goals. The Senate passed a statement of policy to ensure that federal agencies achieve their small business goals regardless of where the work is performed. This provision would have opened up billions of dollars in overseas contracting opportunities to small companies.

The second proposed change in the Senate related to how the agencies purchase goods. One of the most common ways for agencies to purchase goods and services is through the General Services Administration’s (GSA) Federal Supply Schedule. Unfortunately, while competition is required, small companies are often forced to compete against their much larger counterparts. This provision would have allowed agencies to limit competition only to small companies – which is currently prohibited by the GSA. Allowing small companies to compete amongst each other would have increased the likelihood that small firms would obtain more contracts.

These three provisions that would have benefited small businesses – one on the House side and two on the Senate side – were not made part of the final bill. Because of this, P.L. 109-163 did not contain any provisions designed to increase small business access to the federal marketplace.

EMERGENCY SUPPLEMENTAL SPENDING BILL IN 2005

Congress passed *HR 1268, the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, (P.L. 109-13)* that included \$76 billion in spending as well as some legislative changes. A provision was included requiring the SBA and the Department of Energy (Department) to enter into a Memorandum of Understanding with respect to measuring how the Department does contracting with small businesses that could hinder access to contracts for these small companies. The change would have altered how the Department calculates its small business goal achievement. As the second largest buying agency in the federal marketplace, the Department has one of the worst records for contracting with small companies and the change appeared to be an effort to inflate these goal achievements.

This proposal is harmful because every agency counts small business participation exactly the same way. To suggest that some agencies should count differently confuses the situation – particularly when the government-wide systems to track small business participation have disintegrated. The genesis of this language was a Senate proposal that would have allowed the Department to count subcontracts awarded by large Department prime contractors, as if they were really Department contracts. This not only masks the fact that small businesses would be subcontractors, but reported as prime contractors – it also set a poor precedent by removing any incentive the Department would have to provide contracts to small companies.

The so-called “compromise” contained in HR 1268, unfortunately creates the perception that the Department is unique and should possibly have its small business contracting achievements counted in a more favorable way to the Department. Instead, Congress should be working together on ways to ensure that agencies are held accountable for not achieving their small business goals, rather than giving agencies new ways to count.

FY 2006 BUDGET -- DEFICIT REDUCTION ACT OF 2005, HR 4241/S 1932

To offset the country’s unprecedented \$423 billion deficit, requests for additional war funds, and unexpected outlays, reconciliation spending was enacted, *HR 4241/S1932, the Deficit Reduction Act of 2005, (P.L. 109-171)* and signed into law on February 8, 2006. The legislation provided cuts to mandatory spending programs – many of which have a major impact on small business. This legislation reduced federal spending by approximately \$40 billion over the next 5 years affecting many programs that currently serve small businesses.

This legislation was passed in conjunction with an FY 2006 budget document that had already slashed funding for small business programs. The FY 2006 budget and deficit reduction bill continue the Republican-controlled Congress and administration’s efforts to minimize federal resources that promote entrepreneurial growth in the country. Small business programs have had over a 100% increase in cuts over the last 3 years, while 50% are slated for funding reductions in the current fiscal year. This represents one of the largest areas cut in the budget. The Deficit Reduction Act will hit those in the agriculture the hardest as there were significant spending cuts to programs that help those in rural America. Despite these cuts, the deficit continues to skyrocket due to increased spending on the war and tax cuts that have failed to generate the necessary revenues. Thus, small businesses are confronted with a federal government that cannot balance its books, and the majority of cuts are coming from programs that serve their needs.

The investments in the FY 2006 budget show that the commitment to small businesses and the programs that serve them is waning. It should also be noted that the 109th Congress has failed to adopt the FY 07 budget even as the country’s economy and industrial productivity continues to lag.

CONCLUSION

As this report demonstrates, small businesses reached out to lawmakers for assistance on a wide range of policy issues. In most cases, however, Congress did not take the necessary action, failing to enact numerous pro-business initiatives, while letting other key legislative priorities languish. Its failure to address the problems that the business community is encountering has left many entrepreneurs without the resources and tools they need to be successful.

Given all of these economic, regulatory, and legal challenges of the last two years, small businesses reached out for federal assistance. During the 109th Congress, 98 small business trade associations prioritized 196 legislative initiatives. Of these priorities, 175 bills – or 90 percent of these pro-small business bills – continue to languish, having passed only the House, only the Senate, or, in many cases neither chamber. Even though Republicans controlled the U.S. Senate, the U.S. House of Representatives, and the White House during the 109th Congress, more than 85 percent of the Republican-introduced bills to assist small businesses remain stalled.

Lawmakers failed to pass legislation on a wide range of major policy issues that were important for small businesses. On the critical issues of health care, no solution was crafted that would enable small firms to more readily afford health care insurance – leaving millions of their employees without necessary medical coverage. Immigration was another top issue for small firms, many of which rely on foreign workers for labor. While it was a popular topic for politicians to discuss, comprehensive immigration reform remains stalled in Congress, with several pending solutions failing to meet the needs of the business community.

Unable to pass major legislation, it was expected that non-controversial legislative items would be enacted into law. Unfortunately, this was not the case as several historically bipartisan issues were left unresolved as well. Among these issues were the reauthorization of the Small Business Administration (SBA) and the Export-Import Bank of the United States. The SBA and its programs, which are used by thousands of small businesses each year, need to be modernized and reformed. The Export-Import Bank, on the other hand, needs to refine and reorient its approach to smaller firms. In these and other areas, there was a general consensus on policy solutions; however, a lack of congressional action resulted in many small business priorities being left unaccomplished. While nearly 200 bills were introduced that would have assisted small businesses, only 21 – or just 10 percent – were signed into law.

This lack of legislative action – occurring on so many fronts – is indicative of the internal priorities of Congress. This report reveals that small businesses were a low-tier concern for the Republican-controlled 109th Congress, which, when compared to previous Congresses, produced the least number of public laws in recent history. In the 109th Congress, 280 bills became public laws – the first time that fewer than 300 public laws were enacted since the 93rd Congress in 1973-1974.⁴ During the last two years, small businesses’ legislative priorities were not a primary focus, accounting for only 8 percent of public laws enacted. In sharp contrast, 77 public laws were enacted that named U.S. Post Offices or other government buildings, accounting for 28 percent of public laws, more than three times the number of laws enacted to assist small businesses. For both startups and more established small businesses, the 109th Congress provided little in the form of substantive relief or progress.

By not providing this relief, small firms will be less able to expand, hire new employees, and contribute financially to the communities they are located in. In some locales, this will lead to dampened growth, fewer startups, lower job creation, and a reduced tax base. Due to Congress’ disregard for small business priorities, entrepreneurs have faced an economic and regulatory climate that was more challenging than it would have been had policymakers been less passive. Laws that could have been enacted to encourage innovation and entrepreneurship were ignored, causing many new ventures to look overseas for resources, labor, and capital. The result is a political economy that remains at best stagnant – and at worst hostile – to the interests of our nation’s small businesses.

⁴ The 93rd Congress is the earliest Congress readily searchable via the Library of Congress’ Thomas on-line service.

THE UNFINISHED SMALL BUSINESS AGENDA - THE 109TH CONGRESS

ACCESS TO CAPITAL

- H.R. 436 – Increased Capital Access for Growing Business Act
- H.R. 1224 – Business Checking Freedom Act of 2005
- H.R. 1868 – Access to Capital Act of 2005
- H.R. 2943/S. 1263 – Save Biotechnology Innovative Research Act of 2005
- H.R. 5352 - Small Business Reauthorization Act of 2006
- H.R. 3429/S.1923
- H.R. 5405/S. 2824 - COMPETE Act

AGRICULTURE

- H.R. 2047 – Railroad Competition Improvement and Reauthorization Act of 2005
- H.R. 5099 – Emergency Agriculture Disaster Assistance Act of 2006
- H.R. 4332
- H.R. 384
- H.R. 5372 – Biofuel Act of 2006

CONTRACTING

- H.R. 2965 – Federal Prison Industries Competition in Contracting Act
- H.R. 2834 – Construction Quality Assurance Act
- H.R. 4474 – Minority-Owned Venture Empowerment Act
- H.R. 2067 – Acquisition System Improvement Act

DISASTER ASSISTANCE

- H.R. 4234 – Small Business Gulf Coast Revitalization Act
- S. 1807 – Small Business Hurricane Relief and Reconstruction Act of 2005
- S. 1724 – Small Business, Homeowners, and Renters Disaster Relief Act of 2005
- H.R. 5334
- S. 3664 - Small Business Disaster Recovery Assistance Improvement Act of 2006
- H.R. 5924

ENERGY

- H.R. 424 – Energy Efficiency Investment Act of 2005
- H.R. 983
- H.R. 1212 – Save America’s Valuable Energy Resources Act of 2005
- H.R. 5965 – Program for Real Energy Security Act
- H.R. 612 – Energy Basic and Applied Sciences Act of 2005

HEALTH CARE

- H.R. 525/S. 406 – Small Business Health Fairness Act of 2005
- S. 1955 – Health Insurance Marketplace Modernization and Affordability Act of 2005
- S. 1329 – Small Business Health Care Act of 2005
- H.R. 2073 – Small Business Health Insurance Promotion Act
- H.R. 5288 - Small Business Health Plans Act of 2006

IMMIGRATION

- H.R. 2330/S. 1033 – Secure America and Orderly Immigration Act
- H.R. 4740 - Save our Small and Seasonal Small Businesses Act of 2006

REGULATIONS

- H.R. 230 – National Small Business Regulatory Assistance Act of 2005
- H.R. 435 – Equal Access to Justice Reform Act of 2005
- H.R. 682 – Regulatory Flexibility Improvement Act of 2005
- H.R. 742 – Occupational Safety and Health Small Employer Access to Justice Act of 2005
- S. 769 – Small Business Compliance Assistance Enhancement Act of 2005
- H.R. 5242 – Small Business Paperwork Amnesty Act

TAX

- H.R. 1186 – Alternative Minimum Tax Repeal Act of 2005
- H.R. 1241 – Cool and Efficient Buildings Act
- H.R. 1388 – Small Business Expensing Permanency Act of 2005
- H.R. 1510 – Realistic Roofing Tax Treatment Act of 2005
- H.R. 3841 – Small Employer Tax Relief Act
- H.R. 4960 – Tax Fairness for Small Business Act of 2006
- H.R. 1568
- S. 3626 – Estate Tax Relief and Reform Act of 2006

TECHNOLOGY

- H.R. 2795 – Patent Reform Act of 2005
- H.R. 5273 – Network Neutrality Act of 2006
- H.R. 5417 – Internet Freedom and Nondiscrimination Act of 2006
- H.R. 5072 – Universal Service Reform Act of 2006
- H.R. 2533 – Amendment of Communications Act of 1934
- H.R. 4434 – 10,000 Teachers, 10 Million Minds, Science and Math Scholarship Act

TRADE

- H.R. 1454
- H.R. 5043 – Restoring America’s Competitiveness Act of 2006
- H.R. 5068 – Export-Import Bank Reauthorization Act of 2006
- H.R. 1498 – Chinese Currency Act of 2005
- H.R. 4733 - Stand Up for America Act of 2006