



Written Testimony of

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Before the

**House Committee on Small Business**  
**Subcommittee on Economic Growth, Tax, and Capital Access**

On

**“Audits and Attitudes: Is the IRS Helping or Hurting Small Businesses?”**

Dear Chairman Huelskamp, Ranking Member Chu, and Committee Members:

Thank you for the opportunity to testify today on the Internal Revenue Service's (IRS) interaction with the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA). I am Emily Peterson-Cassin, the Bright Lines Project Coordinator at Public Citizen's Congress Watch. Public Citizen is a national nonprofit public interest organization with more than 400,000 members and supporters. For 45 years, we have successfully advocated for stronger health, safety, consumer protection and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest.

My own work at Public Citizen is to coordinate the Bright Lines Project, an expert team of attorneys and nonprofit partners working for an improved tax code definition of political activity applicable to all nonprofits. Clearer rules for the nonprofit sector will strengthen nonpartisan engagement in our democracy while curbing abuses of the nonprofit structure and making enforcement of the rules easier for the IRS and the Treasury Department.

I do not need to tell this committee how important small business is to our economy and our society. Protecting small business owners and employees is a paramount goal of our government. Congress can and should protect small businesses by ensuring a clear, predictable framework of tax rules and regulations. Rules that are easy to follow and enforce allow small businesses to thrive while minimizing opportunities to abuse the tax system. And the IRS should be doing more to ensure that small businesses can easily comply with the regulations already in existence, and work to improve its ability to provide accurate and timely guidance.

At the same time, it is important to recognize that rules intended to protect small businesses can have unintended effects. Laws that are intended to help small businesses, such as the RFA and SBREFA, in practice can allow large corporations to delay important regulations and thus harm small businesses rather than help them.

Finally, while fair enforcement of regulations is critical for small business success, it is also important that we ensure that the tax code itself provides a level playing field for small business. Currently, loopholes in the tax code allow multinational entities advantages that smaller players do not have, and prevent domestic businesses from being fully competitive in the marketplace. These loopholes allow tax-avoidance by large corporations, and small entities that would rather spend their resources on building their business than on elaborate avoidance schemes cannot take advantage of them. For example, reforming the code to remove the incentives that promote complex corporate tax-avoidance schemes like inversions would help small businesses by leveling the playing field, so that small, domestic businesses can compete more fairly with big international businesses.

**I. Delaying Appropriate Regulations Harms Rather than Helps Small Business.**

The benefits to small business and our society of having a safe and healthy workforce made possible by sensible regulations, including tax regulations, are tremendous.<sup>1</sup> For example, in addition to improving the quality of life in our country, regulations in the areas of public health and environmental safety reduce time lost due to illness among workers and their families. The Environmental Protection Agency (EPA) estimated that the Clean Air Act prevented 13 million lost work days in 2010 alone.<sup>2</sup> In addition, the costs of large-scale industrial catastrophes preventable by adequate regulation fall disproportionately on small business, for example when local tourism is affected. Regulations are also essential for opening up new markets for small businesses, and help incentivize innovation in safer and cleaner technologies. Regulations make our country stronger, safer, cleaner, healthier, and fairer to small business.

The RFA and SBREFA are intended to benefit small businesses by ensuring that the costs of these important regulations do not fall disproportionately on them. Paying for tax assistance, compliance, consultants, accountants, and others is easier for large corporations than for small businesses.

Unfortunately, SBREFA does not operate to support small business. Instead, SBREFA has provided an opportunity for large corporations to delay progress on important regulations. The SBREFA panels at the EPA, the Consumer Financial Protection Bureau (CFPB) and the Occupational Safety and Health Administration (OSHA) are good examples. The panels currently require massive government work and spending even on rules that will have no application on small businesses. The analysis required under SBREFA can delay the already laborious rulemaking process for months. A recent Government Accountability Office (GAO) report which investigated the slow process of rulemaking at OSHA found that it takes about eight extra months of work for OSHA to prepare for the SBREFA panel.<sup>3</sup>

Because SBREFA operates to delay the regulatory process, pushing the IRS to apply SBREFA more broadly is not a good way to help small business. The IRS issues guidance in the form of revenue rulings, private letter rulings, and revenue procedures and announces updates on that guidance weekly.<sup>4</sup> This up-to-date guidance helps practitioners understand the uniquely-demanding tax code. Requiring the IRS to do more analysis of their advice before publication will limit the amount of information available to small business and make compliance harder, not easier. In addition, unnecessary additional steps would cause pointless delay in the issuance of needed guidance. Subjecting the IRS's guidance processes to superfluous analysis like a SBREFA process would render that guidance less useful and certainly less timely.<sup>5</sup>

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<sup>1</sup> See generally, *The Administrative State: An Examination of Federal Rulemaking*, Hearing before the S. Comm. on Homeland Security and Government Affairs, 114th Cong. (2016) (statement of Robert Weissman, President, Public Citizen). Available at <http://www.hsgac.senate.gov/hearings/the-administrative-state-an-examination-of-federal-rulemaking>

<sup>2</sup> Environmental Protection Agency, *Factsheet: Benefits and Costs of the Clean Air Act Amendments of 1990*, available at <https://www.epa.gov/sites/production/files/2015-07/documents/factsheet.pdf>

<sup>3</sup> *Workplace Safety and Health: Multiple Challenges Lengthen OSHA's Standard Setting*: Hearing Before the S. Comm. on Health, Education, Labor, and Pensions, 113th Cong. (2012) (statement of Revae Moran, Director, Education, Workforce, and Income Security).

<sup>4</sup> The IRS weekly bulletin may be found at <https://apps.irs.gov/app/picklist/list/internalRevenueBulletins.html>

<sup>5</sup> Public Citizen takes no position on whether the IRS is correctly interpreting its obligations under RFA and SBREFA.

## **II. Finding the Balance: A Path to a Successful Regulatory Regime**

Though the advisory panel component of SBREFA legislation often results in unnecessary delay to needed regulations, other aspects of the law do help small businesses comply with regulations, and could be expanded to be even more helpful. In addition to providing information on non-tax regulatory compliance, agencies with Small Business Ombudsman offices could expand their outreach and provide more education on tax issues in the industries the agency oversees.<sup>6</sup> Congress should pass legislation that ensures those offices are conducting effective outreach and establishing “best practices” guidelines. Programs at the IRS itself could be expanded with adequate funding and direction from Congress as well. Such reforms would give direct, tangible assistance to small businesses.

In the IRS context and others, additional analysis on small business impacts for some rules may be useful so long as the delay in implementing a final rule does not give larger competitors an unfair advantage. Small business analysis should be narrowly targeted to benefit small businesses. When agencies, including the IRS, undertake an analysis specifically to determine the impact upon small business, care should be taken to ensure that the extra work is not wasted because the rule in question would not affect small business. By the same token, a good rule should not be delayed for all businesses because of an additional analysis applicable only to small businesses.

Even without these changes to SBREFA, there is much the IRS could do to reduce the compliance burden on small businesses. However, funding cuts to the IRS in the past few years has made that assistance more difficult to provide. Since fiscal year 2010, the IRS’s funding has been drastically cut again and again.<sup>7</sup> Consequences of those cuts have been far-reaching, leading to reductions in staff available to assist taxpayers and in the training available to that staff.<sup>8</sup> An IRS staff that is adequately knowledgeable and available to small business taxpayers is essential to answer questions as they arise and prevent compliance problems from compounding.

## **III. Loopholes in the Tax Code Hinder Small Business Success in the Marketplace**

Finally, it is impossible to talk about whether the IRS helps or harms small businesses without acknowledging that the tax code which the IRS enforces stacks the deck in favor of large multinational corporations in a set of important ways. For example, the practice of inversion (merging with a foreign company and reincorporating in a tax-friendly nation in order to save money on taxes) allows companies with the resources to carry out a multinational merger to shift their tax burdens onto small businesses and individual taxpayers, while retaining unfettered access to the U.S. economy. Treating a larger number of inverted companies as domestic for tax purposes (as proposed by the Stop Corporate Inversions Act) would reduce the incentive for U.S. companies to invert.

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<sup>6</sup> A list of small business ombudsman offices can be found at <http://www.sba.gov/category/navigation-structure/starting-managing-business/starting-business/business-law-regulations/contact-government-agency/fe>

<sup>7</sup> <http://taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/IRS-BUDGET-The-IRS-Desperately-Needs-More-Funding-to-Serve-Taxpayers-and-Increase-Voluntary-Compliance.pdf>

<sup>8</sup> Internal Revenue Service, Prepared Remarks of Commissioner Koskinen before the AICPA, Nov. 3, 2015.

Other tax avoidance gimmicks like profit-shifting also stack the deck against small, domestic businesses. A recent random sampling of entrepreneurs found that nine out of ten small business owners agreed that the practice of U.S. corporations using accounting loopholes to shift their profits overseas and avoid taxes is a problem, and they support eliminating these tax breaks and providing incentives to bring production home.<sup>9</sup>

Well-resourced corporations have an unfair role in creating and keeping loopholes that benefit them at the expense of small business. Our current political spending system allows big-dollar political donations and expensive lobbying by corporations to preserve their favored status at the expense of small businesses unable to make the same expenditures. More than three-quarters of small employers say that big businesses have a significant impact on government decisions and the political process, while not even one quarter believe that of small businesses.<sup>10</sup> To correct this imbalance, we need significant changes to the way our election campaigns are financed, including at the IRS. For example, the Bright Lines Project advocates for a better definition of political activity for nonprofits, which would operate to strengthen the nonpartisan role of nonprofits in our democracy while ensuring that voters have full information regarding the financing of their elections. Adopting such changes through rulemaking and new campaign finance laws would help small businesses play on a level playing field.

## **Conclusion**

It is in our nation's interest that small businesses are able to grow and thrive in a society that protects health and safety and ensures that the market operates fairly to businesses of all sizes. Small changes to SBREFA, fully funding the IRS, and closing unfair loopholes will ensure that the playing field is level for small businesses.

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<sup>9</sup> Small Business Majority, *Dept. of Treasury Actions on Corporate Tax Inversions will Help Level the Playing Field for Small Businesses*, (April 5, 2016) <http://www.smallbusinessmajority.org/press-release/dept-treasury-actions-corporate-tax-inversions-will-help-level-playing-field-small>

<sup>10</sup> Small Business Majority, *Small Business Owners Feel Disadvantaged when it comes to the Electoral Process, Support Significant Reforms*, (Oct. 30, 2014) <http://www.smallbusinessmajority.org/our-research/government-accountability/small-business-owners-feel-disadvantaged-when-it-comes>