

**FIELD HEARING: TULSA, OK: HOW REGULATIONS
STIFLE SMALL BUSINESS GROWTH**

HEARING
BEFORE THE
SUBCOMMITTEE ON ECONOMIC GROWTH,
TAX, AND CAPITAL ACCESS
OF THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

HEARING HELD
JULY 22, 2019



Small Business Committee Document Number 116-037
Available via the GPO Website: www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2019

37-074

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Questions for the Record:	
None.	
Answers for the Record:	
None.	
Additional Material for the Record:	
None.	

HOW REGULATIONS STIFLE SMALL BUSINESS GROWTH

MONDAY, JULY 22, 2019

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON ECONOMIC GROWTH,
TAX, AND CAPITAL ACCESS,
Washington, DC.

The Subcommittee met, pursuant to call, at 9:00 a.m., at Oklahoma State University-Tulsa, North Hall Conference Center, Room 150, 700 N. Greenwood Ave., Tulsa, OK, Hon. Andy Kim presiding.

Present: Representatives Kim and Hern.

Chairman KIM. Good morning, everyone. The Committee will come to order.

I want to thank everyone for joining us here this morning. First I would like to thank Congressman Hern for welcoming me to Oklahoma, for putting this all together and making sure that we have an opportunity here directly for you.

First of all, I will just start by saying it is a real great honor to be able to be here in Oklahoma. I am glad I could bring the cooler weather here to you today, and hopefully we will be able to bring a good discussion as well on what it is that we can be doing for you.

This is my very first time doing a field hearing, a hearing outside of D.C., and I will tell you, this is the kind of stuff that Congress needs to be doing more of in terms of coming out, meeting you where you are at, hearing from you, understanding what is happening on your end and not just living in some sort of bubble in Washington, D.C.

I have the great honor of being able to serve on this Committee and the Subcommittee with Congressman Hern, and from the very beginning we had a sit-down just talking through what it is that we can be doing together, really trying to make sure that the Small Business Committee is a committee that is focused on the people, that in this time of divided government, that it is a place where we can show the rest of Congress, as well as the rest of this country, what bipartisanship means in terms of our ability to focus in on where the rubber hits the road on the issues that matter to individuals and businesses, especially small businesses, each and every day, and really trying to have an impact on the tangible things that can be done to be able to address that.

I remember the very first time when I was sitting in his office and we were talking about what are some of the issues that we could be working on, this issue that we are going to be talking

about today was the first thing out of his mouth. He said, look, we have to find ways to make sure that we are helping out our small businesses, making sure that we are not drowning them in paperwork, that they are able to operate in the way that they need to.

So I am really glad that we have an opportunity to hear from our witnesses here today, as well as just the broader community about what it is that we can be doing.

I think for me, this is an issue where we have been grappling on this over the course of the last six months, trying to figure out what is the right balance that we are dealing with when it comes to the regulation side, but also the promotion of business side. And I think that we really need to think about this in both ways and try to strike the right balance.

It is a balance that is hard to strike, but it is a fine line that we as legislators need to figure out and understand what it is going to be that we do. It would be irresponsible of us to simply disregard all regulations, but we also need to make sure that we are trying to find the right balance, focusing on the right issues.

In particular for me today, to hear from all of you about what are the tangible impacts that this is having, either on the bottom line financially or on personnel or others, that is helpful for me to take back and understand how does this actually get implemented. From my end, having been on the Federal Government side—I was a diplomat before this, worked at the State Department, Pentagon—I certainly have from my own experiences troubles where we have been burdened with all sorts of reports and other things, and it prevented me from doing the job that I was being asked by the American people to do. So I understand that there has to be ways in which we can strike that balance, and small businesses experience that even greater than what it is that I experienced, and I certainly want to find ways that we can be focused on it in that way.

We must think about it not just in terms of the impact today but also the impact over the course of the long term, what the consequences would be.

Also, just trying to extrapolate and take from the lessons that you are giving us today, the insights that you will have, and how that applies more broadly to other businesses, other industries that aren't represented in this room today as well, and that is a responsibility that Congressman Hern and I have, that we have to make sure we are trying to look at the bigger picture and understand how that all comes together.

We understand the implications as we have seen regulations and the impacts that that had, as well as the consequences that happened when they were not having the proper oversight, whether that was with the financial crisis in 2007 to 2008, or environmental issues, which I know we will get into. Certainly, as a district on my end on the Jersey Shore, a district that got crushed by Superstorm Sandy, where we are having real environmental problems, whether that is along the shoreline or in the pinelands, we have a tremendous amount of flooding that I also heard is something that this community here is struggling with as well. So just trying to understand how are we mindful about this while we are also looking out for our businesses, especially small businesses.

We also need to make sure that we are ensuring that the regulations are not harming the small firms, folks that are just trying to get their businesses up and running, not getting caught up in the red tape, find the right way to right-size our regulations and make sure that they are actually getting at the intended purpose. Having read through some of the words that you will likely be saying in our testimonies, just understanding what was the intention of this rule or regulation and is that actually being implemented, because even if it has the right intention, it could be outdated, it could be something that isn't just quite getting at the heart of it, and again putting in burdens while also not serving the function that it was put in place to do.

Certainly, we see things from our own angle, but having your perspective and the perspectives of folks and businesses right here in Tulsa and across Oklahoma is critically important to that.

During today's hearing we will hear from small business owners, bankers and farmers about the regulation impacts on their businesses and local communities, and I look forward to hearing from each and every one of you about what it is that we can do to improve our regulatory system, promote economic growth and job creation, while continuing to protect our consumers, our families, and our communities.

Again, I want to thank the witnesses all for being here today, and I would now like to yield to the Ranking Member, Mr. HERN, for his opening statement and to introduce our witnesses.

Mr. HERN. Thank you, Mr. Chairman.

Chairman Kim mentioned it is his first time to be in Tulsa, and the way this works—and I am greatly indebted to him because I told him I would love to return the favor. But to have these field hearings, you have to have your colleague on the other side be willing to attend, and he was most gracious in offering his presence to be here to make this work. I jokingly said I am wearing my bipartisan tie today. It has red and blue in it. But this Committee has been really refreshing, to see a committee where you can work together to find solutions, because what I have found, and I think the Chairman would agree with this, is that when you are sitting with witnesses, at the end of the day they are really not very partisan at all, they just want things to move out of the way so they can grow business, create jobs, put Americans to work, which is exactly why I ran for Congress, was to reduce the regulations on small business and people with ideas who wanted to go find capital, create business, create jobs, put Americans to work.

So this is a very refreshing committee to be on in the midst of all of the crazy tweets on both sides and all the messaging going on. But this is very refreshing.

Congressman Kim serves in New Jersey's Third District, which goes from Pennsylvania over to the Atlantic Ocean. Is that right?

Chairman KIM. That is right.

Mr. HERN. Yes. So it is great. We both serve on the Economic Growth and Tax and Capital Access. If you think about it for a second, it is hard to start, if not impossible, if you can't get capital to start, take your idea and start a business. From time to time it is very difficult if you can't find capital to grow your business. Certainly every one of us, regardless if you are in business or if you

are working for somebody, we are always dealing constantly with the tax issues, does it apply, does it treat you fairly, does it prevent the government from picking winners and losers. At the end of the day, the regulatory process, we do have to have a certain amount of regulations to protect from certain things that happen out there, but it is always the swinging of the pendulum that sometimes gets us when we make it so overbearing that we cannot even stay in business.

I understand this very well. I have been in small business since 1985. I created my first one-person business under then-President Ronald Reagan and had the fortunate opportunity with every president since then to create a small business, operate small businesses for a long time, so I get it.

When you are the last to get paid, every regulation is just like a tax. It prevents you from growing your business. It prevents you from being able to create jobs, put Americans to work.

I spent 17 years on executive bank boards, 13 years on McDonald's National Leadership Council, working with every diversity group in America. McDonald's is the most diverse company in the world. It wins national and global honors for that every year. It is about listening to ideas, finding solutions, and growing businesses. That is what it is about. I would say that we would be better off if we could continue to do that and have less dependency on Washington, D.C. There is no gain from that from the standpoint of dependency. Most Americans, again, if you let people and our witnesses speak in the Small Business Committee, if you walked in that room after the first introductions, you probably couldn't tell what party they belonged to. It has been very refreshing, and I think most people would recognize that as well.

I served five years as the Chief Financial Officer for the McDonald's franchisees in the system on our National Leadership Council, five years on our McDonald's tax policy, so global tax policy, domestic tax policy, large corporation, small business. So I have seen it from every perspective, what happens when you have extenders, don't have extenders, lower the rates so everybody benefits, and then eight years on their global insurance board. So I have seen the impact of insurance on small business when it comes to regulatory processes and what that does to drive the business.

As the Chairman said, we don't have every small business industry represented in here. We have a cross-section of four. Some would argue, Mr. Selman, that you work in the Farm Bureau but you are also in the other area of agriculture. So as you are looking at these things, you are talking about how do we take this information and do we cross-pollinate all the different industries and say how can we take what we learned today and be able to help small businesses grow.

The interesting thing about small businesses, we stand at 3.2 percent unemployment in Oklahoma, over 350,000 small businesses in Oklahoma, and that is about 99.4 percent of all firms in the state. Nationally, small businesses account for 99.7 percent of all firms in the United States. Think about that. Only three-tenths, three-tenths, of 1 percent of all businesses in the United States are what we call large businesses.

So 28 million small businesses in America. We had a period of time there when regulations were stifling that we actually had a net decline in small businesses. When you think about what we consider as large businesses today, what we consider McDonald's Corporation, what we consider Walmart Corporation, what we consider Amazon, what we consider Microsoft, what we consider Apple as very large corporations, every single one of them started out in garages as a one-person shop or a two-person shop.

The point being of that is if our small businesses aren't growing, how are we going to have big businesses in the future? We have to have the incubators of the small business men and women growing their small businesses so that one day some of them will grow through the cracks and be the large business that took the right risk at the right time, had the right access to capital at the right time, found a niche, created value, and grew a customer base and became a large company. Not any one large company in this country or around the world became a large company the next morning. It took a lot of growth and finding out how to maneuver and get around.

So I wanted to just talk about this issue of regulations, why it impacts small businesses so much more than large corporations. Large corporations have banks and banks of attorneys, outside consultants. I always jokingly say, as a small business person, you are sort of chief cook and head bottle washer. You are the janitor, you are the person who works on your HR issues, your compliance issues. You do it all. It becomes very burdensome because there is only so much time in the day, and if you are taking away your time, your leadership time to deal with those compliance issues, some that may be extraneous to your business, then you are taking away from the ability to look at a strategic plan for your business.

Recent data show small business owners spend approximately \$12,000 every year on compliance. That number balloons to over \$80,000 for the start-up companies. Almost half of all small businesses spend over 40 hours per year complying with Federal regulations. We expect small businesses to grow, but if we are having this kind of regulatory burden, it is very difficult to get started.

I was just reading an article this morning that was talking about the maneuvering through the regulatory process, and we are only talking about the Federal issue. We also have the state and local issues to deal with, as well. We can only talk about what we call Washington, D.C. Federal regulations, but there are so many others that we need to recognize, and I think at times people that are not in the business world tend to forget the multiple levels of burdensome regulations that we have, along with everything else you have to deal with.

So I really appreciate you all being here today to share this information with us.

The Administration has made it a priority to lift some of those hurdles that stand in the way of progress. When President Trump became president, he mentioned cutting 2-to-1 regulations. For every regulation introduced, he wanted to take two out. It is actually up to around 22 regulations that have been cut.

Again, he is not saying cut them all because there are needs for certain things, a regulation to protect our environment, to protect

how workers are treated. But again, there is a swing that has gotten a little bit out of control.

Again, I want to just thank you all for being here today, to recognize from the Chamber to the representative organizations to energy, which accounts for so much of our economy, to our banking industry, and look forward to listening to what you all have to say today, what we can take back.

Again, I just don't want to leave this opening statement without saying thanks so much to my Chairman for being here today, I really appreciate it.

Chairman KIM. Thank you.

Mr. HERN. And we are going to go get some great food after this, take you to Tulsa Food.

So, I want to talk about our first witness, who is Chad Selman. Mr. Selman is the owner of Selman Farms, LLC in Skiatook. Mr. Selman raises cattle and pecans, and is also a member of the Oklahoma Farm Bureau and the Vice President of Tulsa County Farm Bureau.

Mr. Selman, thank you for joining us this morning.

Our next witness is Mr. Jordan. Mr. Jordan is the President and CEO of Farmers State Bank, with multiple locations in Oklahoma. Mr. Jordan is currently the Secretary of the Independent Community Bankers Association, or Bankers of America rather, ICBA trade association, and a previous Chair of the Community Bankers Association of Oklahoma.

Mr. Jordan, thank you for being here.

Our next witness is Howard Bud Ground. Bud, right? Mr. Ground is the Director of Regulatory Affairs for the Petroleum Alliance of Oklahoma. Mr. Ground is a leader in regulatory issues, with years of experience in compliance and rulemaking matters.

Mr. Ground, I appreciate you joining us today.

Our last witness is certainly not the least famous, Ms. Elizabeth Osburn. Ms. Osburn is the Senior VP of Government Affairs for the Tulsa Regional Chamber, with years of public policy and legislative experience both in Washington and in Oklahoma. Ms. Osburn leads all the Regional Chambers' advocacy efforts.

Ms. Osburn, thank you for joining us today, a great friend of business in Oklahoma.

So with that, Mr. Chairman.

Chairman KIM. Look, I just want to say that every time I hear Congressman Hern talk about his experience that he brings to the table, it just really makes me feel good about what we are doing on the Small Business Committee, that we have people who live and breathe this, that understand what it is like to start something up from scratch. It is just such an incredible professional experience that he brings to the table, but across the board in the Small Business Committee. I think his remarks really reminded me of exactly what you were saying. You were saying across our country, 99.7 percent of businesses are small businesses, and that is a voice that gets often just lost in the mix of things. When we are talking about big-picture issues, whether that is taxes or whether that is about different industries or trade or other aspects of that, I know from personal experience that so many people in Congress on both

sides of the aisle just immediately jump to thinking about how that is going to impact big tech or big corporations, big companies.

Our job is to try to make sure that we are making sure that the voice of small businesses is in that mix, that it is being considered, it is not some afterthought that people tack on later on but it is something that is at the forefront of what it is that we are trying to do.

So again, your voices are the ones that we are trying to lift up, and I am grateful for you coming out today.

We didn't bring our fancy gizmos and gadgets in terms of having lighting systems of red, yellow, green, things like that. But just in general, we are trying to keep folks to about 5 minutes with your opening statements. I am not going to gavel you to death or anything if you go over. We are going to try to keep this informal and we just want to make sure that you have the time that you need to tell us what it is that you want us to know and take back to Washington.

So on that front, why don't we just jump right in? Mr. Selman, over to you. Why don't you kick us off with your remarks?

Maybe you can pull the mic over. I can hear you fine, but I just want to make sure.

STATEMENTS OF CHAD SELMAN, OWNER, SELMAN FARMS, LLC, SKIATOOK, OK; CHRIS JORDAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE FARMERS STATE BANK, STIGLER, OK; HOWARD L. (BUD) GROUND, DIRECTOR OF REGULATORY AFFAIRS, THE PETROLEUM ALLIANCE OF OKLAHOMA, OKLAHOMA CITY, OK; ELIZABETH OSBURN, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS, TULSA REGIONAL CHAMBER, TULSA, OK

STATEMENT OF CHAD SELMAN

Mr. SELMAN. Hello. Thank you for the opportunity to provide comments on this important topic. I am Chad Selman from Skiatook, owner of Selman Farms, a pecan growing operation. Oklahoma is the first in the nation in native production and fifth in overall production, harvesting around 16 million pounds annually. I lease around 1,800 pecan acres. We harvest more than 25,000 trees. Our groves consist of 90 percent native pecans and 10 percent improved varieties. In addition to my pecan operation, I have a 120-head cow-calf herd.

I serve as Vice President of the Tulsa County Farm Bureau and President of the Oklahoma Pecan Growers Association. I serve on the Board of the U.S. Pecan Growers Council, the American Pecan Federation Board, and the American Pecan Council in the alternate broker/buyer position.

Labor makes up the largest percentage of my operating expenses. I use the H-2A Temporary Agricultural Worker program. These workers are not immigrants but foreign nationals. My workers are from Mexico, and most return every year.

Pecan groves require a lot of hands-on caretaking and physical labor. I contract for two H-2A workers for 10 months of the year for grove work. During the spring and summer, the workers trim branches from trees, some of which is done from the ground and

some with a tree trimmer with a hydraulic pole saw. We manage the ground cover between the trees through mowing, spraying of the weeds, and baling hay. The hay feeds my cow-calf herd in the winter. We spray the trees to keep them free from insects and plant pests. All the fallen branches must be physically picked up from the grove floor and disposed of, which is back-breaking work. We must have a clean grove floor to harvest the pecans. I could not operate my farm without these workers, as few Americans want to do this difficult work.

During harvest I employ 11 additional H-2A workers, bringing the total to 13. We have a tree shaker machine that literally shakes each individual tree. The pecans that fall to the ground are swept up by a pecan harvester, then transferred to a trailer for transport.

I have a cold storage facility that holds 2 million pounds of pecans. In addition to storing my own pecans, I lease space to commercial pecan shellers. The cold storage facility requires year-round workers to weigh and bag pecans, drive the forklift, and load and unload trucks.

Because the H-2A program is so complicated, I would never try to arrange for workers myself. I use a third-party consultant who handles the paperwork, including the H-2A advertising. Workers arriving on different days require separate contracts. Under the program, I am required to advertise for workers in three different states, three different times. This is to provide Americans with the first opportunity to work for me. If I don't succeed in hiring Americans, it proves I need the H-2A labor. During 13 years of advertising in the U.S., we have had only six people apply for a job. We hired three, and the other three never showed up.

I pay another person to make sure the workers make their appointments at the consulate and have their documents in order.

The minimum amount I pay the workers is \$12.23 an hour, the adverse effective wage in Oklahoma. This is required so I am not displacing Americans who would otherwise work for me. By comparison, the minimum wage in Oklahoma is \$7.25 an hour. What I pay for the adverse effective wage is more than what my neighbors pay for similar labor.

I pay the H-2A workers' transportation costs from their country to my location, a per diem that covers their meals during travel and consulate fees, before they even begin their work for me. This year, it cost us more than \$500 per worker to get them to my farm. While they work for me, I provide housing and transportation to and from the workplace, as well as to the grocery store once a week. I also pay for their transportation back to their country.

One of the most challenging aspects of my business is having the right number of workers when I need them. We are required to pay 75 percent of the contract hours from the time they arrive. Because of the weather last year we had a short crop, and harvest lasted only two weeks. I filed to stop the contract early due to unforeseen events. That process takes three weeks to be approved. Knowing that I would receive approval with the appropriate documentation, I sent the workers home early so they wouldn't have to stay here with nothing to do.

There is great value to the foreign nationals who work for me. I mentioned many of the same workers return to work for me every year. I couldn't operate my farm without them, as Americans don't want to do this type of work. I need skilled workers, not inexperienced ones that I have to train who could tear up expensive equipment and cost me time and money.

Last week the Department of Labor, Employment and Training proposed to help America's farmers with rules to modernize and improve the H-2A program. I am encouraged by this. We need revision of the H-2A program to remove those things that don't make sense and that are overly burdensome. The process could be simpler so it is better for me as the producer and better for them as the workers. Because things like weather are beyond our control, production agriculture needs to have H-2A flexibility.

I have some thoughts on how to make the program better. This could include approving workers' visas for five years at a time and allowing workers to come and go during the year when the labor is needed, rather than limiting them to a continuous stay per each contract.

Again, thank you for the opportunity to share my concerns. I will be happy to answer your questions.

Chairman KIM. Thank you so much for your testimony, I appreciate it.

Mr. Jordan, we are going to turn it over to you. You are now recognized for 5 minutes.

STATEMENT OF CHRIS JORDAN

Mr. JORDAN. Chairman Kim, Ranking Member Hern, and members of the Subcommittee, my name is Christopher Jordan, and I am President and CEO of the Farmers State Bank, a \$110 million bank headquartered in Stigler, Oklahoma.

I testify today on behalf of the community banks represented by the Independent Community Bankers of America. Thank you for convening today's hearing.

Farmers State Bank was founded in 1908 and has been in my family since 1969. I am a third-generation community banker. Today, Farmers State Bank serves four rural communities in southeastern Oklahoma. Our business model is typical of a rural community bank, with a mix of small business, agricultural, and residential mortgage lending.

Like other community banks, we have thrived across generations by maintaining a simple capital structure, conservative lending practices, and being dedicated to the success of our communities.

Community banks play a critical role in providing small business credit, and yet the vital partnership between community banks and small business is at risk today because of the exponential growth of regulation. In a few short years, the nature of community banking has fundamentally changed from lending to compliance. I believe the new regulatory burden has contributed significantly to the loss of over 2,300 community banks since 2010. With fewer banks, small businesses have less access to credit.

The local bank may be replaced by the market bank or a non-bank financial technology company that is less willing to make a loan in those areas. The good news is that we have readily avail-

able solutions for this pending crisis. ICBA's Community Focus 2020, or CF 2020, is a regulatory relief agenda that will allow Main Street small businesses to prosper. A copy of that CF 2020 is attached to my written statement.

While the CF 2020 includes dozens of recommendations covering the major threats to community banking, I want to focus my comments on four areas that would have the greatest impact.

First is the Bank Secrecy Anti-Money Laundering compliance that increasingly burdens community banks with identifying, investigating, policing, and reporting potential criminal activity. ICBA supports reforms that will ease compliance while providing more useful data to law enforcement. The Currency Transaction Report Threshold was set in 1970 at \$10,000 and has not been adjusted for inflation. A threshold of \$30,000 would produce more targeted, useful information for law enforcement.

The Suspicious Activity Report, or SAR, is a way for banks to provide leads to law enforcement. However, bankers have a tendency to over-file SARs to protect themselves from examiner criticism, which dilutes their value to law enforcement. The SAR process should be reformed to a risk-based system, and the SAR threshold, which has not changed since 1992, should be raised to \$10,000.

Another aspect of BSA AML compliance is bank collection of beneficial ownership information on legal entity customers, including small businesses. This information collection is onerous and inefficient for both the customer and the bank employee. For this reason, we support the Corporate Transparency Act, H.R. 2513, sponsored by Representative Carolyn Maloney, which would require corporations to disclose their beneficial owners directly to the Financial Crimes Enforcement Network, FinCEN.

H.R. 2513 passed the House Financial Services Committee on June 11th with a strong bipartisan vote, and I would encourage you to support that bill when it comes to the House floor.

Second, ICBA believes a community bank should be excluded from the CFPB's forthcoming Small Business Data Collection Rule. This rule, which will require information reporting on every small business loan application, will fall disproportionately on community banks that lack the scale and compliance resources.

Third, regulatory barriers to capital access for community banks should be reformed. ICBA supports a higher exemption level for Sarbanes-Oxley 404(b) for community banks that are publicly traded, and reforms to SEC Regulation D, which governs private sales of unregistered securities. These reforms would help community banks raise capital to deploy in their communities.

Finally, a safe harbor is needed for banks that serve cannabis businesses in states such as Oklahoma that have legalized cannabis for medical or recreational use. Legal and regulatory uncertainty has curtailed access to the traditional banking system for cannabis businesses and forced them to operate mostly in cash, which has created a public safety risk.

Farmers State Bank does not have any cannabis businesses and at this point doesn't plan to offer that, but the safe harbor would extend to banks that serve the many ancillary businesses, such as landlords, accountants, utility providers and others that may be paid in funds that ultimately were derived from the cannabis sales.

These ancillary businesses are difficult to identify and create a legal and regulatory trap for unsuspecting banks.

The Safe Banking Act, H.R. 1595, passed the House Financial Services Committee on March 28th on a strong bipartisan vote, and I would also encourage you to support that bill when it comes up.

Thank you again for the opportunity to testify, and I look forward to your questions.

Chairman KIM. Thank you so much, Mr. Jordan.

Mr. Ground, we are going to turn it over to you. You are recognized for 5 minutes.

STATEMENT OF HOWARD L. (BUD) GROUND

Mr. GROUND. Okay, thank you. I want to welcome you to Tulsa and welcome you to Oklahoma State University. I am the Regulatory Director for the Petroleum Alliance of Oklahoma, and the Petroleum Alliance is a non-profit association with about 1,300 member companies that include from very large—Phillips 66—down to the very small mom and pop, but it includes all aspects of oil and gas, from production, midstream, the suppliers, the refineries, the whole spectrum of businesses in the oil and gas industry in Oklahoma, 1,300 companies, with the average employee size of 12. So we help a lot of small business in Oklahoma to comply with regulations. That is my position, is to help them to comply.

So today, what I want to talk to you about is this tremendous burden of small business just to try to comply, just to keep up with what they need to comply with. As, Chairman Kim, you said, they are drowning in paperwork. There are many instances, and I will go through a few, but just trying to keep up with the amount of regulations and the constant regulatory change leads to uncertainty in these businesses. It leads to uncertainty in their planning, uncertainty in how they go to the capital markets for money when they want to expand.

I also want to discuss another part of this, which is actually just agency policies that you may not hear a lot about. It is not a regulation. It doesn't go through the regulatory process, but it is policies within the different agencies in the Federal Government that are changed at their will. I will put it that way.

So to start with, I want to bring up what is called the unified agenda of regulatory and deregulatory actions. This is the Office of Information and Regulatory Affairs within the Federal Government. I think this is a fantastic organization because they actually track the regulations and some policy changes within some 71 agencies within the Federal Government. I don't deal with all 71, but I brought some examples of what these agencies are that they deal with.

So 71 Federal agencies, from Cabinet departments to executive agencies to independent regulatory agencies that include things like the farm credit system, commodity futures. There are others that deal with this. But some that I deal with regularly, the EPA. This report comes out periodically. I think it is quarterly, but this is from the spring of 2019. It may only be three times a year. On this it shows long-term actions from the EPA. There are 20 of them long term—29 of them; I am sorry. And these include things like underground injection control, ozone and particulate matter, sec-

ondary national ambient air quality, ecological effects of nitrogen oxide. These things have been going on, as I said, long term, for years. We have been tracking some of these issues for years. I have been doing this type of work for over 30, and some of these are never-ending.

This is the EPA list on their agency rule list for just the spring. These are more current issues that are going on right now. There are 151 on this list. I will go through it, and I am tracking things that you will recognize immediately, like Waters of the U.S. that have been going on for years, going back and forth and doing changes and how they have changed it from one administration to the next; accident prevention programs; again, ozone issues.

The Department of Transportation, 214 current regulatory actions, some of them in the proposed rule stage, some of them in the final rule stage, and some of them in the proposed rule stage.

And then the last one—no, I am sorry. The Department of Interior, 236 current regulatory actions going on, pages, and I am really glad that this Office of Information and Regulatory Affairs does this because it helps me, it helps small business.

The last one, Department of Labor, 62 different current regulatory actions going on that are required to be tracked not just by large industries but by the very smallest, and that is just a few of that 71 total.

So there are overall regulatory burdens that even the smallest company has to comply with, has to track, comply, and implement that compliance. Organizations like ours and like the Chamber, we help these small companies by tracking those and doing it for them, because they do not always have the personnel. If it is a one- or two- or 10- or 20-person shop, they don't have the personnel to constantly track these regulations.

I will give you a few real-world examples of some of these that actually impact small companies on the same level as your largest oil and gas companies. In the Department of Interior, through the Bureau of Land Management, the BLM, there is a regulation called the commingling rule, and that is when you commingle oil that comes from different leases, that comes from a private lease to a Federal lease to potentially even, in Oklahoma, a Native American or an Indian lease, it goes through the BIA, the BLM, all this that has to be permitted prior to going out and drilling, and you have to describe how are you going to commingle and account for that oil as it comes out and who gets payment.

Now, that is wonderful they do that, but what we find is that every BLM office interprets these regulations differently. So the paperwork is different, the burdens that they have to go through to actually approve this. It can take months to get these permits. So then you are, as a small company, trying to plan and schedule a time when you are going to have, say, a drilling rig on a site, and it could take months to get these approvals through from the BLM.

Another one is endangered species, which everyone hears about endangered species all the time. A couple of them in Oklahoma that go on in particular is the American burying beetle and the lesser prairie chicken. Again, these type of issues—and it is not like we shouldn't protect these, but when you have a regulatory scheme that requires that you go out and do tree site monitoring

at certain times of the year, you actually cut your window down of when you can actually do work in the field, whether it is a drilling site or a pipeline. It can take months.

Chairman KIM. Mr. Ground, in order that we can have some good time for questions, would you mind starting to wrap up a little bit?

Mr. GROUND. Yes, I will.

The last real time the EPA changed the regulations that were—it is called OOOOa, the permitting of these facilities, and this was one that changed during the past administration and then turned around and changed again for the current administration. So it gets uncertain for these companies.

Now, on the other side that doesn't involve regulatory change, these are policies, and I will give you one of EPA that comes through, and I have other examples in the written. It is called "Once In, Always In." What that means is a facility that has enough emissions to be considered a major source, if they change that source later and add control equipment where they are not emitting at a level that should be a mega-source, that EPA will not allow them to lower that to a lesser burden on paperwork. The current administration is going through changes, but it has taken two years just to go through that regulatory change.

There are others in there, and I will just say in conclusion I just want you to keep in mind that there are other things besides just the regulatory process that small business has to keep track of, and that is the policies and the hundreds and hundreds of potential regulations. And on top of that, like Congressman Hern said, that goes to the state level and the local level that we are watching as well.

Chairman KIM. I appreciate you walking us through that. That is very helpful.

Ms. Osburn, over to you.

STATEMENT OF ELIZABETH OSBURN

Ms. OSBURN. Thank you very much. Chairman Kim, Ranking Member Hern, thank you very much for this opportunity to speak with you all today.

My name is Elizabeth Osburn. I am the Senior Vice President of Government Affairs at the Tulsa Chamber. We are a membership organization that focuses on helping companies of all sizes grow their businesses, find the workforce that they need, and essentially improve economic prosperity in northeastern Oklahoma.

So we have more than 2,100 members from all across the region, not just exclusive to the Tulsa metro area, and small businesses are an absolutely integral part of the Tulsa Chamber. They actually make up over 85 percent of our membership. So we have about 1,800 businesses that qualify as small employers. I will get into this a little bit later in my remarks, but we qualify that as 50 employees or less.

So these businesses range from small manufacturers, small proprietary consultants, and entrepreneurs even. So we have programming. Our small business connection engages with these members annually. We have a small business summit in October. I describe

all of this to let you know about some of the engagement that we are doing with small businesses.

In my role specifically regarding advocacy, we run a process by which we invite all of these businesses into a room not unlike this to sit around and debate and discuss what their priorities will be policy-wise for the coming year. And so we gain a tremendous amount of insight into these diverse businesses, and I would like to share some of those with you today.

My remarks may be a little bit more general, but I am happy to answer any questions about the specifics.

I grouped them into a few categories that we tend to hear most from. The first is reporting and compliance burdens under the Affordable Care Act; consistency or clarification needed across all Federal agencies; and then examples of negative unintended consequences when a regulation is actually put into practice.

So related to reporting compliance burdens under the ACA, we continue to hear from small businesses that they have difficulty navigating some of the requirements of the Act. Our members have supported efforts to reduce small and mid-sized providers' costs of providing care such as steps to reform the health insurance tax, easing reporting requirements, and revisiting the definition of a full-time employee, which especially for some of our smaller businesses can be incredibly burdensome.

Related to health care, many of our entrepreneurs, start-ups, and single-employee businesses are hindered by the rule prohibiting their participation in association health plan insurance plans. What this essentially means is that in the past couple of years there was a ruling allowing association health plans offered through a Chamber of Commerce or another membership association to allow their members to purchase and provide health care through the association. But if you are a single-employee business, which a lot of our entrepreneurs are—I mean, you think about the single-employee business entrepreneur of today could be the next large business of tomorrow. You have to start somewhere. So allowing these single employees to participate in association health plans would be one regulatory burden and compliance burden that they can tick off their list.

And the next general category is consistency and clarification needs. So a common concern from all of our small businesses is the need for consistency across Federal agencies. Our members have specifically requested language across Federal agencies to be updated and clarified so that when working with different agencies on the different compliance burdens, the language is similar. There is still some ambiguity about what actually defines a small business depending upon which regulation you are looking at.

So specifically what some of our businesses have mentioned is classification of a worker as an independent contractor versus an employee, and that is 1099 versus W-2 forms. This would allow the distinction to be applied equitably across industries and allow small businesses to more easily classify their workforce.

Our businesses also report, to my colleague Mr. Ground's point, that the constant back and forth of regulations or the ambiguity about the status of some of the rulemaking has hurt their hiring capacity because they cannot anticipate what the climate is going

to be like. So specifically, Department of Labor and National Labor Relations Board targeting overtime pay, independent contractors, and joint employment status, which is governed under the Fair Labor Standards Act when a single individual might be employed by—considered jointly by one or more employers. We increasingly hear that these rulings disproportionately harm especially the hospitality industry and the non-profit sector and increase legal liability.

Lastly, negative unintended consequences. We hear a lot of stories that might be a little too shocking to believe and kind of get your head around, so I wanted to share one today. Actually, Mr. Chairman, if you are going to stay in town for a little bit and eat some lunch, you might want to take note of this story I am going to share with you, Andolini's Pizzeria. It is a local pizza place. It is absolutely delicious, and actually the owner is from New Jersey, but he claims it is not New Jersey style pizza. It is a blend of New Jersey and Oklahoma.

Chairman KIM. [Inaudible.]

[Laughter.]

Ms. OSBURN. It means it is good, that is what it means.

Owner and operator Mike Bausch has expanded Andolini's over the past several years, opening new locations, and he recently came up with an idea to try to sell a take-n-bake pizza to another regional grocery store chain, Reasor's Grocery Store. In attempting this, Andolini's was forced to wade through a myriad of complex, even conflicting Federal regulations from the U.S. Department of Agriculture and the U.S. Food and Drug Administration, not to mention the State of Oklahoma and local regulations, to move their product into grocery stores, even on a limited basis.

So Andolini's was not using any raw ingredients with their take-n-bake pizza. Nevertheless, at the point when a piece of fully cooked, ready-to-eat, USDA-certified pepperoni comes in contact with the pizza, a process statement must be gained on the origin of the flour, the cheese, the water, meaning that Andolini's must certify USDA or give USDA documentation certifying that they have clean water from the City of Tulsa, and tick on down the line.

Well, not only that, but at the point when the piece of pepperoni is supplied, they have to have a trained inspector be present while they are making their pizza. And if they are making it during non-business hours, so when Andolini's isn't serving customers one on one, if they wanted to make it on a Saturday or Sunday, they have to pay an inspector \$30 an hour to come in and watch them make the pizza.

Now, if they are just making cheese pizza, this doesn't apply. If they were putting fish on their pizza, this doesn't apply. But the way that the regulations have shaken out, when pepperoni is put on the pizza, non-working hours, \$30 an hour to come in and source the production. So the cost of this requirement has essentially allowed Andolini's not to expand. It is just not profitable to be able to carry on with this new business venture.

In closing, these are some general summaries of concern; and, as I mentioned, I am happy to answer any more specific questions.

Chairman KIM. Well, I appreciate it. It sounds like all of our losses that they didn't go ahead with that type of business model

because it means I won't be able to take any home, but I will see if I can try that.

I want to just jump right in, and like I said, we can kind of keep it pretty fluid in terms of the conversation. I just want to make sure we get it all on the table.

I will ask just a few questions and then turn it over to Congressman Hern. Then we can go back and forth if needed, if we have more.

I just wanted to start with you, Ms. Osburn. Off of what you were just talking about, I am just trying to get a better sense of what industries in particular seem to be hit particularly hard, and I think each of the other three can explain it from their own perspective of their industries, and that was helpful. I know you mentioned health care, you mentioned hospitality and non-profits, at least that is what I gathered from your testimony. Are there other particular industries that you see? I am interested in your perspective because you see across a number of different industries and sectors. What are some of the other ones that we should be keeping an eye out or we should try to reach out to after this hearing to be able to get their perspectives as well?

Ms. OSBURN. Absolutely. We have a lot of small-scale manufacturers. I am looking at your nameplates, so a manufacturer who might produce something like a nameplate for outside of someone's office. We are not talking about very large-scale production but that spends so much time trying to comply with OSHA, which is I believe the Office of Safety and Health Administration—I am probably butchering the acronym there—and EEOC, Equal Employment Opportunity Council, regulations that we hear a lot, that that takes up an increasing amount of paperwork and burden time.

Answering your question more specifically, small-scale manufacturers are another industry that we hear a lot about the reporting burden.

Chairman KIM. Thank you.

Mr. Selman, I wanted to ask you, you and Mr. Jordan, just give me a sense of, with these extra burdens that are being placed upon you, what does that position you to have to do to be able to make sure you are in compliance? Mr. Selman, you were saying that some of the work you had to do you are contracting out to someone else to be able to do. So I would just like to get a better sense of what does this make you have to do in terms of hiring an outside firm, or just get a better sense of the resources and the time that you have to put into this.

Mr. SELMAN. I hire an outside person to deal with contracts, and that person costs, with the H-2A advertising, it costs about \$3,000 per contract, and I actually do two contracts year after year. We have to deal with over three different agencies, and while we are doing that I need to be out in the field harvesting our crops or getting ready for it, which is part of it. That is part of running the business. But the amount of paperwork that it takes is unreal.

Chairman KIM. And a question that I will ask more broadly across the board—and, Mr. Jordan, I wanted to turn to you after this as well on this question. But we were talking about the inconsistencies, and Ms. Osburn kind of hit it home in terms of between different Federal agencies, inconsistencies in wording and other

regulations. With the amount of time you have to invest in compliance and other aspects, how does that stack up with the Federal compared to the state level and local level? Are there other types of regulations that you need to stay within right here at the local level within Oklahoma, and are there inconsistencies between that and the Federal level that make it all the more complicated?

Mr. SELMAN. I deal with mostly Federal level.

Chairman KIM. Okay.

Mr. SELMAN. There is some on the state, and that mainly has to do with some housing and a little bit with the Department of Labor. But 90 percent of it is Federal.

Chairman KIM. Mr. Jordan, I just wanted to get your perspective on this in terms of the compliance and the kind of resources that are needed to be able to do that, just your thoughts on that as well as the question I just asked Mr. Selman about how much of your bandwidth when it comes to compliance and this type of work is geared towards Federal compared to the state level?

Mr. JORDAN. Just to kind of give you an idea on compliance costs, it is probably well over \$100,000 a year for us by the time you hire a compliance officer and you have outside auditors that come in to help you make sure that you are in compliance. But when the compliance Federal regulators get there, that is an additional cost there.

And it is just the cumulative effect of the regulations. No one regulation typically is so onerous that you can't get around it, but it has just been that cumulative effect over the years.

You asked about contradictions. There is really not much between the Federal and the state, other than that cannabis. That is a big one where you sort of have some things at odds. But what we find is the difference between the compliance exam and a safety and soundness exam, sometimes those two exams are a little bit at odds because in the regulatory environment, those people don't communicate real well. So that is one of those things where they kind of put us at odds.

And that compliance cost to us is obviously passed on to those small business customers that we do business with. We can't continue to absorb those compliance costs without offsetting that at some point. So that does make it more expensive for credit for those small businesses that Ms. Osburn represents and the service charges and things like that that go on. That is really where it floods out and affects everybody, not just mine but all those businesses that we are associated with.

Chairman KIM. I appreciate that.

I will probably have a few more questions along that thread, but I do want to hand it over to Congressman HERN to throw out some other questions and ideas.

Mr. HERN. Thank you.

Mr. Jordan, I would like to start where you just left off. One of the things we hear a lot—and Congressman Kim and I sit on the full committee as well, and we hear the witnesses talk about—one of the big conversations we have been having is access to capital, small businesses getting loans. There is a very significant critique of banks across America not loaning to small businesses anymore—

key word “anymore.” You just alluded to why it is so difficult today to do it.

Could you expound on why it is—first of all, let me ask you this question. This will probably be a simple yes or no. You are not averse to loaning to small business people with ideas?

Mr. JORDAN. No.

Mr. HERN. Just expound on that piece. I mean, people come to you with a business plan, they come to you with hopefully some collateral and some credit history, and if they don't, then SBA is always kind of the lender of last resort as an opportunity to start that business up. But could you expound on what has happened in the regulatory process over, say—you alluded since 2009. Could you talk about what burdens have grown, have changed the behavior or the relationship between community banks and small business men and women in these communities?

Mr. JORDAN. The really short answer is you have a regulator looking over your shoulder, questioning every decision that you make. A small town where we are from, we know everybody in town. We know what is going on, we know what is happening. But the question that typically bankers ask today when they are faced with a loan application there, one of the first things they think of is how are the regulators going to look at that if I approve that loan?

So that is the short answer right there.

Mr. HERN. So the days of a person walking in and saying they need \$100 to start a lawn-mowing business on a passbook account are long gone; right?

Mr. JORDAN. Well, we do our best to try to still accommodate that. We have to get fairly creative in working around that. But that is one of the things, the rules change. As long as we know what the rules are, a lot of times it is easy, you figure out a way to get those things done. But sometimes the rules are a little bit ambiguous.

Mr. HERN. You mentioned in your testimony you have gone from being a banking business to a compliance business. How has your compliance officer staff level changed in the last 10 years?

Mr. JORDAN. Well, 10 years ago we didn't have a person that was called a compliance officer. The compliance issue fell across several people, which it still does, but you still have to have a person that is in charge of the compliance function. What the state alluded to is if you were to come and sit in on our strategic planning meetings, the focus has changed from what do we need to do to be making more loans, getting more deposits, to how are we going to deal with this compliance issue, how are we going to deal with that compliance issue. So that dynamic has just completely shifted, and it is aggravating that your strategic planning has to be centered around compliance.

Mr. HERN. Which is what you alluded to, that you either know the person who is asking for a loan in your community, or you know the parents of the person who is asking, or you know somebody that knows them very closely, whether that person is asking for the right reasons or can actually fulfill what they are saying they are going to do.

Mr. JORDAN. Yes. Like Mr. Selman here, if we were in his community, we would probably know what is going on down there. I drive by his trees every day, so I know what is happening, what he is doing out there. You just don't get that from what is happening on a piece of paper. So we feel like that there is just that disconnect and it has just not allowed us to really get that personal relationship that is so crucial to that small business success.

Mr. HERN. I would like to ask you one other question. Could you expound a little bit on the marijuana banking issue? You shared with the Chairman that that is one of the big discrepancies between Federal law, state law. The people of Oklahoma have spoken recently and wanted medicinal marijuana, yet basically have a cash business right now. Could you talk about that?

Mr. JORDAN. Yes. Really what you are looking for from the banking side is just some assurance that you are not going to get tagged for something that you didn't intend to do. With the laws in Oklahoma allowing medical marijuana at this point—so there are dispensaries opening up on every corner—those people have to have somewhere to bank, and the local bank may decide that they don't want to do that at this point because it is at odds with the Federal regulations still at this point.

But the problem for us is it touches all these other things. I mean, the employee that works for that who is not the owner, their income is going to be derived from the cannabis sales. Well, they need to do business with your bank. Well, is that money laundering? I mean, that raises the question, those SAR reports that we have to fill out. So an overly protective compliance officer is going to say, well, if we know that employee works at that dispensary, we are going to fill out a SAR every time they come in and make a small deposit.

So we just want to know that we are not going to get tagged for that inadvertent cannabis-related cash that might be coming through our institution. Does that answer—

Mr. HERN. It does. Thank you.

Mr. Ground, obviously this is about Congress, what we can do to change the regulatory environment for each of the particular industries that we are trying to reference today. What changes, if you were able to communicate this to us right now, what changes would you like to see Congress make to improve the regulatory landscape in the energy industry? Any particular one that you think is preventing us—under President Obama's administration, you started working on freeing up the ability to be energy dominant. We sort of accelerated that now. What particular regulation today is driving you most crazy in your role?

Mr. GROUND. Well, there are several.

Mr. HERN. This is what I have learned in Congress in my short months. We don't deal in multiple things very well. It is like one at a time, so it takes forever to get anything done.

Mr. GROUND. So I will start with EPA.

Mr. HERN. Okay.

Mr. GROUND. There are changes within EPA that have changed from one administration to the next, and that has happened with every administration. Just some consistency in that. And it is also, like Ms. Osburn said, you have competing Federal agencies that

have tried to regulate the same thing, and they conflict, or one is more burdensome than the other. And I would say if you could let EPA do what EPA does, and let BLM do what BLM does, and not try to cross over between the two, it would be extremely helpful. That is one issue that has come up within the last few years, is BLM trying to take on EPA-type regulations.

Mr. HERN. Okay. That is really good to know.

Mr. Selman, you mentioned in your testimony that the H-2A program is very complicated, and therefore you out-source the management of the entire process. If you had to manage the entire process, how would that impact the way you ran your farm?

Mr. SELMAN. I probably wouldn't have employees coming to my house, unfortunately. It is so complicated that it would be delayed for harvest, and I would end up losing money, and that would probably be the number-one thing that would be. It would just be done incorrectly, and every time it is done incorrectly, anything that is done through the government, it takes a while, so you want to make sure you have it done right the first time, and on time.

Mr. HERN. You made a statement a minute ago—and I don't have it written down. I do have it written down, but I have heard it a lot in my lifetime, and it is the statement that the reason we bring in immigrant workers, either seasonal or they have work visas, is because Americans don't want to do the work.

Mr. SELMAN. That is correct.

Mr. HERN. Why do you think that is?

Mr. SELMAN. I think we are just—the United States is evolving to a more electronic labor force. Everything is becoming more electronic on computers and everything else, and I think more people are wanting to do that rather than get out in the field and get their hands dirty and be in the cold and the heat. It is easier work than that.

Mr. HERN. So the days of hauling hay are over, right?

Mr. SELMAN. The days of hauling hay are just about over. That is why they build equipment to stack them all by themselves.

Mr. HERN. I appreciate that. In your testimony you state that the Department of Labor is proposing a modernization of the H-2A program. This is a good thing. However, the challenge of the H-2A program existed for a long time. Is what you are describing, is that a brand new problem that we are having, and why does it take so long to address the needs of the farmers? I mean, the crops come off at the same time roughly every year, so it shouldn't be like—I mean, the agricultural people—the Department of Labor that is approving this, or the Department of State that is approving these, they know when the harvest season is for the particular industry that needs these workers. Why is this so difficult, do you think?

Mr. SELMAN. Well, it is all done on an individual basis, if that is answering your question correctly. Each individual farm might need them—like watermelons we harvest at different times than pecans. Pecans are harvested during the winter, and watermelons are harvested during the summer. So that is one of the reasons why you can't just put a blanket statement on it, okay, we are going to get workers in the U.S. from July to November. It just wouldn't work. So each individual farm is different and they have different needs.

During the summer we are baling hay and brush hogging. We don't do that during the winter. So our needs during the summer, we have different needs during the winter. And these months during, say, March and April, I don't have as much need for labor at all.

Mr. HERN. So I think this would go to Ms. Osburn and to you, since you deal across multiple businesses and you deal with a particular business, plus you are a member of the Farm Bureau, so you hear this from your colleagues. Probably the most important issue that matters to people in the 1st District of Oklahoma, the State of Oklahoma, and I would say even in this country, is the issue of immigration. While we don't want to talk about that a lot of times, when you talk to business communities they are all for immigration reforms, except the reforms have got to be able to produce workers that we still have.

So I would love to get your thoughts if you think that is factual, first of all, and not just some talk behind the doors. Is it actually factual that people are very concerned that with immigration the way it is going right now, that there is going to be a real shortage of workers, more so than there is right now, and what am I going to do with my crops? From your standpoint and what you are hearing from small businesses, landscaping businesses, roofing businesses and places like that, just to get your general thoughts.

I will go to Ms. Osburn first and let you think about that one.

Ms. OSBURN. Certainly I would echo what my colleague has said, that we hear a lot about the H-2B program, which is for seasonal workers such as a Christmas tree farm or something that is not necessarily agricultural but is seasonal hands-on work, and then also on the H-1B program with more highly trained engineers or someone like that, that is an absolutely critical workforce shortage that a lot of our small businesses have, whether it is in energy, a smaller energy company that needs some sort of very highly trained engineer or another company that utilizes an H-1B.

So I would say, by and large, that the inability to predict what is going to happen with immigration reform year after year is certainly hurting our businesses in knowing where their trained workforce might come from and their ability to plan ahead for the coming year, and their ability to grow.

Mr. HERN. One could even argue that the situation is not going to fix itself, and the longer we kick this down the road, the less people are going to want to do the job, Americans, as you described earlier, that we have got to get this fixed, we have to come up with a solution that resolves this issue, do we have people who can actually perform the work that is needed to be done in the United States to keep our economy growing, accelerating our economy, at the same time protecting the needs of those folks that we have here.

Did you want to add anything to that conversation?

Mr. SELMAN. Yes. She is talking about the H-2B. Pretty much all business owners that I have ever talked to that have any type of intense labor, hands-on labor workforce is very much for any type of immigration reform that gets employees to their doorstep. There is an absolute need for this foreign labor to come in and do it, especially on a seasonal basis. My guys, I have one guy that has

been working for me for 13 years. I can walk away from the operation and he can take care of all of it. He is a seasonal employee. To get seasonal employees here in the U.S., you are more than likely not going to see them again the next year. They are going to have another job, especially if they are a good employee. They are going to go out and find a full-time job somewhere and be able to provide for his family very well, if it is seasonal, it is really temporary.

So that is one of the main points, is to be able to have a good workforce when you need it, a reliable workforce.

Mr. HERN. Thank you.

I am going to pass it back to the Chairman, and then I am going to come back with one or two in closing. That would be great.

Chairman KIM. Great. I wanted to kind of continue on the thread that I was pushing on earlier.

Mr. Ground, I wanted to just get your perspective. During your testimony, you were talking about how part of your job and your organization's job is to help small businesses keep up to speed with the myriad of rules and regulations that you rolled through, and that was very helpful for you to just kind of lay out all the different numbers from these different departments and agencies.

I wanted to dig into that a little bit more. If you can tell me where the intersection is between some of the work that you are doing and what your organization provides in terms of helping small businesses navigate that, how that threads with what I had heard from Mr. Selman and Mr. Jordan about in-house compliance or contracted compliance. I am just trying to get a better understanding myself of the constellation of what has to occur for small businesses to be able to stay up to speed.

Mr. GROUND. Okay. For our typical small business, we being the Petroleum Alliance, we help them by tracking the regulations, the changes, and then communicating that with them. So from the start of it through the process, we make comments. I do not go to D.C. I do not lobby there. That is not part of my job. Everything is done from here in Oklahoma or with staff. But we do go through that process and try to make sure that the different agencies at least have our understanding or our comments, and then we also work very much, even more so, as you asked earlier, on the state level. So once that EPA regulation has changed, then the state-delegated agency in our case, which is the Oklahoma Department of Environmental Quality for most of the issues—actually, the Department of Ag here has some, Environmental, the Oklahoma Corporation Commission has some of them. So when it gets down to the state-delegated agency, then we work very hands-on in making sure that the regulation that is developed from that Federal regulation is something that we can comply with. So that is where we really get more involved, and that is where I get the member companies more involved in the regulatory process, because then they can make comments on the state level, they can go visit with the regulatory agencies.

But once it gets to the state, it is at a variety of agencies. So then it is still a little difficult, like with injection control. Underground injection control is housed between the Oklahoma Corporation Commission, which does oil and gas issues, and the Depart-

ment of Environmental Quality, because some are just industrial and some are oil and gas. So there is a process that we go through.

We help them on making sure that the regulations are something we can comply with and try to lessen that burden on, say, monitoring and reporting. But we as the Alliance, we do not do the compliance. Then the small business has to go to, usually, especially a small business, to a consultant, and that consultant then helps them develop their plans and their compliance and helps them with their monitoring and their testing, and even tells them a lot of times what new equipment they have to install to meet compliance.

So we have a point that is only through the regulatory process, legislative regulatory, and then it is turned over, and that is where the real financial burden starts with the small business. It is once they have to hire that consultant to develop their actual compliance plan, permits, or whatever is required, or equipment to be installed.

Chairman KIM. Great. No, that is helpful.

Just one last question from my end that will kind of open it up to anyone who wants to speak on this. What I am trying to think about just sitting here and trying to think about what Congressman Herd and I can do coming out from this, how it is that we can try to make the best case for taking some actions along these routes with our colleagues back in D.C., certainly it is very helpful to have a deeper understanding of the harm or the burden that this places on small businesses. But one other thing that could be helpful just from my perspective is to be able to explain how taking these steps will alleviate that and show the positive aspects of this.

So I guess I just wanted to ask the four of you if there is an example, if one of the regulations Congressman Herd talked about that recently was either taken away or reduced, some example of how something of that nature has opened it up, or you heard directly from small businesses and owners about how that might be able to help out. For instance, Mr. Jordan, when we are thinking about how Dodd-Frank might be hitting small businesses or community banks, now with some of the provisions that only affect banks that have \$250 billion or more, have you seen benefits from that type of move tangibly, whether in your own or from other banks? Those are some of the things that will help me understand, if this were to happen, what are some of the success stories where it has reduced the burden upon small businesses and the sky didn't fall and things didn't go crazy. That would be really helpful if anyone has any specific examples right now. Anything you can think of?

Mr. JORDAN. Just for us personally, my bank, that BSA AML stuff that I talked about, that regulation can't go away. That is something that is very important in fighting terrorism. But tweaking that, because it was implemented and has just remained stale, tweaking that makes a difference there.

But again, it is really hard to pinpoint just one particular regulation because, again, it is the cumulative effect. It is not just peeling back that one layer, which is great if you can do it, but that one layer doesn't always have a significant impact, because it has just been years on years on years. It just keeps piling on, and that is the big deal.

But like you said, Dodd-Frank, there are so many issues to Dodd-Frank. The latest, and specifically to the banking industry, was 2155 a year or so ago. Those were things that helped right there, and it is a mixed bag with banks. There is a lot of it that really didn't apply to my bank specifically, but for banks as a whole it was definitely something that was a positive for us.

Chairman KIM. That is helpful. If anyone else wants to jump in, I didn't want to put you on the spot on this one, but think about it, and if there are other things that come to mind, let me know, because those are the kind of examples and arguments that help us make the case, when we can say look what happened when this regulation was reformed or removed a couple of years back, these businesses or this sector was able to increase this or that. You are right, there is going to be a cumulative issue here, while our conversation has been more systemic about very specific things. But do keep that in mind, and if there is anything that comes to mind, I will certainly leave you all my card. Please let me know. That is the kind of stuff that I think will be helpful as well.

Mr. Selman, is there anything you wanted to add?

Mr. SELMAN. Yes, real quick. I mentioned that the Department of Labor is trying to modernize the H-2A labor program. They came up with one solution that would really help fix it, and I believe if it is not up for comment, it is going to be up for comment shortly. But it is taking it where instead of, like me personally, doing two contracts to bring employees at two different times, just doing one contract for the year and being able to bring up the employees when you need them.

Say with all the flooding that happened, I need a couple of guys for a month to come up and work, I can just call down there and tell my guys to come up for a month, for however long I need them. I think everybody in the ag industry would very much approve of this if it pulls all the way through, and it would really help.

Chairman KIM. That is helpful.

Well, those are all my questions. Congressman Herd, anything else you want to follow up on?

Mr. HERN. Sure. I would like to follow up on this banking marijuana for just a second. Those that are not in the world of banking, sir, like you have been for multiple generations, somebody that—I think I understand it pretty well. But I think I would like to paint this picture one more time, if we could.

By not banking marijuana, will that end medicinal marijuana in Oklahoma and other states because it is not being banked? Will that run the marijuana people out of business because it can't be banked?

Mr. JORDAN. That is a hard question. That is a good question, though, to ask. I don't think that it will. I think they are going to find some way, somehow. I think you could look to Colorado. They have probably been doing it longer than anybody and still not all—I mean, you would think that every bank in Colorado banks cannabis, but they do not. A lot of them have said we are just not going to go into that, and it is just because of the compliance that you have to do that.

But they are making it right now, they are opening up, so they are figuring out a way to do it. My thought is even if a bank says,

hey, we want to stay away from it, it is going to touch you some way, somehow. They are going to figure out a way, once they know what the rules are, they are going to figure out a way how to do it. But I can't see it just not happening.

Mr. HERN. Well, it is not federally required, and we continue to add states every election cycle—Arkansas, Oklahoma, the list goes on and on. So it hasn't been a deterrent to people to open the businesses.

Mr. JORDAN. No.

Mr. HERN. So where is the cash if it is not going into banks? Where is that at?

Mr. JORDAN. They have it in their back room.

Mr. HERN. It is pretty scary, right?

Mr. JORDAN. Yes. I did see there was an entrepreneur there in Oklahoma City, though, that he was going to set up a vault business for those that wanted to just come and bring their cash to him.

Mr. HERN. So is it plausible that a person with a lot of cash could lend to other people who need cash and you create a whole industry of cash lending?

Mr. JORDAN. Yes, that happens today.

Mr. HERN. So what about payroll taxes? If these people are working for these different dispensaries and the farming process, they are getting paid, but if you can't take your payroll check to the bank and cash it, it is a cash business, so we are going to lose the payroll tax. Social Security and Medicare, Federal taxes, state taxes, local taxes will never be charged on any of that money.

Mr. JORDAN. Yes, because it is all cash.

Mr. HERN. So people need to understand the enormity of this problem, that if we don't bank it—you didn't create the problem. You are trying to be a solution to the problem.

Mr. JORDAN. We are just trying to deal with it.

Mr. HERN. Yes, thank you.

I have one final question that kind of goes across to everybody. I could ask questions all day. This is my bailiwick. This is what I love to hear, and the Chairman knows this. Thank goodness we are in Washington, D.C. and limited to 5 minutes, or we would be talking for a long time.

Do you believe that the Federal agencies understand the challenges that small businesses face in complying with regulations in their communities?

I will start with Ms. Osburn.

Ms. OSBURN. No. I think that is where—and, Mr. Chairman, to answer your earlier question, I think that that would be something that would be greatly beneficial, is some sort of communication, some sort of leaning on the agencies, maybe to feel a little bit of pressure to help understand the burden that a lot of this is placing upon small businesses.

Mr. HERN. Thank you.

Mr. Ground?

Mr. GROUND. I will go just the opposite and say yes. I have seen in the last couple of years a change in an attitude, and it is more on the local Federal agency offices, like the local U.S. Fish and Wildlife Office. They have had a change in leadership. A lot

of times that is all it is, is a change in leadership, which changes the attitude, which very much changes now the field of people who work with companies, which in the past couple of years, few years, has been tremendous.

The same for the local Bureau of Land Management Office in Norman. It has got to where we actually have industry-agency periodic meetings where we talk to them about issues. I would say before we started holding those they did not understand our perspective, what the burden was. So we have actually started working through and have a much better working relationship.

And then with EPA Region 6 in Dallas, I hate to call them bureaucrats, but some of the people, the long-term employees there do not understand, and you never—someone like me never gets an opportunity to meet with them. But you have enough of a change in their leadership where we work with them, and it really gets back to where there is a better working relationship.

So to me, any time we can work with the Federal agency, it helps them to understand. I have seen in the past where they do not. They say, no, we are not going to—you do what we tell you and there is no two-way conversation. So I have seen a change in the last few years.

Mr. HERN. Mr. Jordan, I am going to repeat the question. Do you believe that Federal agencies understand the challenges of small businesses, in your case banks, facing complying with regulations?

Mr. JORDAN. It is a mixed bag. I think from our safety and soundness regulatory people, they kind of see that. But the compliance don't seem to see that. But I would echo Mr. Ground's comments. We have seen a little bit of a change when you have seen change in the leadership of those agencies. There is a little bit more cooperative stance today than probably there was six or eight, 10 years ago. Of course, 10 years ago we were in the middle of a crisis too, in the banking, so that was a different environment than it is today. But to me, at best, it is kind of a mixed bag.

Mr. HERN. You just made a comment—I hadn't thought about this—in regard to Dodd-Frank and the safety and soundness versus compliance. Do you think there ought to be—and I don't know that there isn't, but I am going to assume that there isn't—a scale that says if you have consecutive quarters of very safe and sound, your asset levels have been great, you have hit all your marks on CRA and stuff like that, that maybe your regulatory meets with OCC and all those various agencies are spread out farther to give you more breathing room?

Mr. JORDAN. Yes, it would help. There is a little bit of that going on now on your exam cycle. It went from a 12-month to maybe an 18-month, which it could probably be even more than that. But that is what we would like to see, is more of a risk-based approach to the regulations that you put in. Specifically, we are just looking at Farmers State Bank. I mean, we are definitely not a systemically important institution, but yet we are under the same rules and regulations that Bank of America is. When you are looking at that, if you would risk-base that, or if they could on just the metrics that you mentioned, that certainly would be a welcome thing in the community banking world.

Mr. HERN. Mr. Selman, thoughts?

Mr. SELMAN. I actually agree with Mr. Jordan here. You have got your agencies you are working with. Some of them are more educated on all the burdens that you go through than others. USDA, we are talking with them quite a bit, so they are very intelligent on what the farmers do. If you are talking with, say, the Department of Immigration or Homeland Security, or maybe even the Department of Labor, they might not understand what goes on, that you have to deal with these other agencies. They just see this one agency, this one particular item that you are dealing with and they don't see everything else. I think a lot of it is just educating them on what we are doing.

Mr. HERN. Thank you.

Mr. Chairman, I think that is all my questions.

Chairman KIM. That is great.

Again, I just wanted to thank all the witnesses for coming on out and giving us your perspective, and I think that final question that the Ranking Member just said I think really sums it up. We wanted to make sure that those that are in charge of making these regulations from the congressional side or from the executive branch side, and implementing them, that they understand your experience, that they understand the user experience, for lack of a better word, from the small business side of how this impacts them.

I think you are right. I think Mr. Selman really hit the nail on the head, that oftentimes some people in Washington are only thinking about it from their particular slice, whether that is issue based or department based or geographic based. They may not necessarily be thinking about the big picture and how all of this accumulates from a small business perspective side or an individual side, so that is really helpful.

I think for me, just a couple of takeaways that I think about when I think about what it means to be in the shoes of a small business owner or worker. Certainly, there needs to be a need for flexibility, some nimbleness in terms of how small businesses are able to operate for them to be able to deal with their work, and this is certainly impacted by some of these rules and regulations.

Two, I think Mr. Selman really hit this home, the need for expertise and experience, to be able to hire workers, to be able to have the flexibility that you need, the ability to be able to bring in the kind of talent that you need to be able to get the job done, especially if there is a shortage, or especially if you can't find others that are able to do that.

Third, the need for predictability. There is a lot of uncertainty in planning, and it is already a difficult business climate oftentimes for different industries, and businesses need to be able to plan not just what the next six months or year is going to look like but what is going to happen two, three, four, five, 10 years down the road, and be able to do that type of plan that is very difficult when regulations and rules are changing and it is hard to keep up with it and you don't know what direction it is going to go.

I think, again, a lesson that I learned from Mr. Jordan is that it is not just one specific regulation or issue or different issues, that it has a cumulative effect, that this is a systemic problem that we need to address, and there is a deeper question about what is the

importance and what is the role that these types of rules and regulations play.

And certainly all of us understand there are times and places when it is important, when it is dealing with the health and safety of our families, our communities, when it is dealing with the security of our nation as a whole, or whether it is dealing with environmental protections in important ways that deal with our own communities and our commitments to conservation. There are certainly places that we see it, but we need to make sure that it is, first of all, the right value that we are pushing on, and second, that it is dealing with it in an effective way and that the rules and regulations are actually getting at the issue and the intent for which it was created, while also not creating an over-burdensome perspective.

So I certainly take a lot out from this. I come before you all here in Tulsa today with a lot of humility. I am not here thinking that I know what is best for your community. I don't know all the issues that you are facing here in Oklahoma, what small businesses face here. I hear a lot of echoes, similarities with my own community, whether it is with what Mr. Selman said that sounds a lot like what I hear from cranberry growers and blueberry growers in New Jersey, or even just the shore towns that need to hire people to staff the boardwalk and other places during the season and being able to get the amount of workers that they need.

So I certainly see a lot of reflections. I think there are a lot of things that bind New Jersey and Oklahoma, but then there are also other things that are going to be different, and that is exactly why Congressman HERN and I need to work together and work with other members of Congress all across the country to figure out what are the areas that we feel are common threads, how do we make sure that things that might be good for New Jersey aren't going to be bad for Oklahoma, and vice versa, and those are the types of things.

So what I will tell you is that I feel like I can speak on behalf of the two of us and the broader Committee, that we are committed to working for small businesses, we are committed to working with you doing what we can, and I just greatly appreciate this opportunity and the hospitality that you have shown me coming into your community, and I look forward to coming back around again sometime in the future.

I just want to turn it over to the Ranking Member for some final words.

Mr. HERN. Mr. Chairman, again, I want to thank you so much for doing this. I appreciate it. The Small Business Committee is a nice oasis in Washington, D.C. It is a place where you hear from witnesses and nobody would know—they could walk in and listen to your testimony and never know how you ever vote because it is about one thing, it is about how you make your businesses better for the people that work for you regardless of how they vote. That is what it is all about.

I have said this countless times, almost every time that I have had the chance, which is every time, on our full Committee when we have witnesses speak, that I wish every committee, the other 21 committees in the House of Representatives, could have wit-

nesses like we have, because they come in, they pour their hearts out, asking us to help them to be able to run a better business, to start businesses, to be a better employer so they can do the right things to do their part in making this the greatest country in the world.

We have a lot of work to do. The pendulum always swings from no regulation to over-regulation. We have to find that harmony, as the Chairman said. We can all work together to move this country forward. When you have almost 30 million businesses in the United States that are small businesses, which represent, as I mentioned in my opening statement, 99.7 percent of all business in the United States are considered small businesses.

We have a lot of work to do. When you think about that, that responsibility, that size of the entire workforce in the United States is bipartisan, you would wonder why we couldn't take what we have here in Washington, D.C. in the Committee and cross-pollinate that to the rest of Congress to get so much done.

Just this past week we passed out of Committee six bills that were specifically to our veterans, directed to our veterans, to help them start businesses as they come out of the military that we are sending to the floor for a vote that I am sure will pass with bipartisan support.

So we have a lot of work to do to listen to you all, get your respective issues to the respective committees with our recommendations, our thoughts from all the committee hearings that we have. We have great staff members here. It has been video recorded. Everything we do is recorded so we always have the archives of what was said, who said it, and what the intent and the passion was behind it.

So with that, I want to thank all of you all. You are great Oklahomans for being here. I appreciate you taking your time to be here to do what may not be comfortable for you to do, speak about who you are, what you are about, your concerns, and with a little bit of doubt in your mind, am I just talking to a wall. I get that, I understand that.

But I want you to know, and I speak for the Chairman—I just want to say this in passing before we leave here. The Chairman, when we first sat down, the first thing he said to me, he says I have never been in small business before, but I want to learn.

You have to have that kind of relationship, because there are many things that he has done that I have never done. You have to be willing to sit down. That is what is broken in Washington, that nobody is willing to sit down and have these kind of conversations that we are having today. We have to do that so we can get some things done.

Thank you all so much, and safe travels home. Appreciate it.

Chairman KIM. Thank you so much.

I would ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

And if there is no other further business to come before the Committee, we are adjourned.

Thank you so much.

[Whereupon, at 10:43 a.m., the Committee was adjourned.]

A P P E N D I X

**WRITTEN STATEMENT OF
CHAD SELMAN
TO THE
HOUSE OF REPRESENTATIVES SMALL BUSINESS COMMITTEE
REGARDING
"HOW REGULATIONS STIFLE SMALL BUSINESS GROWTH"**

July 22, 2019

Thank you for the opportunity to provide comments on this important topic. I'm Chad Selman, from Skiatook, owner of Selman Farms, a pecan growing operation. Oklahoma is first in the Nation in native pecan production and fifth in overall production, harvesting around sixteen million pounds annually. I lease around 1,800 pecan acres. We harvest more than 25,000 trees. Our groves consist of 90% native pecans and 10% improved varieties. In addition to my pecan operation, I have a 120 head cow-calf herd.

I serve as vice president of the Tulsa County Farm Bureau and president of the Oklahoma Pecan Growers Association. I serve on the board of the U.S. Pecan Growers Council, the American Pecan Federation board, and on the American Pecan Council in the alternate broker/buyer position.

Labor makes up largest percentage of my operating expenses. I use the H-2A Temporary Agricultural Worker program. These workers are not immigrants, but foreign nationals. My workers are from Mexico and most return every year.

Pecan groves require a lot of hands-on caretaking and physical labor. I contract for two H-2A workers for ten months of the year for grove work. During the spring and summer, the workers trim branches from trees, some of which is done from the ground and some with a tree trimmer with a hydraulic pole saw. We manage the ground cover between the trees through mowing, spraying for weeds and baling hay. The hay feeds my cow-calf herd in the winter. We spray the trees to keep them free from insect and plant pests. All fallen branches must be physically picked up from the grove floor and disposed of, which is back-breaking work. We must have a clean

grove floor to harvest the pecans. I could not operate my farm without these workers, as few Americans want to do to this difficult, outdoor work.

During harvest, I employ eleven additional H-2A workers, bringing the total to thirteen. We have a tree shaker machine that literally shakes each individual tree. The pecans that fall to the ground are swept up by a pecan harvester, then transferred to a trailer for transport.

I have a cold storage facility that holds two million pounds of pecans. In addition to storing my own pecans, I lease storage space to commercial pecan shellers. The cold storage facility requires year-round workers to weigh and bag pecans, drive the forklift and load and unload trucks.

Because the H-2A program is so complicated, I would never try to arrange for workers myself. The process involves several agencies, including the: State Workforce Agency, Department of Labor, U.S. Citizenship and Immigration Services, State Department and USDA.

I use a third-party consultant who handles the contracts and the paperwork, including performing the H-2A advertising. Workers arriving on different days require separate contracts. Under the program, I'm required to advertise for workers in three different states, three different times. This is to provide Americans with the first opportunity to work for me. If I don't succeed in hiring Americans, it proves I need the H-2A labor. During thirteen years of advertising in the U.S., we've had only six people apply for a job. We hired three and the other three never showed up.

I pay another person to make sure the workers make their appointments at the consulate and have their documents in order.

The minimum amount I pay the workers is \$12.23 an hour, the adverse effect wage (AEWR) in Oklahoma. This is required so I'm not displacing Americans who would otherwise work for me. By comparison, the minimum wage in Oklahoma is \$7.25. What I pay for the AEWR is more than what my neighbors pay for similar labor.

The AEWWR changes almost every year, with the 2019 AEWWR increasing on average 6%, while the national wage increase in the U.S. was only 3%. Some states saw significant increases from 2018-2019, ranging from 15-23%.

I pay the H-2A workers' transportation costs from their country to my location, a per diem that covers their meals during travel, and consulate fees, before they even begin their work for me. This year, it cost more than \$500 per worker to get them to my farm. While they work for me, I provide housing and transportation to and from the workplace, as well as the grocery store once a week. I also pay for their transportation back to their country.

The housing I provide is at no cost to the workers. It must meet strict standards and is inspected annually.

One of the most challenging aspects of my business is having the right number of workers when I need them. We are required to pay 75% of the contract hours from the time they arrive. Because of the weather last year, we had a short crop and harvest lasted only two weeks. I filed to stop the contract early due to unforeseen events. That process takes three weeks to be approved. Knowing that I would receive approval with the appropriate documentation, I sent the workers home early, so they wouldn't have to stay here with nothing to do.

There are segments of agriculture that need year-round workers. Livestock, dairy, mushroom and poultry production do not have a guest labor option, as the H-2A program is currently intended for seasonal/temporary work.

There is great value to the foreign nationals who work me. I mentioned many of the same workers return to work for me every year. I couldn't operate my farm without them, as Americans don't want to do this type of work. I need skilled workers, not inexperienced ones that I have to train who could tear up expensive equipment and cost me time and money.

Last week, the Department of Labor, Employment and Training proposed to help America's farmers with rules to modernize and improve the H-2A program. I'm encouraged by this.

We need revision of the H-2A program to remove those things that don't make sense and that are overly burdensome. The process should be simpler, so it's better for me as the producer and better for them as the workers. Because things like weather are beyond our control, production agriculture needs the H-2A program to have flexibility.

I have some thoughts on how to make the program better. The print advertisements required by the program are expensive and outdated, and do not meet the objective of obtaining a domestic worker before a guest worker. It would be preferable to have an online option for advertising.

A major reform for the program could include approving workers' visas for five years at a time and allowing workers to come and go during the year when the labor is needed, rather than limiting them to a continuous stay per each contract.

Because a domestic labor supply is unavailable, farmers incur costs they normally would not have to pay. Given the recent economic challenges in farm country, these added costs are causing farms to rethink their business structures, or in some cases go out of business. For example, farmers in western Oklahoma who used to grow watermelons have switched to crops that can be mechanically harvested. There are numerous examples of this around the Nation.

Should H-2A regulations not be addressed in a meaningful way, there is a great chance we will be importing even more food from countries with lower food safety, quality, and labor standards than we have in the United States.

Again, thank you for the opportunity to share my concerns.



Testimony of

Christopher Jordan

President and Chief Executive Officer

The Farmers State Bank

Stigler, Oklahoma

On behalf of the

Independent Community Bankers of America

Before the

United States House of Representatives

Committee on Small Business

Subcommittee on Economic Growth, Tax, and Capital Access

Hearing on

"How Regulations Stifle Small Business Growth"

July 22, 2019

Washington, D.C.

Chairman Kim, Ranking Member Hern, and members of the subcommittee, my name is Christopher Jordan, and I am President and CEO of the Farmers State Bank, a \$114 million asset community bank headquartered in Stigler, Oklahoma.

I testify today on behalf of the community banks represented by the Independent Community Bankers of America, with more than 52,000 locations nationwide. I am a former member of the Executive Committee of ICBA and remain active in the leadership of the association. Thank you for convening this hearing on "How Regulations Stifle Small Business Growth." With 40 employees, Farmers State Bank is a small business that, by creating access to credit, helps other small businesses to thrive. Regulatory burden on Farmers State Bank and other community banks harms us as well as the other small businesses we serve. The success of small businesses, including farms, in Oklahoma and across the country is vital to the prosperity of rural, urban, and suburban America. A favorable regulatory environment is a critical ingredient to this success.

Farmers State Bank was founded in 1908 and has been in my family since 1969. I am a third-generation community banker. Today, Farmers State Bank serves four rural communities in southeastern Oklahoma: Stigler, Quinton, Red Oak, and Eufaula. Our business model is fairly typical of a rural community bank, with a mix of small business, agricultural, and residential mortgage lending. We maintain a diverse portfolio because specializing in any one of these areas would be too risky. Like other community banks, we have thrived across generations by maintaining a simple capital structure, conservative lending practices, and being dedicated to the success of our communities.

Community Banks and Small Business Lending

Community banks are prodigious small business lenders. Though we hold 16 percent of U.S. banking industry assets, we hold a disproportionate market share of small business loans – 47 percent – supporting a sector responsible for more job creation than any other. We provide small business credit in good times as well as challenging times. Federal Reserve data shows that while overall small business lending contracted during the recession of 2008 and 2009, lending by a majority of small community banks (those of less than \$250 million in assets) actually increased, and small business lending by banks with asset sizes between \$250 million and \$1 billion declined only slightly. By contrast, small business lending by the largest banks dropped off sharply. The viability of community banks is linked to the success of our small business customers in the communities we serve, and we don't walk away from them when the economy tightens.

The type of small business lending community banks do simply cannot be duplicated by a bank based outside the community. As noted in a comprehensive study by scholars at the Harvard Kennedy School, "In certain lending markets, the technologies larger institutions can deploy have not yet proven effective substitutes for the skills, knowledge, and interpersonal competencies of many traditional banks."¹

Regulatory Overkill Poses a Grave Threat to the Community Bank-Small Business Partnership

The exponential growth of regulation in recent years is suffocating community banks' ability to serve their small business customers. Compliance has become a major distraction for community bank managers. In recent years, my job as a community banker has fundamentally shifted from lending

¹ "The State and Fate of Community Banking," Marshall Lux and Robert Greene. Mossavar-Rahmani Center for Business and Government at the Harvard Kennedy School. February 2015.

and serving customers to struggling to stay on top of ever-changing rules and guidance. This experience is typical of community bankers I talk to across the country. Every aspect of community banking is subject to new regulation.

Banks need more scale to accommodate the increasing expense of compliance which includes hiring, training, software, and other costs. I believe this increase in regulatory burden has contributed significantly to the decrease of 2,332 community banks in the U.S. since 2010. The number of banks with assets below \$100 million shrunk by 52 percent, while the number of banks with assets between \$100 million and \$1 billion fell by 24 percent. A financial landscape with fewer, larger banks will reduce access to credit for small businesses.

ICBA's legislative and regulatory recommendations are contained in Community Focus 2020: The Community Bank Agenda for Expanding Economic Opportunity. A copy of Community Focus 2020 is attached to this statement.

In this statement, I will focus on four areas of Community Focus 2020 regulatory relief which I believe would provide the greatest impact in strengthening community banks so that they may better serve small businesses: first, modernization of the Bank Secrecy Act, including reporting of beneficial ownership information; second, eliminating small business data collection; third, reforming Securities and Exchange Commission (SEC) regulation that creates barriers to capital raising for community banks; and fourth, a safe harbor for legal cannabis banking, which will protect even banks like mine that do not serve the cannabis industry. Regulatory reform in each of these areas would reduce the cost of regulatory compliance and allow community banks to redirect scarce financial and management resources to better serve our customers and communities.

Bank Secrecy Act Modernization

Community bankers are committed to supporting balanced, effective measures that will prevent terrorists from using the financial system to fund their operations and prevent money launderers from hiding the proceeds of criminal activities. However, Bank Secrecy Act/Anti-Money Laundering compliance has increasingly burdened community banks with identifying, investigating, policing, and reporting potential criminal activity.

However, because BSA/AML requirements become outdated, community banks increasingly doubt their effectiveness in combating financial crime. ICBA supports BSA/AML reforms that will ease compliance while providing more useful data to law enforcement.

Each year, Farmers State Bank must invest more time, money, and resources in BSA/AML compliance. My bank files an unusually large number of currency transaction reports (CTRs), which is perhaps true of other rural banks as well, though I have not seen data to confirm it.

Reporting thresholds are significantly outdated and capture far more transactions than originally intended. The currency transaction report (CTR) threshold was set in 1970 at \$10,000 and has not been adjusted for inflation. A higher threshold would produce more targeted, useful information for law enforcement.

Suspicious activity reporting is the cornerstone of the BSA system and is a way for banks to provide leads to law enforcement. Unfortunately, in the current regulatory environment, community bankers have a strong incentive to protect themselves from examiner criticism and liability by over-filing of

Suspicious Activity Reports (SARs) as a defensive practice, which dilutes their value to law enforcement. Regardless of the degree of offense, community banks are required to follow the same SAR procedure for every suspicious transaction alert. This mechanical approach makes community bankers doubtful that SARs have real value for law enforcement.

Reforming the SAR process to a truly risk-based system with appropriate threshold increases would enable community banks to provide more targeted and valuable leads to law enforcement. Similar to the CTR thresholds, the SAR filing thresholds have not been adjusted since becoming effective in 1992.

ICBA calls for a CTR threshold of \$30,000, significantly less than the threshold would be if it had kept pace with inflation, and a suspicious activity report (SAR) threshold of \$10,000.

ICBA supports the Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act (H.R. 2514), sponsored by Representative Emanuel Cleaver. H.R. 2514 recognizes the outdated currency transaction report (CTR) thresholds and would begin to address the filing of CTRs by indexing this threshold to inflation with adjustments made in five-year increments.

While indexing this threshold to inflation is a welcome first step, ICBA believes immediate and more robust relief is needed. CTR filings are a primary source of community bank compliance burden and expense, diverting resources that could be better directed toward community lending. For this reason, we strongly support the Financial Reporting Modernization Act (H.R. 388), introduced by Representative Barry Loudermilk, which would raise the CTR and SAR thresholds to \$30,000 and \$10,000.

Customer Due Diligence Rule

On May 11, 2018, FinCEN's Customer Due Diligence Rule became effective. The purpose of the rule, which requires banks to collect information on the beneficial owners of legal entities that open accounts, is to create more transparency and thereby deter the abuse of anonymous legal entities for money laundering, corruption, fraud, terrorist financing and sanctions evasion.

We agree that such transparency is important. We strongly disagree that bank collection of beneficial ownership information is an effective means of creating this transparency. For banks, collection of beneficial ownership information for all legal entity customers is difficult to implement and an onerous and inefficient task for both the customer and the employee. Front-line bank staff is required to conduct several additional intermediate steps during the account-opening process to ensure they have a reasonable belief of the true identity of each beneficial owner. While the ownership interest and management responsibility of a business may be straightforward in certain cases and specified in a legal organizational document in other cases, certain legal structures make determining ownership equity extremely difficult, at best. Obtaining this information and assessing the risk requires a sophisticated understanding of various legal structures and ownership interests that is well beyond the training of a typical community bank loan officer.

For this reason, we support the Corporate Transparency Act (H.R. 2513), sponsored by Representative Carolyn Maloney, which would require corporations and limited liability companies to disclose their beneficial owners to the Financial Crimes Enforcement Network (FinCEN) at the time the company is formed. FinCEN collection of beneficial owner information, as opposed to its collection by banks, would provide uniformity and consistency across the United States. Making the

formation of an entity contingent on receiving beneficial owner information more directly would create a strong incentive for equity owners and investors to provide such information.

Furthermore, information regarding beneficial owners could be more easily shared between law enforcement and government agencies than between banks and law enforcement. Privacy laws do not permit banks to share personal information with a government agency absent a subpoena or similar directive. Information should be collected by the party that can make the most effective use of it to deter the criminal use of legal entities. This is the government.

H.R. 2513 passed the House Financial Services Committee on June 11 on a strong bipartisan vote. I encourage the members of this committee to support the bill when it comes to the House floor.

Cutting the Red Tape in Small Business Lending: Eliminate Data Collection

Community banks are strongly concerned by a forthcoming rule that should be of particular interest to this committee because it is directly related to small business lending. Under a Section 1071 of the Dodd Frank Act, which has yet to be implemented, whenever a business seeks credit at a financial institution, the institution must inquire whether the business is women-owned, minority-owned, or a small business. The financial institution must maintain a record of the response to the inquiry together with additional information such as the census tract of the business and its gross annual revenues, whether or not a loan is subsequently approved. These records must be compiled and submitted annually to the CFPB, which will make the data available to any member of the public upon request. In addition, the records must be kept separate from the credit application and accompanying information and shielded from access by the underwriters or anyone involved in making credit determinations. In other words, the requirement creates a separate bureaucracy within the financial institution that cannot be integrated with lending operations.

I appreciate and sympathize with the motivation behind the new requirement. Lending discrimination, which is illegal under fair lending laws, must not be tolerated. But this new data collection requirement is especially inefficient and may not be feasible in certain cases such as in organizations that are too small to accommodate fire wall structures. Community banks will be disproportionately burdened by this requirement because they concentrate more on small business lending than other financial institutions. Further, data collected by community banks and subsequently made public by the CFPB could compromise the privacy of applicants in small communities where an applicant's identity may be easily deduced, despite the suppression of personally identifying information. For these reasons, ICBA believes community banks should be excluded from new small business data collection requirements.

Regulatory Barriers to Capital Access

Finally, ICBA supports regulatory relief measures that would improve capital access for community banks so that they have more capital to deploy in community lending. In particular, SEC regulations deter community banks from raising capital by going public or remaining public. ICBA supports relief for community banks under \$5 billion in asset size from the internal control attestation requirements of Section 404(b) of the Sarbanes-Oxley Act. Under current law, only companies with market capitalization of less than \$75 million are exempt from Section 404(b).

In addition, ICBA support relief for community banks with assets of less than \$5 billion from a requirement under the FDIC Improvement Act (FDICIA) that they submit an annual report containing management assessment of the bank's internal controls, an external auditor's attestation, and audited financial statements, among other items. Under current law, institutions with assets of less than \$1 billion are exempt from the FDICIA requirement.

For community banks, the external audit requirement is redundant because their internal control systems are monitored continually by bank examiners. This threshold increase would account for recent industry consolidation which has resulted in fewer, larger banks. Almost 90 percent of banking assets would remain subject to the FDICIA reporting requirements. When FDICIA was first adopted in 1993, only 75 percent of banking assets were subject to its reporting requirements.

With regard to banks such as mine that remain privately held, ICBA recommends reforming SEC Regulation D, which governs private sales of unregistered securities, to broaden the definition of "accredited investors" who may purchase such securities to include the value of investors' primary residence in determining whether they meet the \$1 million net worth threshold. Current Regulation D requires exclusion of the value of an investor's primary residence. The accredited investor net worth definition has not kept pace with inflation. In addition, we recommend that up to 70 non-accredited investors be permitted to purchase the unregistered securities of a private company. Current law limits the number of non-accredited investors to 35. Transactions under Regulation D would remain subject to antifraud, civil liability, or other provisions of the federal securities laws.

Safe Harbor for Legal Cannabis Banking

ICBA and I support the Secure and Fair Enforcement Banking Act of 2019 (SAFE Banking Act, H.R. 1595), bipartisan legislation introduced by Representatives Ed Perlmutter, Denny Heck, Steve Stivers, and Warren Davidson to create a safe harbor from federal sanctions for financial institutions that serve cannabis-related businesses (CRBs) in states and other jurisdictions where cannabis is legal.

While cannabis remains illegal at the federal level, an increased number of states have legalized it for medical and/or recreational use. As you know, Oklahoma has legalized cannabis for medical use. To date, Farmers State Bank does not have any relationships with CRBs nor do we have plans to initiate any. However, as these businesses continue to mature they require access to the traditional banking system, the conflict between state and federal law has created increasingly significant legal and compliance concerns for banks that wish to provide banking services to CRBs in jurisdictions where it is currently legal. Legal and regulatory uncertainty has curtailed access to the traditional banking system for CRBs and forced them to operate mostly in cash. Cash-only businesses, especially those with a high volume of revenue, pose a significant risk to public safety.

ICBA does not advocate for legalization of cannabis at the federal level or otherwise, but we do support the creation of an effective safe harbor from federal sanctions for banks that choose to serve CRBs in states and jurisdictions where these businesses are legal. The SAFE Banking Act would create such a safe harbor by providing that in jurisdictions where cannabis is legal federal banking regulators may not threaten or limit a bank's deposit insurance, downgrade a loan, prohibit or discourage the provision of banking services, or take any other prejudicial action solely because a bank customer is a CRB.

Importantly, this safe harbor would extend to banks that serve the many ancillary businesses that serve CRBs such as landlords, accountants, utilities providers, and others that may be paid in funds ultimately derived from cannabis sales. These ancillary businesses may be difficult to identify in states that have legalized cannabis, and potentially create a legal and regulatory trap for even those banks that choose not to serve CRBs directly.

H.R. 1595 passed the House Financial Services Committee on March 28 on a strong bipartisan vote. I encourage the members of this subcommittee to support this important bill when it is considered on the House floor.

Closing

Thank you again for the opportunity to testify today. ICBA hopes this testimony, while not exhaustive, gives this subcommittee a sense of the sharply increasing resource demands placed on community banks by regulation and the destructive impact they have on small business lending. ICBA hopes to work with this subcommittee to craft urgently needed legislative solutions.

ATTACHMENTS

- **ICBA's Community Focus 2020**



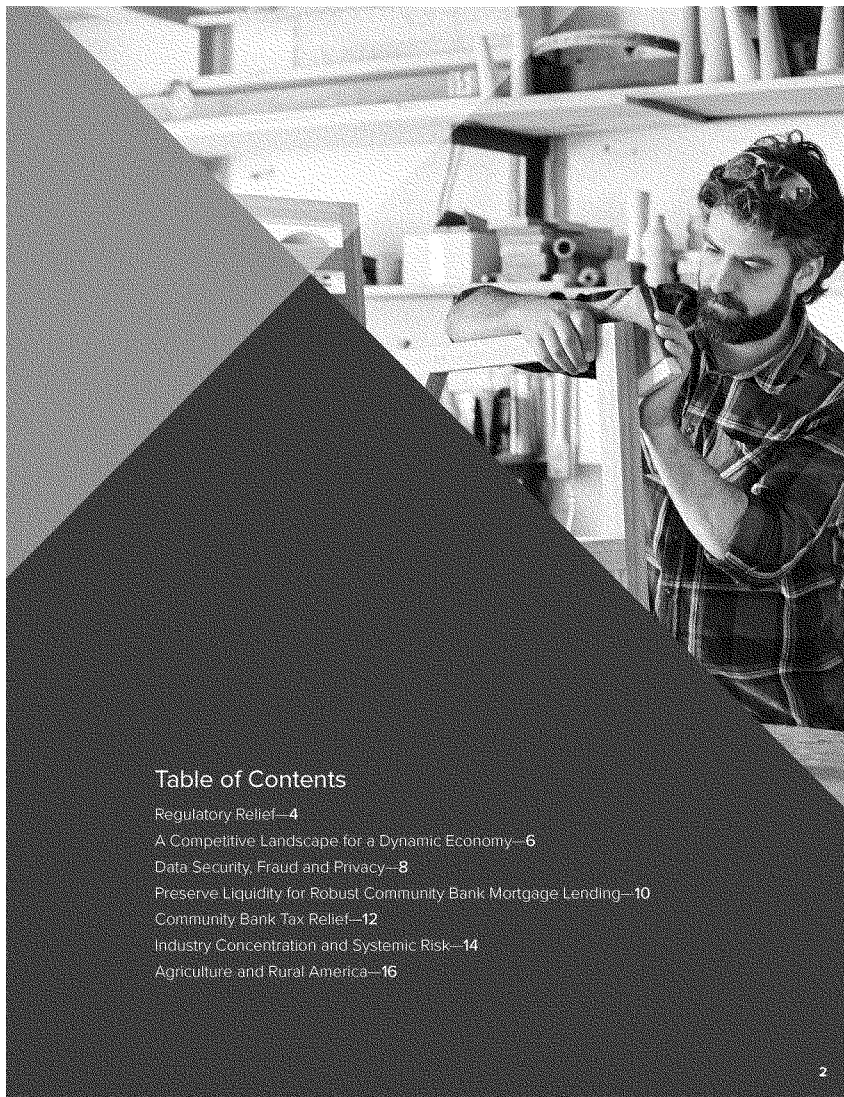


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Community Focus 2020:
The Community Bank
Agenda for Expanding
Economic Opportunity

Community banks are local financial institutions that serve their customers and communities in unparalleled ways. By channeling \$3.4 trillion in loans to local consumers, small businesses, farms and agricultural enterprises, community banks spur job creation, foster innovation and help realize their customers' goals in communities throughout America.

Comprising 99 percent of U.S. bank charters, community banks make nearly 60 percent of the nation's small-business loans and nearly 80 percent of agricultural loans from the commercial banking sector. They are the nation's preeminent source of capital for Americans who wish to put their deposits to work in their own communities.

Serving the nation's rural, suburban and urban communities with more than 52,000 locations, and a presence in every congressional district, strong and prosperous community banks are critical to ensuring that every local community can join in the nation's broad economic prosperity. In more than 600 counties—nearly one in five U.S. counties across the country—a community bank is the only physical banking presence.

To better disperse economic opportunity across and throughout every local community, ICBA's Community Bank Agenda for Expanding Economic Opportunity supports economic principles that every member of Congress and policymaker can stand behind. ICBA and community banks across the nation support a more efficient system of regulation, unbiased laws governing the financial sector, a safer and more secure business environment, and more effective agriculture policies. The plan includes specific, common-sense recommendations developed by community bankers to establish a level regulatory and competitive playing field that allows them to better serve customers while also preserving consumer protections and bank safety and soundness.

ICBA and community bankers look forward to working with policymakers on advancing this agenda.

Regulatory Relief

Overregulation continues to encumber community bank lending, which plays a critical role in spreading the economic recovery to regions that have not yet experienced strong growth. Excessive regulation of community banks drives industry consolidation that will directly harm consumers and small businesses. Regulation should be tiered to the size, complexity and interconnectedness of the institution. Not all institutions present the same risk to consumers or to the financial system, and one size does not fit all. ICBA supports intelligent, risk-based regulation focused on the too-big-to-fail and too-big-to-manage institutions that have repeatedly abused consumers and whose failure would disrupt the financial system. Community bank regulatory relief will better promote the flow of credit and economic opportunity for all individuals and families.

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Modernizing the Bank Secrecy Act

ICBA recommends raising the currency transaction report (CTR) threshold from \$10,000 to \$30,000 and indexing future increases on an annual basis. The current threshold, set in 1970, is significantly outdated and captures far more transactions than originally intended. A higher threshold would produce more targeted, useful information for law enforcement. ICBA also supports the creation of a tax credit to offset the cost of Bank Secrecy Act (BSA) compliance. See *Community Bank Tax Relief* for more information.

Customer Due Diligence Rule

FinCEN's Customer Due Diligence Rule requires banks to collect information on the beneficial owners of legal entities that open accounts. The purpose of the rule is to create more transparency and thereby deter the abuse of anonymous legal entities for money laundering, corruption, fraud, terrorist financing and sanctions evasion. ICBA recommends that beneficial ownership information be collected and verified by either the Internal Revenue Service or other appropriate federal or state agency at the time a legal entity is formed. This solution would provide uniformity and consistency across the United States. Making the formation of an entity contingent on receiving beneficial owner information would create a strong incentive for equity owners and investors to provide such information.

Strengthening Accountability in Bank Exams: A Workable Appeals Process

An independent body should be created to receive, investigate, and resolve material exam complaints from banks in a timely and confidential manner. This would create much-needed checks and balances in the current system, which grants examiners almost unfettered and unassailable authority. A workable appeals process would hold examiners accountable and prevent retribution against banks that file complaints.

Relief from Internal Control Mandates

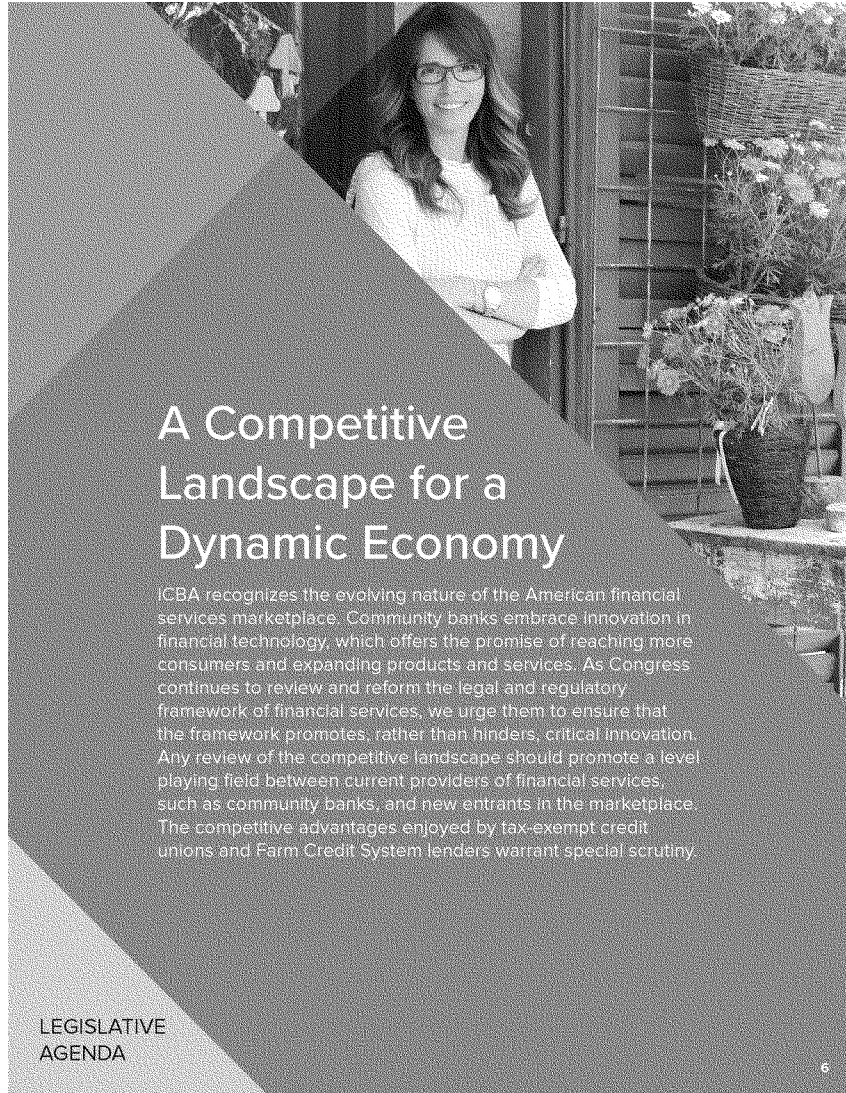
An exemption from Securities and Exchange Commission (SEC)-mandated internal control audit requirements should be created for publicly traded banks with a market capitalization of \$350 million or less. This should be paired with an equivalent exemption from FDIC-mandated internal control audit (Part 363) for banks with assets of less than \$5 billion. Under current law, any company with market capitalization of \$75 million or less is exempt from the SEC mandate, and any bank with assets of less than \$1 billion is exempt from the FDIC mandate. Because community bank internal control systems are monitored continually by bank examiners, they should not have to sustain the unnecessary annual expense of paying an outside audit firm. This provision would substantially lower unnecessary accounting costs for small banks without creating more risk for investors or the Deposit Insurance Fund. It would allow these banks to redirect resources toward community lending.

Facilitate New Capital Investment Through Private Offerings

SEC Regulation D should be reformed so that anyone with a net worth of more than \$1 million, including the value of their primary residence, would qualify as an "accredited investor." The number of non-accredited investors that could purchase stock under a private offering should be increased from 35 to 70.

Banking Services for Legal Cannabis-Related Businesses

As more states legalize cannabis for medical and/or recreational use, it is critically important as a matter of public safety that cannabis-related businesses, as well as those businesses that serve them, have access to the traditional banking system. ICBA supports legislation that would create a safe harbor from federal sanctions for financial institutions that serve cannabis-related businesses in states where cannabis is legal.



A Competitive Landscape for a Dynamic Economy

ICBA recognizes the evolving nature of the American financial services marketplace. Community banks embrace innovation in financial technology, which offers the promise of reaching more consumers and expanding products and services. As Congress continues to review and reform the legal and regulatory framework of financial services, we urge them to ensure that the framework promotes, rather than hinders, critical innovation. Any review of the competitive landscape should promote a level playing field between current providers of financial services, such as community banks, and new entrants in the marketplace. The competitive advantages enjoyed by tax-exempt credit unions and Farm Credit System lenders warrant special scrutiny.

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No Regulatory Subsidy for Fintech

Congress should ensure that online marketplace lenders or other fintech companies are not given an unfair regulatory advantage over depository institutions such as community banks. In particular, the Office of the Comptroller of the Currency should not issue a special-purpose charter for fintech companies without explicit statutory authority from Congress. Any new federal charter should be subject to the same standards of safety, soundness, and fairness as other federally chartered institutions.

ILC Loophole Promotes Corporate Consolidation and Threatens the Federal Safety Net

A loophole in the Bank Holding Company Act allows commercial companies and fintech companies to own or acquire industrial loan companies (ILCs) without being subject to federal consolidated supervision. ILCs are the functional equivalent of full-service banks. Commercial company ownership of ILCs will effectively combine banking and commerce, contrary to long-standing American economic policy. In the new era of dominant Big Data, social media and e-commerce conglomerates, artificial intelligence, and financial technology, we should be cautious before giving these companies yet more reach into the economic lives of Americans. Any such far-reaching change should be debated by Congress. ICBA supports statutory closure of the ILC loophole.

Curb or Eliminate Tax Subsidies for Rapid-Growth, Bank-Like Credit Unions

Tax-exempt credit unions have become virtually indistinguishable from tax-paying commercial banks. Today's credit unions are leveraging their tax subsidy for rapid growth, purchasing multi-million-dollar stadium naming rights, flaunting their nearly unlimited fields of membership, and expanding their activities well beyond their original mission. The largest credit union is approaching \$100 billion in assets. Many credit unions are aggressively pushing into commercial lending. Others are trying to get into wealth management. ICBA urges Congress to restore balance to the American financial services marketplace and help close the growing budget deficit by re-examining the outmoded credit union tax subsidy.

Farm Credit System Crowding Out Rural Community Bank Lending

Farm Credit System (FCS) lenders enjoy unfair advantages over rural community banks and leverage their tax and funding advantages as government-sponsored enterprises (GSEs) to siphon the best loans away from community banks. The FCS is the only GSE that competes directly against private-sector lenders at the retail level. FCS was chartered by Congress to serve bona fide farmers and ranchers and a narrow group of farm-related businesses. In recent years FCS has sought non-farm lending powers in an effort to compete directly with commercial banks for non-farm customers.

Data Security, Fraud and Privacy

Community banks are committed guardians of the security and confidentiality of customer information as a matter of good business practice as well as legal and regulatory compliance. Safeguarding customer information is central to maintaining public trust and retaining customers. Nonetheless, community banks are only one of numerous entities that store consumer financial data. As bad actors continue to look for vulnerabilities in the payments and information systems of various industries, breaches will continue to occur. Data breaches at a national credit bureau, national retailers, major hotel chains, and elsewhere have the potential to jeopardize consumers' financial integrity and confidence in the payments system.

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Strengthen Weakest Links

All participants in the payments and financial systems, including merchants, aggregators and other entities with access to customer financial information, should be subject to Gramm-Leach-Bliley Act-like data security standards.

Uniform Breach Notification Will Mitigate Losses

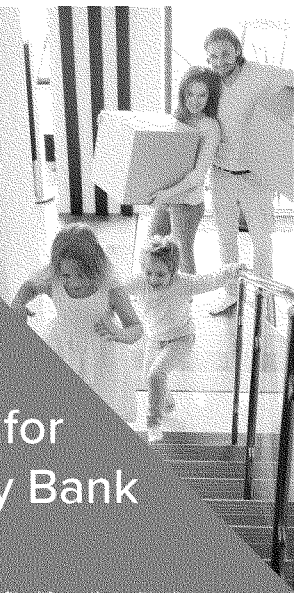
ICBA supports a national data security breach and notification standard to replace the current patchwork of state laws. Community banks should be notified of a potential or actual breach as expeditiously as possible in order to mitigate losses.

Align Incentives to Better Secure Data

The costs of data breaches should ultimately be borne by the party that incurs the breach. This is not only a matter of fairness; a liability shift is needed to properly align incentives for entities that store consumer financial and personally identifiable data to strengthen their data security. When breaches have a material impact on entities' bottom lines, they will quickly become more effective at avoiding them. Barring a shift in liability to the breached entity, community banks should continue to be able to access various cost-recovery options after a breach, including account-recovery programs and litigation.

Privacy

Any privacy legislation considered by the Congress must recognize the existing requirements community banks undertake to protect customer information and privacy.



Preserve Liquidity for Robust Community Bank Mortgage Lending

For decades, American homeowners have benefited from the critical role Fannie Mae and Freddie Mac (the government-sponsored enterprises, or GSEs) play in helping finance homeownership. The GSEs have provided a steady, reliable source of funding for home mortgage lending through all economic cycles and in all markets. GSE securities trade with the same ease as U.S. Treasury debt. The GSEs operate as friendly aggregators and a source of capital for mortgage-lending institutions of all sizes and charters.

Community banks depend on the GSEs for direct access to the secondary market without having to sell their loans through a larger financial institution that competes with them. Unlike other private investors or aggregators, the GSEs have a mandate to serve all markets at all times.

ICBA Supports Reform

ICBA supports housing finance reform to preserve market liquidity, protect taxpayers, encourage the return of private capital, and ensure a stable national mortgage market for all stakeholders.

Earnings Sweeps Jeopardize GSE Capital

The Federal Housing Finance Agency (FHFA) must take steps to end the destructive sweep of GSE earnings that will bleed all capital from the GSEs to the Treasury, result in another taxpayer bailout, and possibly cause disruption in the housing market.

Preserve Community Bank Access

Housing finance reform must provide robust and equitable secondary market access for lenders of all sizes, no competition from GSE successors at the retail level, and retention of mortgage-servicing rights on transferred loans. The GSE secondary market structure must not be turned over to the largest national lenders and Wall Street institutions.

30-Year Fixed-Rate Mortgage a Staple of American Homeownership

ICBA is committed to preserving the 30-year fixed-rate mortgage for creditworthy customers in all markets.

A Long-Term, Financially Responsible National Flood Insurance Program Will Promote Mortgage Lending and Homeownership

Congress created the National Flood Insurance Program in 1968 to help property owners protect themselves financially from the risk of flooding at a time when flood insurance was not readily available in the private market. Long-term authorization of the NFIP will stabilize the program and prevent disruptions in the mortgage market. Congress needs to strike a delicate balance between setting the program on sound financial footing and making sure that rates are affordable for the homeowners and businesses who depend on flood insurance coverage. ICBA is supportive of increased private market participation as long as certain conditions are met that would protect both consumers and lenders.

Community Bank Tax Relief

ICBA continues to promote tax and budget policies that foster economic growth and support the community banking sector by providing direct tax relief and encouraging private savings and small business investment. A fair and unbiased tax code will enhance the viability of community banks and the vital role they serve in the U.S. economy as a critical source of lending for consumers, small businesses and farms.

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Preserve Competitive Corporate Rate

ICBA strongly supports the new corporate tax rate of 21 percent created by the Tax Cuts and Jobs Act, which benefits community banks and many of the businesses they serve. It is critical that the United States maintain a tax rate that is competitive with other industrialized economies. Over time, the new tax rate will strengthen corporate investment and create a more productive workforce. ICBA will oppose any efforts to increase the corporate tax rate.

Make Permanent the New Deduction for Pass-Through Shareholders and All Individual Rate Reductions

ICBA will press for extension of the individual provisions of the Tax Cuts and Jobs Act, including the 20 percent pass-through deduction for shareholders of Subchapter S banks and Alternative Minimum Tax and estate tax relief, well before they are scheduled to expire at year-end 2025. The pass-through deduction helps create rough parity between the taxation of C corporation and S corporation banks.

Incentivizing Credit for Low- and Middle-Income Customers and American Agriculture

ICBA supports the creation of new tax credits or deductions for community bank lending to low- and moderate-income individuals, businesses, and farmers and ranchers. Such tax credits or deductions would help to sustain and strengthen lending to these borrowers and would help to offset the competitive advantage enjoyed by tax-exempt credit unions and Farm Credit System lenders.

Modernize Subchapter S Constraints

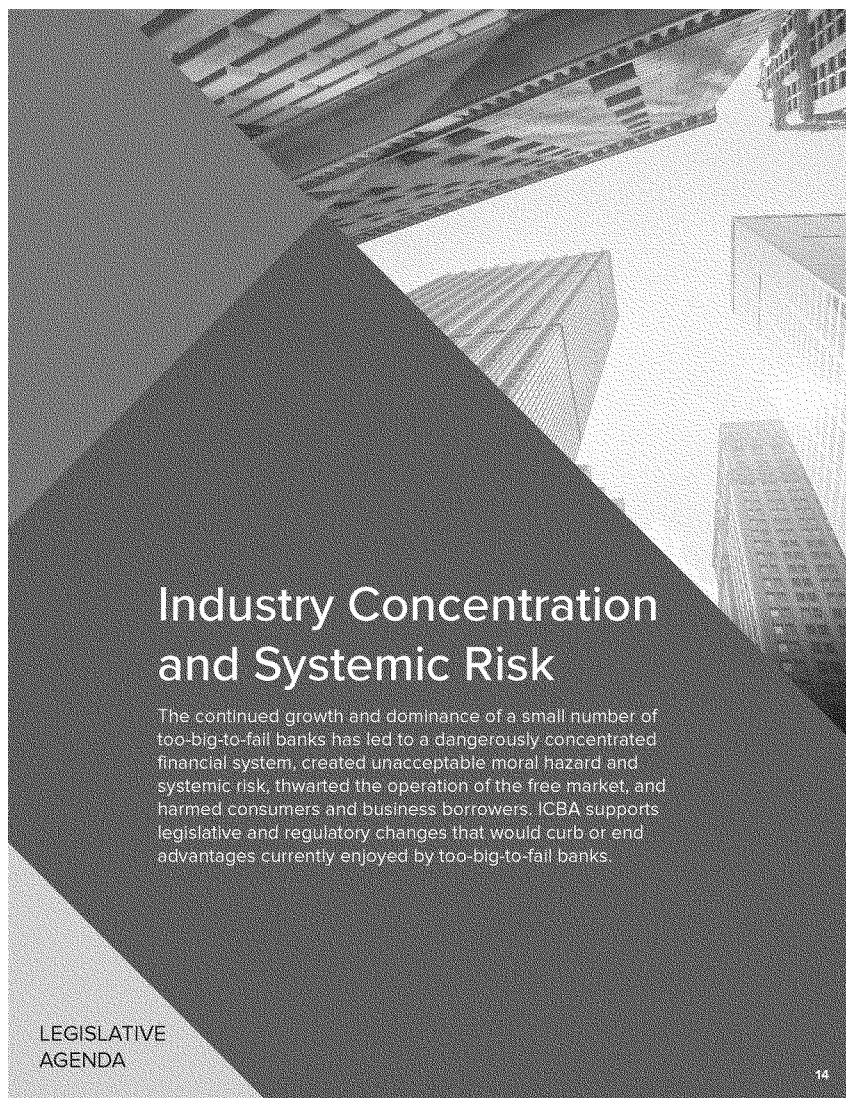
Subchapter S of the tax code should be updated to facilitate capital formation for community banks. Congress should: increase the limit on Subchapter S shareholders from 100 to 200; allow Subchapter S corporations to issue preferred shares; and permit the holding of Subchapter S shares, both common and preferred, in individual retirement accounts (IRAs). These changes would improve the ability of the nation's 1,900 Subchapter S banks to raise capital and increase the flow of credit.

Estate Tax Repeal

ICBA supports full, permanent repeal of the estate tax, which jeopardizes the succession of many community banks from generation to generation. A family estate should never be forced to sell its interest in a community bank to pay a transfer tax. Forced sales of once-family-owned community banks, coupled with regulatory burden, accelerate the current trend toward consolidation in the banking sector.

Tax Credit for Bank Secrecy Act Compliance Costs

For community banks, BSA compliance represents a significant expense in terms of both direct and indirect costs. BSA compliance, whatever the benefit to society at large, is a purely governmental, law-enforcement function with no direct benefit to the bank or its customers. As such, the costs should be borne by the government. ICBA supports the creation of a tax credit to offset the cost of BSA compliance.



Industry Concentration and Systemic Risk

The continued growth and dominance of a small number of too-big-to-fail banks has led to a dangerously concentrated financial system, created unacceptable moral hazard and systemic risk, thwarted the operation of the free market, and harmed consumers and business borrowers. ICBA supports legislative and regulatory changes that would curb or end advantages currently enjoyed by too-big-to-fail banks.

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Enhanced Prudential Standards for the Largest Banks

ICBA endorses higher capital, leverage, and liquidity standards; concentration limits; and contingent resolution plans for systemically important financial institutions. ICBA supported the requirement for a higher supplementary leverage ratio on the largest banks and their holding companies adopted by bank regulators. ICBA supports a significant capital surcharge on SIFIs and the imposition of total loss-absorbing capacity and long-term debt requirements on globally significant banks.

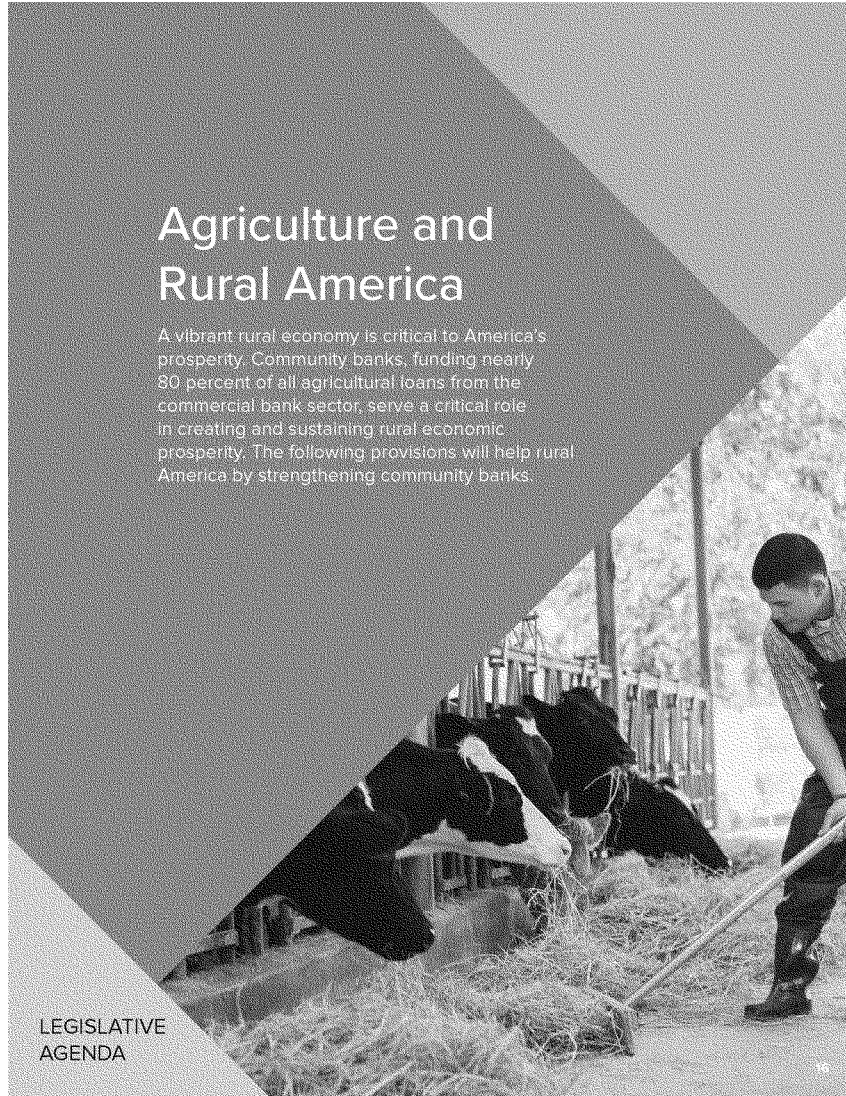
National Deposit Cap Must Be Strengthened

Current law prohibits bank mergers or acquisitions that would result in a single bank holding more than 10 percent of all U.S. deposits. ICBA supports a "hard" 10 percent deposit cap that would apply whether deposit growth was organic or a result of mergers or acquisitions. A hard deposit cap would help to curb further industry concentration.

Agriculture and Rural America

A vibrant rural economy is critical to America's prosperity. Community banks, funding nearly 80 percent of all agricultural loans from the commercial bank sector, serve a critical role in creating and sustaining rural economic prosperity. The following provisions will help rural America by strengthening community banks.

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Crop Insurance and Lending Limits

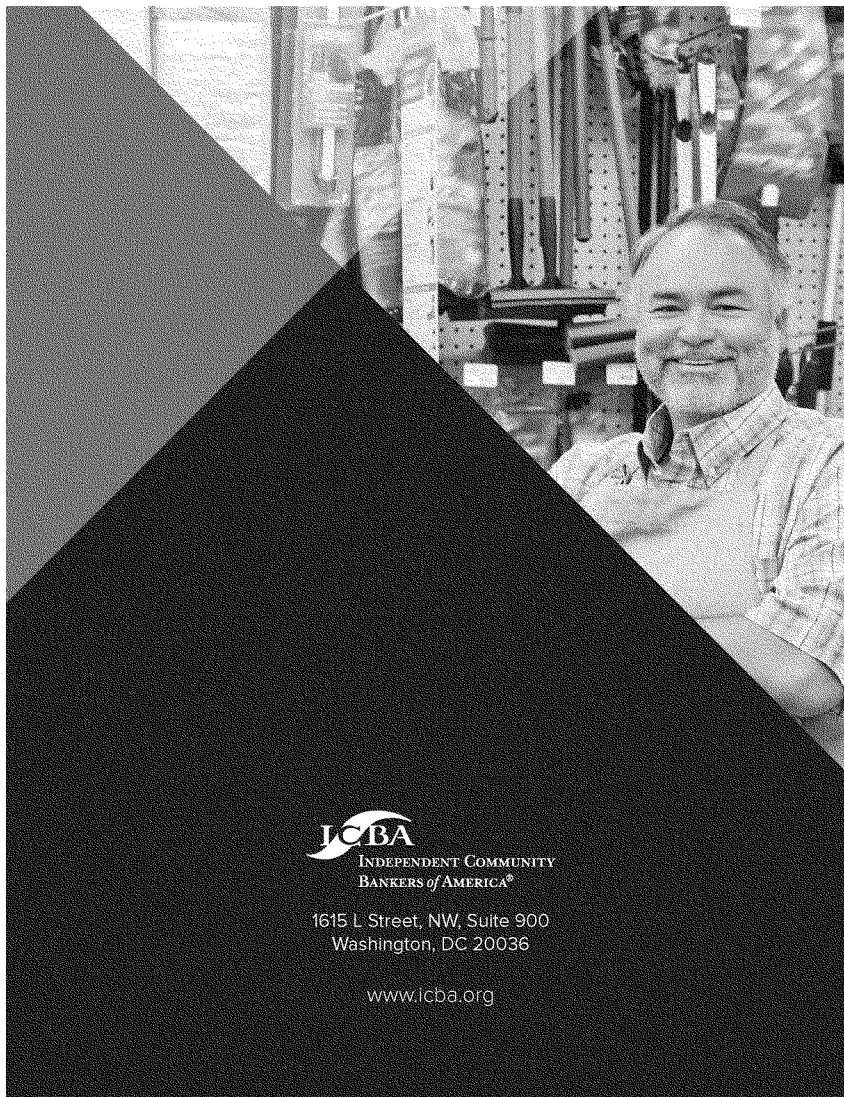
Farm loan balances that are protected by federal crop and revenue insurance should be exempt from banks' lending limits.

Agricultural Loan Concentration Limits

Federal banking regulators should not impose concentration limits on community bank agricultural loans that would needlessly curtail lending relationships. Many banks in rural areas do not have economic choices beyond agriculture, and arbitrary concentration limits could dramatically increase their risk by forcing them into new lending markets.

Tax Relief for Rural Lending

ICBA supports the creation of tax incentives to support agricultural and residential mortgage lending in rural areas. Congress should consider the creation of new tax credits or deductions for community bank lending to farmers and ranchers. Such incentives should include an exemption for interest income on mortgage loans equivalent to the exemption provided to the Farm Credit System. There should be parity among all lenders that serve rural areas regardless of legal entity type. This will allow community banks to maximize credit and services to farmers, ranchers, and residents of remote rural areas while helping to offset the competitive advantage enjoyed by tax-exempt credit unions and Farm Credit System lenders.



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Statement of Howard L. Ground
Director of Regulatory Affairs
The Petroleum Alliance of Oklahoma
Before the
House Small Business Subcommittee on
Economic Growth, Tax, and Capital Access
on
“How Regulations Stifle Small Business Growth”

July 22, 2019

Distinguished members of the Subcommittee, I speak to you today representing The Petroleum Alliance of Oklahoma, which was recently created by the merger of the Oklahoma Independent Petroleum Association and Oklahoma Oil & Gas Association. The Alliance represents approximately 3,000 individuals from 1,300 companies, including oil and gas producers, operators, purchasers, pipelines, transporters, processors, refineries and service companies. The average member company has 12 employees or less. The Alliance represents all sectors of Oklahoma's oil and gas industry and is dedicated to the advancement and improvement of the industry within the State of Oklahoma and the United States. The Alliance advocates the development of an environment that enables the oil and natural gas industry and related businesses to grow and prosper through the responsible development of Oklahoma's natural resources.

I want to spend my short time with you today describing the tremendous burden small businesses have in tracking and complying with new and constantly changing regulations and agency policies. This regulatory burden leads to uncertainty in business planning, in capital markets and in expense planning.

Overall Regulatory Burden

There are 71 federal agencies that regulate large and small businesses, and each of them routinely change regulations and policies requiring businesses to constantly track and make changes to their operations or plans. The constant tracking of the changes and implementation of required changes within the business leads to uncertainty, hindering access to capital and resulting in missed opportunities. Small oil & natural gas companies must expend valuable manpower and other resources in order to remain compliance with the rules of myriad federal agencies, including the Environmental Protection Agency, the Department of Transportation, the Department of Interior, the Department of Labor and many others.

The Office of Information and Regulatory Affairs publishes their *Unified Agenda of Regulation and Deregulatory Actions* on a routine basis. The latest *Unified Agenda* published in Spring 2019 listed all 15 cabinet departments, 33 executive agencies and 23 independent regulatory agencies and the hundreds of regulation and policy changes. While this Office and report is much-needed and appreciated by business since it gives access to all of the regulatory activities going on within each of the agencies, it also details the massive regulatory burden that business, especially small businesses, face.

For example, the Environmental Protection Agency currently has 151 rules and policy changes in various stages of rulemaking. Many of the proposed rule changes directly impact the oil & natural gas industry and require tracking, commenting and implementation when final. The EPA also has 29 Long Term Actions listed that seem to never come to a conclusion but can change and require large capital investments and extensive changes to operations to remain compliant. A few other examples include the Department of Transportation, which has 214 rules and policy changes listed, the Department of the Interior, which has 236 rules and policy changes listed, and the Department of Labor which has 62 rules and policy changes listed. This constant barrage of changes to regulations and policies has a stifling effect on small business growth and viability.

Real World Examples

The Department of Interior “commingle rules” in PART 3170—ONSHORE OIL AND GAS PRODUCTION, 43 CFR § 3173.14, which outlines the conditions for commingling of minerals between federal, tribal and private leases, and allocation approval is extremely burdensome. They are burdensome to the companies involved as well as to the Bureau of Land Management (BLM), which manages the rules. It seems that each of the BLM area offices interprets the rules differently and has different requirements for approval. This approval of the comingling often delays the permitting of oil & natural gas activities, which is very expensive to business.

The Endangered Species Act (ESA) implemented by the U.S. Fish and Wildlife Service under Title 16 U.S.C. Chapter 35 requires an immense amount of resources and is constantly changing, requiring modifications to expansion timelines and project scopes. The main species in Oklahoma that oil & natural gas companies encounter are the American Burying Beetle, and the lesser prairie chicken. Both species require preplanning on when and where a company can expand, as well as a

great amount of monitoring and reporting. Both have gone through listing changes, requiring that even more resources be dedicated to the tracking, monitoring and compliance activities required.

The Environmental Protection Agency has proposed many changes to air regulations that will have major impacts to the oil and natural gas industry, especially small companies that operate low producing wells. One example is the New Source Performance Standards (NSPS) for the oil and natural gas sector emissions standards for new, reconstructed and modified sources, also known as OOOOa amendments. This regulation in Title 40, Part 60, subpart OOOOa was changed in 2016 and placed limitations on methane and volatile organic compound emissions as well as increased monitoring and changes to equipment in the field. This rule was proposed to be changed again in late 2018, in order to streamline implementation, reduce duplicative requirements and significantly decrease the unnecessary burdens on energy producers, again, especially the small producers. These changes show just one small area where a significant regulation change resulted in major capital expenditures and changes to operations only to be changed again 2 years later.

Not Every Change Involves a Regulation

While the regulatory process is open to public scrutiny and published in a manner that is easily found, there is another method of regulating businesses that is not so transparent and easy to navigate. Many agencies use internal policies that basically set standards and requirements on businesses rather than going through the required regulatory process. Some of these policies are dictated to state agencies that implement federal rules, are not apparent to the regulated community, and can be changed by the federal agencies at any time without notice.

One example is the “once in always in” EPA policy which was initially implemented in 1995 and changed early this year. The EPA issued a guidance memorandum in January withdrawing the “once in always in” policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act. This guidance deals with the classification of an air emission source. The policy now allows for a source previously classified as “major sources” to be reclassified as an “area” source when the facility limits its potential to emit below major source thresholds. This is good for business expansion and capital improvements but shows a major change that impacts business and requires planning, capital and changes to operations.

Another example involves setting water quality standards that are used in developing permit limits by the state agencies that implement water discharge permitting. The standards are set by the states under guidance of the EPA and require EPA approval. While establishing the standards, some areas require special treatment and site-specific water quality standards instead of a statewide value. The method to obtain a site-specific standard requires very specialized monitoring and testing by the business, and detailed plans by the state agency and EPA. A couple of years ago, without any hearing or comments from the public, the EPA changed their policy to require a new water model. This new model requires more than a year of additional testing by the company and unlike the previous model, does not lead to a standard that is specific to the site. The historically used and well known and understood model is the Water Effects Ratio (WER) Model, and EPA now requires the Biotic Ligand Model (BLM). The change in models was dictated to the state agency under the threat of non-approval of the water quality standard if not used.

A third example is the EPA guidance on interpreting “adjacent” in relation to air permitting. The EPA provided an opportunity for stakeholders to review and comment on draft guidance in September 2018 on the interpretation of “adjacent” in the context of Clean Air Act permitting. The issue is when facilities are not on a contiguous property and involves more than physical proximity. This can have significant implications to a business that has facilities in close proximity, multiple locations or linear facilities like pipelines.

Conclusion

The regulatory burden placed on small oil and natural gas businesses requires resources that most small companies have difficulty maintaining. Today I spoke mostly about regulations that directly impact the core functions of the oil & natural gas industry, but there are many other areas that I did not mention like changes in tax laws, health care, transportation, etc. The issue is actually multiplied many times greater than what I have outlined. Please keep in mind as you study How Regulations Stifle Small Business Growth, that small oil and natural gas businesses are constantly assaulted on multiple regulatory fronts. This constant barrage of regulation are strain on resources and to make matters even more egregious, not all of the regulatory drivers have been through the required regulatory process. The Petroleum Alliance of Oklahoma appreciates the opportunity to testify before this distinguished committee on behalf of our membership. Questions concerning this testimony can be directed to Howard Ground at 405-601-2318 or bud@okpetro.com.

TULSA REGIONAL CHAMBER

Testimony of
Elizabeth Osburn, Senior Vice President of Government Affairs
Tulsa Regional Chamber

U.S. House of Representatives Committee on Small Business
Subcommittee on Economic Growth, Tax, and Capital Access

Title of Hearing: How Regulations Stifle Small Business Growth

Date: Monday, July 22, 2019
Time: 9am
Location: Oklahoma State University – Tulsa
North Hall Conference Center, Room 150
700 N. Greenwood Ave. Tulsa, OK, 74106

Chairman Kim, Ranking Member Hern, and Members of the Subcommittee, thank you for the opportunity to join you today.

My name is Elizabeth Osburn and I am the senior vice president of government affairs for the Tulsa Regional Chamber. The Tulsa Regional Chamber is a membership organization for businesses with a focus on growing jobs, talent, and economic prosperity in northeast Oklahoma. We have more than 2,100 members from across the region, representing a number of diverse industries.

Small businesses are an integral part of the Tulsa Chamber. Eighty-five percent of our total membership—or 1,800 members—are small businesses of 50 employees or less. They range from small manufacturers to sole proprietor consulting firms and entrepreneurs. Our “Small Business Connection” engages with these businesses constantly, offering year-round programs and resources. In October, we will host our annual “Small Business Summit” which attracts 500 attendees for a day-long event.

In my role as the head of government affairs, I oversee the Tulsa Chamber’s process for creating a legislative agenda of state and federal policy priorities each year. This process, referred to as the

“OneVoice Regional Legislative Agenda,” brings together hundreds of our members from across all of northeastern Oklahoma to discuss the policies that impact their businesses. By engaging small businesses extensively in this process, we have gained a tremendous amount of insight into the federal regulations that impact their growth and prosperity. I would like to share some of their feedback with you today.

The concerns voiced by our small businesses seem to fall into a few main categories: 1) reporting and compliance burdens under the Affordable Care Act, 2) consistency or clarification needed across federal agencies, and 3) negative unintended consequences of a regulation when put into practice. I will briefly describe these general concerns below.

Reporting and Compliance Burdens

We continue to hear from our small businesses that reporting requirements under the Affordable Care Act remain burdensome. Our members have supported efforts to reduce small- and mid-size employers’ cost of providing health care, suggesting steps such as reforming the Health Insurance Tax, easing reporting requirements, and revisiting the definition of a full-time employee. Related to health care, many of our entrepreneurs, start-ups and single-employee businesses are hindered by the rule prohibiting their participation in Association Health Plan (AHP) health insurance plans. They believe this rule discourages the growth of new businesses and participation in AHP should be available for single-employee companies.

Consistency and Clarification Needs

A common concern from our small business members is the need for consistency across federal agencies. Our members have requested that the language used across federal agencies be updated, clarified, and made consistent to distinguish between the classification of a worker as an Independent Contractor (Form 1099) versus an Employee (W-2). This would allow the distinction to be applied equitably within industries, as well as allow small businesses to understand and properly classify their workforce. Our small businesses also report that rulings and interpretations in previous years by the Department of Labor and National Labor Relations Board targeting overtime pay, independent contractors and joint employment status have reduced their hiring capacities. We increasingly hear that these rulings have disproportionately harmed the hospitality industry and the nonprofit sector, and increased legal liabilities. Many small employers have based their companies on business-models such

as franchises and the legitimate use of independent contractors, and they are hurt when constantly changing regulations make it difficult to interpret—and stay in compliance with—the law.

Negative Unintended Consequences

We often hear stories of burdensome unintended consequences of federal regulations, and I would like to share one particular example with you today. Andolini's Pizzeria is a popular local restaurant. Owner and operator Mike Bausch has expanded Andolini's over the past several years, opening new locations. Andolini's recently came up with the idea to expand into a new venture—to provide take-home-and-bake pizzas to sell in regional grocery chain, Reasor's. In attempting this, Andolini's was forced to wade through a myriad of complex, even seemingly conflicting federal regulations from the U.S. Department of Agriculture and the U.S. Food and Drug Administration to move their product into grocery stores. Andolini's was not using any raw ingredients with their take-and-bake pizza. Nevertheless, when a piece of fully cooked, ready-to-eat, USDA inspected pepperoni is applied to the pizza, a process statement on the origin of the flour, cheese, water, etc., must be supplied. By law, Andolini's must have a trained inspector be present while the pizza is being produced. If Andolini's wishes to produce take-and-bake pizzas during the course of a weekend—aside from normal Monday through Friday business hours—they must pay an inspector \$30 an hour to be on site during production. The cost of this requirement has caused Andolini's to virtually abandon its new venture.

In closing, these are very general summaries of concerns described by our small business members. I am happy to answer specific questions and I thank the Subcommittee for its time.

