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Senator Cruz Questions for the Record for
Michael Barrera, National Economic Prosperity Manager at The LIBRE Institute, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts Opportunity Denied: How Overregulation Harms Minorities
October 6, 2015

Questions

1. **In your oral testimony, you detailed how the Affordable Care Act (a/k/a "Obamacare") and its regulatory scheme have hurt many small businesses in the Hispanic community. What other federal schemes, in your opinion, have most damaged Hispanic small businesses through excessive regulation?**

Hispanic small businesses – like all small businesses – bear both the direct and indirect cost of federal regulations. In our experience, Hispanic small businesses are likely to cite regulatory schemes such as Obamacare, environmental regulation, and occupational regulations as among the costliest and most burdensome. Additionally, the increasing amount of paper work associated with the growing regulatory environment only enhances the frustration for businesses.

While the costs of direct regulations are easier to quantify, the indirect cost of regulation should not be ignored. This can take the form of higher financial costs (for policies such as EPA rules on carbon emissions, which raise electric rates for small businesses) or the opportunity costs that come when policymakers adopt "solutions" that do not truly solve the problem they are intended to address.

The Dodd-Frank Wall Street Reform and Consumer Protection Act for example, was touted as an important measure to help ensure small businesses have access to capital at competitive rates. Instead, it is widely agreed that the law has at best proved ineffective – or may even have worsened the problem. In the wake of the financial crisis and the Great Recession, many Hispanic small businesses eagerly awaited changes that would have provided an incentive for financial institutions to increase lending. After months of debate and years of regulatory implementation, the problem of poor access to credit remains. It is impossible to quantify the damage done to Hispanic businesses by the failure to diagnose and correct the problem. However, the lack of capital affects both startups and those that want to expand their businesses.

2. **At the hearing, we discussed various aspects of the problem of overregulation, but did not address in a significant amount of detail how to best remedy the problem. In your written testimony, you indicated the burden of proof should be placed on the regulators to prove that each regulation is necessary, beneficial, and cost-efficient. Do you have any other thoughts on how to stem the tide of overregulation? And what is your opinion on the following proposals?**

    a. **Under the Congressional Review Act of 1996 (CRA), Congress can overturn bureaucratic regulations by enacting a joint resolution of disapproval. According to a July 2015 report from the Congressional Research Service, however, this option has only been utilized *once* in nearly twenty years. How could we best strengthen the CRA to give this avenue some teeth?**

b. **Would you support automatic "sunsets" for all regulations—that is, would you support the idea that every regulation will automatically expire at a future date (*e.g.* three years) unless Congress specifically reinforces the regulation?**
c. **Are you familiar with the Davis-Bacon Act? If so, do you view it as an example of federal government overregulation that harms minorities?**

The LIBRE Institute does not endorse or oppose specific pieces of legislation. However, the experience of the small business operators with whom we work is that existing measures intended to curb regulation have proved ineffective to this point.

As noted however, the Congressional Review Act (CRA) has rarely been used to block the implementation of new and costly regulations. In practice, the CRA may have had the effect of permitting the Executive Branch to promulgate broad and costly regulations without Congress being accountable – unless Members of Congress choose to make themselves accountable through the CRA. If policymakers intend the CRA to limit regulation, it is worth considering whether this approach is fundamentally flawed - so long as Congress is able to choose when to go on record on specific regulations, and when not to. One possible alternate approach would be to require regulations to be approved by Congress before they could take effect. Alternately, broader measures such as regulatory sunsets and temporary moratoria on the issuing of new regulations may also merit consideration.

Additionally, other laws were enacted to reduce the federal regulatory burden on small entities such as small businesses, non-profits and small government jurisdictions. For example, the Regulatory Flexibility Act (FRA) requires regulatory agencies to determine how much their regulations or rules will cost small entities and consider alternatives rather than take a one size fits all approach. Adherence to the RFA by federal agencies is detailed in a yearly report by the Office of Advocacy and should be used as a process to grade agencies on their support of small businesses. The report appears to be only type of enforcement mechanism in the law as it leaves it to Congress to ultimately follow up with the agencies on their actions.

The Paperwork Reduction Act (PRA) requires that federal agencies submit all information collection requests to the Office of Information and Regulatory Affairs (OIRA) before collecting information from the public. One of the primary purposes of the PRA is to minimize the paperwork burden on individuals and small entities. OIRA is only permitted to approve reporting and recordkeeping requirements if they will be useful to the agency or are required by law. Again the intent is admirable, however, change should be considered to strengthen protections against unnecessary and duplicative reporting and recordkeeping requirements. Moreover, despite the "protections" in the CRA, RFA and PRA regulations continue to grow.

In regards to the Davis-Bacon Act, we understand this legislation was enacted in the 1930s ostensibly to ensure federal contactors pay "prevailing wages". However, many small business would argue the law only serves to keep them out of the federal contracting marketplace and that the law has morphed into an Act that protects union wages and benefits without regard to experience, labor needs, or free market principles. Moreover, the law's paper requirements is a large burden on many small businesses that want to compete in the federal marketplace. This further complicates the growth of numerous minority owned businesses who employ many people from their communities.

3. **Are there any other points or issues that were not adequately explored during the hearing that you would like to bring to our attention?**

Congressional oversight on regulators will be needed as well as more accountability. There are several laws already on the books which can be enhanced to offer more protection for small businesses. While The LIBRE Institute doesn't advocate for more government with increased legislation, we believe enforcing what is already on the books (if it is working) and deleting out of date legislation are good first steps in helping small businesses prosper, increase profits and hire more Americans.