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Via paareportnoi@hq.doe.gov
and United States First Class Mail

August 28, 2021

The Honorable Jennifer Granholm
Secretary of Energy
c/o Office of General Counsel
Department of Energy
1000 Independence Ave. SW
Room 6A-167
Washington, DC 20585

Dear Madam Secretary:

RE: Department of Energy "Notice of Inquiry on Preparation of Report to Congress on the Price-Anderson Act," 86 *Fed. Reg.* 40032 (July 26, 2021) and 45714 (August 16, 2021)

This letter presents comments of the National Federation of Independent Business (NFIB) in response to the Department of Energy (DOE) "Notice of Inquiry on Preparation of Report to Congress on the Price-Anderson Act [PAA]" published in the *Federal Register* of July 26, 2021. The Notice requested comments from the public to assist DOE in reporting to Congress on whether to continue in force the Secretary of Energy's PAA authority to indemnify DOE nuclear-related contractors that is due to expire at the end of 2025.¹ To aid small businesses and their owners and employees in the event of a nuclear incident or a precautionary evacuation, NFIB urges DOE to recommend in its report that Congress make the Secretary of Energy's indemnification authority under the PAA permanent.

¹ The popular name "Price-Anderson Act" refers to section 170 of the Atomic Energy Act (42 U.S.C. 2210). The Secretary of Energy's authority under the Act to agree to indemnify DOE contractors is set to expire on December 31, 2025 (42 U.S.C. 2210(d)). Under the PAA, DOE indemnifies DOE contractors for legal liability for a nuclear incident or a precautionary evacuation arising from a DOE contract relating to nuclear power. The DOE indemnification: "(1) Provides omnibus coverage of all persons who might be legally liable; (2) indemnifies fully all legal liability up to the statutory limit on such liability (as of 2018 approximately \$13.7 billion, inflation adjusted, for a nuclear incident in the United States); (3) covers all DOE contractual activity that might result in a nuclear incident in the United States; (4) is not subject to the availability of funds; and (5) is mandatory and exclusive" (footnotes omitted). 86 *Fed. Reg.* at 40032, col. 3.

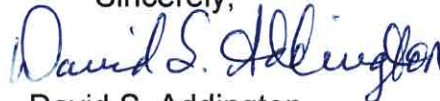
NFIB is an incorporated nonprofit association representing small and independent business members across America. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty states hear the voice of small business as they formulate public policies. Small businesses contribute greatly to the economic life of many communities in America that host DOE contractor nuclear-related facilities, that host DOE legacy nuclear sites, or through which DOE contractors transport nuclear materials.

Under the Price-Anderson Act, DOE indemnifies contractors against legal liability for a nuclear incident or precautionary evacuation. Congress enacted the PAA to encourage private sector participation in nuclear activities despite the risk of potentially enormous liability claims in the event of a catastrophic nuclear incident and to ensure the availability of funds to the public for liability claims in the event of such an incident.²

Given the safety activities and the safety record of DOE nuclear-related contractor activities, the likelihood of a catastrophic nuclear incident is small, but if such an event should occur, devastating injuries and damage to property could result. Few if any DOE contractors, whether with their own assets or with whatever limited private sector insurance coverage they could obtain for nuclear risks, could provide sufficient redress for people in such a catastrophe. The Price-Anderson Act assures small businesses, and their owners and employees, that the Government can step in to provide redress in the event of a nuclear incident or precautionary evacuation related to DOE nuclear programs.

NFIB urges that DOE, consistent with its obligations under Office of Management and Budget Circular A-19 (revised), recommend in its report to Congress that Congress make permanent the authority granted by the Price-Anderson Act for DOE to indemnify its nuclear-related contractors. Making the authority permanent benefits all Americans, including those who own or work in America's small businesses.

Sincerely,



David S. Addington

Executive Vice President and General Counsel

² Nuclear Regulatory Commission, *The United States of America Eighth National Report for the Convention on Nuclear Safety*, NUREG-1650 (Rev. 7), sec. 11.1.3 (2019) (available at <https://www.nrc.gov/docs/ML1928/ML19289D687.pdf>).