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118TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 118–854
Part 1

ENHANCED REGULATORY FLEXIBILITY ASSESSMENT ACT

DECEMBER 10, 2024.—Ordered to be printed

Mr. WILLIAMS of Texas, from the Committee on Small Business, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 9032]

The Committee on Small Business, to whom was referred the bill (H.R. 9032) to amend chapter 6 of title 5, United States Code (commonly known as the "Regulatory Flexibility Act"), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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59–006

I. Purpose and Bill Summary

On July 15, 2024, Rep. Maloy introduced H.R. 9032. The purpose of H.R. 9032, the "Enhanced Regulatory Flexibility Assessment Act," is to amend Initial Regulatory Flexibility Analysis requirements to include stronger language and descriptions of the cumulative impact of the rule and any disproportionate impacts on small entities.

II. Need for Legislation

Section 603 of the Regulatory Flexibility Act (RFA) requires agencies to conduct what is known as an initial regulatory flexibility analysis (IRFA) as a step in the RFA certification process. The IRFA has to include information such as a summary of what the rule is trying to accomplish, and a summary of what type of entities will be impacted by a proposed rule. This bill amends the IRFA requirements to include stronger language and descriptions of the cumulative impact of the rule and any disproportionate impacts on small entities.

As written, the IRFA and RFA include flexible language such as "where feasible" and "to the extent practicable" which give agencies clearance to not do a full analysis of how impactful a rule will be. This legislation will strengthen that language so that agencies and Main Street alike can better understand how these rules impact America's businesses.

Throughout the Committee's investigation, we uncovered that many agencies would ignore some of the requirements in the IRFA in order to get the rule implemented faster. If agencies are going to force small businesses to comply with burdensome regulations, they should have a full and accurate analysis on what the impacts will be rather than not conducting an analysis because of this loophole built into the law.

III. Hearings

In the 118th Congress, the Committee held one hearing examining the issues covered in H.R. 9032. On May 22, 2024, the Committee held a hearing titled "Burdensome Regulations: Examining the Biden Administration's Failure to Consider Small Businesses" which examined the impacts of the Biden Administration's burdensome regulatory landscape and explored ways to support small businesses and overcome agencies' noncompliance with the RFA.

IV. Committee Consideration

The Committee on Small Business met in open session, with a quorum being present, on September 10, 2024 and ordered H.R. 9032 reported to the House of Representatives. During the markup no amendments were offered.

V. Committee Votes

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted to favorably report H.R. 9032 to the House of Representatives at 2:27 PM.

118th Congress House Committee on Small Business Vote Record

Date: Tuesday, September 10, 2024 at 9:45 AM ET
Bill: H.R. - 9032

Time of Vote: 2:27 PM

Republicans	Aye	Nay	Present
Mr. Luetkemeyer (MO-03)			
Mr. Stauber (MN-08)	✓		
Mr. Meuser (PA-09)	✓		
Ms. Van Duyne (TX-24)	✓		
Ms. Salazar (FL-27)	✓		
Mr. Mann (KS-01)	✓		
Mr. Ellzey (TX-06)	✓		
Mr. Molinaro (NY-19)	✓		
Mr. Alford (MO-04)	✓		
Mr. Crane (AZ-02)	✓		
Mr. Bean (FL-04)	✓		
Mr. Hunt (TX-38)			
Mr. Lalota (NY-01)	✓		
Ms. Maloy (UT-02)	✓		
Chairman Williams (TX-25)	✓		
TOTALS:	13		

118th Congress House Committee on Small Business Vote Record

Date: Tuesday, September 10, 2024 at 9:45 AM ET
Bill: H R. - 9032

Democrats	Aye	Nay	Present
Mr. Golden (ME-02)		✓	
Mr. Phillips (MN-03)		✓	
Mr. Landsman (OH-01)		✓	
Mr. McGarvey (KY-03)		✓	
Ms. Gluesenkamp Perez (WA-03)		✓	
Ms. Scholten (MI-03)		✓	
Mr. Thanedar (MI-13)		✓	
Ms. Chu (CA-28)		✓	
Ms. Davids (KS-03)		✓	
Mr. Pappas (NH-01)		✓	
Ranking Member Velazquez (NY-07)		✓	
TOTALS:		11	

VI. SECTION-BY-SECTION OF H.R. 9032

Section 1: Short title

This bill may be cited as the "Enhanced Regulatory Flexibility Assessment Act."

Section 2: Requirements providing for more detailed analyses

Expands requirements for the IRFA and final regulatory flexibility analysis (FRFA) to contain additional information about the proposed rule including why the agency is considering the action, the objectives and legal basis for the rule, an estimate of the number of small entities to which the rule will apply, and information such as whether access to credit would be impacted or whether some businesses will be more impacted than others.

Additionally, agencies are required to acknowledge and respond to comments or concerns of the proposed rule in the case of certification, rather than just the FRFA.

Strikes the single "factual basis requirement" in a certification to instead require "detailed statement providing the factual and legal basis for such certification. The detailed statement shall include an economic assessment or a sufficiently detailed summary to support the certification by the agency.

Requires a quantifiable description of the rule's impact or a descriptive statement on why the quantification isn't possible.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee's provisions. Once available, the cost estimate will be published in the Congressional Record.

VIII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 9032 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. OVERSIGHT FINDINGS & RECOMMENDATIONS

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small

Business with respect to the subject matter contained in the H.R. 9032 are incorporated into the descriptive portions of this report.

X. Performance Goals and Objectives

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 9032 are to require stronger descriptions of the cumulative impact a rule may have on Americans and any disproportionate impacts on small entities.

XI. Statement of Duplication of Federal Programs

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 9032 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. Federal Mandates Statement

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

XIV. Federal Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XV. Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. Statement of Constitutional Authority

Pursuant to clause 7 of rule XII of the Rules of the House, the Committee finds that the authority for this legislation in Art. I, § 8, cl.1 of the Constitution of the United States.

XVII. Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics,

and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

* * * * * * *

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

[(b) Each initial regulatory flexibility analysis required under this section shall contain—

[(1) a description of the reasons why action by the agency is being considered;

[(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

[(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

[(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will

be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

[(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.]

(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement—

(1) describing the reasons why action by the agency is being considered;

(2) describing the objectives of, and legal basis for, the proposed rule;

(3) estimating the number and type of small entities to which the proposed rule will apply;

(4) describing the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report and record;

(5) describing all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule, or the reasons why such a description could not be provided;

(6) estimating the additional cumulative economic impact of the proposed rule on small entities beyond that already imposed on the class of small entities by the agency or why such an estimate is not available;

(7) describing any disproportionate economic impact on small entities or a specific class of small entities; and

(8) describing any impairment of the ability of small entities to have access to credit.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(d)(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

(A) any projected increase in the cost of credit for small entities;

(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis *(or certification of the proposed rule under section 605(b))*, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a *detailed* description of and an estimate of the number of small entities to which the rule will apply or **[**an explanation**]** *a detailed explanation* of why no such estimate is available;

(5) a *detailed* description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6) a *detailed* description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; **[**and**]**

(6) for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(8) a detailed description of any disproportionate economic impact on small entities or a specific class of small entities.

[(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.]

(b) The agency shall make copies of the final regulatory flexibility analysis available to the public, including placement of the entire analysis on the website of the agency, and shall publish in the Federal Register the final regulatory flexibility analysis, or a summary thereof which includes the telephone number, mailing address, and link to the website where the complete analysis may be obtained.

§ 605. Avoidance of duplicative or unnecessary analyses

[(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.]

(a) A Federal agency shall be treated as satisfying any requirement regarding the content of a regulatory flexibility agenda or regulatory flexibility analysis under section 602, 603, or 604 if the Federal agency provides in the agenda or analysis a cross-reference to the specific portion of another agenda or analysis which is required by any other law and which satisfies the requirement.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a [statement providing the factual basis for such certification.] *detailed statement providing the factual and legal basis for such certification. The detailed statement shall include an economic assessment or a summary thereof that is sufficiently detailed to support the certification of the agency.* The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

* * * * * * *

[§ 607. Preparation of analyses

[In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.]

§ 607. Quantification requirements

In complying with sections 603 and 604, an agency shall provide—

(1) a quantifiable or numerical description of the effects of—

(A) the proposed or final rule; and

(B) alternatives to the proposed or final rule; or

(2) a more general descriptive statement and a detailed statement explaining why quantification is not practicable or reliable.

* * * * * * *

XVIII. MINORITY VIEWS

Under the Regulatory Flexibility Act (RFA), if an agency determines that a proposed rule would have a significant economic impact on a substantial number of small entities, (SEISNSE), then it must, to the extent practicable, determine the economic impact the rule would have on small businesses and consider alternatives to accomplish the objectives without unduly burdening the small entities. The economic analysis consists of an initial regulatory flexibility (IRFA) and a final regulatory flexibility analysis (FRFA), which are published at the proposed and final rule stages, respectively.

The "*Enhanced Regulatory Flexibility Assessment Act*" would require agencies to include more analytical and procedural requirements in the IRFA and FRFA. First, the addition of an estimate of the cumulative impact to the IRFA would require agencies to look not just at the rule but look at it in the context of all rules, as well as the past, present and future costs. This requirement is time-consuming for agencies to do and would slow the rule-making process down considerably. Under current law, agencies have not been required to complete this analysis, so the information is not presently available. An estimate of the cumulative impact would also require an economic assessment justifying certification for IRFAs. Congress has never explicitly required cost-benefit analyses for every proposed rule. Moreover, agencies have limited resources to conduct this type of analysis.

Second, these new additional analytical and procedural requirements included in the FRFA would be subject to judicial review, meaning they could be used as a basis for those who don't like the rule to attempt to overturn it. Additionally, it is unclear why the bill asks for a "legal basis" in addition to a factual basis. The legal basis is already established in section 605 (permitting such certifications).

Third, the bill requires the agency to provide a quantitative or numerical description of the effects of the proposed rule in the IRFA and FRFA. This tightens up the current 607 requirement and reduces the amount of flexibility agencies have in providing a general description statement if the quantification is not practicable or reliable. This new provision would require agencies to provide a justification for the rule, and the justification for the FRFA would be judicially reviewable.

Agencies must consider the impact of rulemaking on small entities, and the Office Advocacy monitors their compliance with the RFA. These additional requirements are unnecessary, burdensome to agencies, delay the implementation of rules that benefit small businesses and Americans, add limited value to small businesses, and require more agency resources, without improving the rulemaking process.

It is important to note, that agencies are carrying out the laws that Congress passed, and agencies have to operate within the guidelines to improve public participation, respond to comments, ensure benefits justify the costs, and follow the procedural requirements of the APA and RFA.

We have learned from Committee hearings that smart, well-crafted regulations can spur innovation and the development of new technologies that provide new opportunities for entrepreneurs.

This bill gets stuck on the message that regulations hinder the growth of small businesses, rather than look to the future and understand that regulations can drive innovation, grow the economy, and protect the environment, labor, and consumer safety.

NYDIA M. VELÁZQUEZ,
Ranking Member.

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