

PROVE IT ACT OF 2024

NOVEMBER 22, 2024.—Committed to the Committee of the Whole House on the State of the Union ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 7198]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7198) to amend title 5, United States Code, to require greater transparency for Federal regulatory decisions that impact small businesses, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all that follows the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Prove It Act of 2024”.

SEC. 2. INITIAL REGULATORY FLEXIBILITY ANALYSIS.

- (a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended—
- (1) in section 603(b)—
 - (A) in paragraph (5), by striking the period at the end and inserting “; and”; and
 - (B) by adding at the end the following:
 - “(6) where feasible, any reasonably foreseeable potential indirect costs the proposed rule may impose on small entities, including small entities that—
 - “(A) purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule;
 - “(B) are directly regulated by other governmental entities as a result of the rule; or
 - “(C) are not directly regulated by the agency as a result of the rule but are otherwise subject to other agency rules as a result of the rule.”;
 - (2) in section 605(b), by striking “The agency” and inserting “Not later than 10 days after completing the certification described in this subsection, the agency”; and
 - (3) by inserting after section 605 the following:

“§ 605A. Review procedures relating to initial regulatory flexibility analysis certifications

- “(a) FILING A PETITION TO REVIEW AGENCY CERTIFICATION OF A PROPOSED RULE.—
- “(1) IN GENERAL.—Any small entity, group of small entities, or organization representing the interests of small entities may petition the Chief Counsel for Advocacy of the Small Business Administration (in this section referred to as the ‘Chief Counsel’) to review a certification published under section 605(b) that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.
 - “(2) FORM.—The Chief Counsel shall—
 - “(A) determine the method, timing, and form of disseminating a petition described in paragraph (1); and
 - “(B) display the information described in subparagraph (A) on the website of the Office of Advocacy of the Small Business Administration in a conspicuous manner.
 - “(3) CONTENTS.—Each petition described in paragraph (1) with respect to a certification published under section 605(b) for a proposed rule shall clearly and concisely—
 - “(A) specify the name of the petitioner and a telephone number, a mailing address, and an email address that the Chief Counsel may use to communicate with the petitioner;
 - “(B) if the petitioner is an organization, provide additional identifying information, as applicable, including the organizational or corporate status of the petitioner, the State of incorporation of the petitioner, the registered agent of the petitioner, the interest of the petitioner in representing small entities affected by the proposed rule and the certification at issue, and the name and authority of the individual who signed the petition on behalf of the organizational or corporate petitioner;
 - “(C) present the specific problems or issues that the petitioner believes should be addressed or considered through a review of the certification, such as—
 - “(i) any specific circumstances in which the determination of the certification that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities is incorrect, incomplete, or inadequate; or
 - “(ii) why the proposed rule would, if promulgated, have a significant economic impact on a substantial number of small entities;
 - “(D) cite, enclose, or reference any relevant and non-protected or confidential technical, scientific, or other data or information supporting any assertion of the problems or issues with the certification;
 - “(E) present a proposed solution to the problems or issues raised in the petition, including potential regulatory or compliance alternatives to the proposed rule;

“(F) provide an analysis, discussion, or argument that explains how the proposed solution described in subparagraph (E) solves the problems or issues raised in the petition; and

“(G) cite, enclose, or reference any other publicly available data or information supporting the proposed solution described in subparagraph (E).

“(b) CONSULTATION.—

“(1) IN GENERAL.—Any entity or organization desiring to file a petition under subsection (a) may request a consultation with the Chief Counsel before or after filing the petition.

“(2) FORM.—The Chief Counsel shall—

“(A) determine the method, timing, and form of requesting a consultation with the Chief Counsel under paragraph (1); and

“(B) display the information described in subparagraph (A) on the website of the Office of Advocacy of the Small Business Administration in a conspicuous manner.

“(3) LIMITATIONS ON ASSISTANCE.—In any consultation regarding a petition under paragraph (1), the Chief Counsel—

“(A) may only—

“(i) describe the process for filing, docketing, tracking, closing, amending, withdrawing, and resolving the petition; and

“(ii) assist the petitioner to clarify the petition so that the Chief Counsel is able to understand the issues of concern to the petitioner; and

“(B) may not advise a petitioner on whether the petition should be amended or withdrawn.

“(c) PRIMA FACIE REVIEW.—

“(1) IN GENERAL.—Upon receipt of a petition filed under this section with respect to the certification of a proposed rule, the Chief Counsel shall make an initial prima facie determination on the merit of the issues raised in petition as to the properness of the certification and whether the proposed rule in question would, if promulgated, have a significant economic impact on a substantial number of small entities.

“(2) NO FURTHER REVIEW.—If, following the prima facie review of a petition under paragraph (1), the Chief Counsel determines that the issues raised in the petition do not merit further review by the Chief Counsel, the Chief Counsel shall, not later than 10 days after receipt of the petition, inform the petitioner of that determination and the matter shall be closed.

“(3) FURTHER REVIEW.—If, following the prima facie review of a petition under paragraph (1), the Chief Counsel determines that the issues raised in the petition do merit further review by the Chief Counsel, the Chief Counsel shall, not later than 10 days after receipt of the petition, inform the petitioner and the agency that promulgated the proposed rule that the Chief Counsel shall conduct a full review of the certification and proposed rule to which the petition relates under subsection (d).

“(d) FULL REVIEW.—

“(1) CONSIDERATIONS; MEETING.—In conducting a full review under this subsection with respect to the certification made under section 605(b), the Chief Counsel shall—

“(A) consider—

“(i) whether the agency that promulgated the proposed rule correctly determined which small entities will be affected by the proposed rule;

“(ii) whether the agency considered adequate economic data to assess whether the proposed rule will have a significant impact on a substantial number of small entities; and

“(iii) the economic implications of the proposed rule; and

“(B) convene a virtual or in-person meeting between the Chief Counsel, the petitioner, representatives of the agency that promulgated the proposed rule who are determined appropriate by the Chief Counsel, and the Administrator of the Office of Information and Regulatory Affairs to—

“(i) provide positions and support for those positions regarding the certification of the proposed rule; and

“(ii) allow the Chief Counsel to ask questions as the Chief Counsel determines necessary to make a final determination as to the validity of the certification.

“(2) PUBLICATION.—Not later than 30 days after the date on which the Chief Counsel begins a full review of a certification made with respect to a proposed rule under paragraph (1), the Chief Counsel shall submit to the petitioner and the agency that promulgated the proposed rule, and publish in the Federal Reg-

ister and on the website of the Office of Advocacy of the Small Business Administration, the results of the review conducted under paragraph (1).

“(3) REQUIREMENT TO PERFORM ANALYSES.—If, after a full review of a certification made with respect to a proposed rule under paragraph (1), the Chief Counsel determines that the proposed rule will, if promulgated, have a significant economic impact on a substantial number of small entities, the agency that promulgated the proposed rule shall perform an initial regulatory flexibility analysis and a final regulatory flexibility analysis for the proposed rule under sections 603 and 604, respectively.

“(4) PENALTY.—If an agency fails to attend the required meeting under paragraph (1)(B) or in any other way fails to assist the Chief Counsel in a full review under paragraph (1) with respect to a proposed rule of the agency, as determined by the Chief Counsel, the final rule shall not apply to small entities.

“(5) JUDICIAL REVIEW.—For purposes of judicial review under chapter 7 of this title, a certification made by an agency under section 605(b) for which a petition is filed under subsection (a) shall be considered final agency action as of the date on which the Chief Counsel—

“(A) makes a determination under subsection (c)(2) that the issues raised in the petition do not merit further review; or

“(B) publishes the results of a full review of the certification under paragraph (1).”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 6 of title 5, United States Code, is amended by inserting after the item relating to section 605 the following:

“605A. Review procedures relating to initial regulatory flexibility analysis certifications.”.

SEC. 3. PUBLICATION OF GUIDANCE.

Section 609 of title 5, United States Code, is amended by adding at the end the following:

“(f) With respect to any rule that an agency determines is likely to have a significant economic impact on a substantial number of small entities, the head of the agency shall, on regulations.gov or any similar internet website—

“(1) publish all guidance documents and other relevant documents, as determined by the agency, including any updated guidance documents that set forth interpretations of the rule; and

“(2) allow for comments on the documents described in paragraph (1) to ensure that small entities may access and provide feedback on those documents.”.

SEC. 4. REVIEW PROCEDURES FOR SECTION 610 PERIODIC REVIEW OF RULES.

(a) IN GENERAL.—Section 610 of title 5, United States Code, is amended—

(1) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking “the following factors”;

(B) in paragraph (4), by striking “and” at the end;

(C) in paragraph (5), by striking the period at the end and inserting “; and”;

(D) by adding at the end the following:

“(6) any indirect costs described in the initial regulatory flexibility analysis under section 603(b)(6), and any other indirect costs that may have arisen during the 10-year period described in subsection (a).”; and

(2) by adding at the end the following:

“(d) If an agency fails to conduct a review of a rule as required under this section within the 10-year period described in subsection (a)—

“(1) the Chief Counsel for Advocacy of the Small Business Administration shall notify the agency that the rule has ceased to be effective;

“(2) the agency shall publish in the Federal Register a notification that the rule has ceased to be effective, and solicit comments for why the rule should be reinstated; and

“(3) if, based on the comments received under paragraph (2), the agency determines that the rule should be reinstated—

“(A) the agency shall have 180 days beginning on the date of that determination to complete the review of the rule under this section; and

“(B) upon completion of the review under subparagraph (A), the rule shall be reinstated, notwithstanding the notice and comment rulemaking procedures under section 553 of this title.”.

(b) APPLICATION.—The amendment made by subsection (a)(2) shall apply with respect to any final rule issued by an agency—

(1) during the 5-year period preceding the date of enactment of this Act; or

(2) on or after the date of enactment of this Act.

Purpose and Summary

H.R. 7198, the Prove It Act of 2024, introduced by Rep. Brad Finstad (R–MN), amends the Regulatory Flexibility Act (RFA) to require agencies to better account for the effects of regulations on small businesses. The bill empowers small businesses to petition the Small Business Administration’s Chief Counsel for Advocacy to review an agency’s certification that a proposed regulation will not have a significant economic impact on small businesses, requires agencies to publish guidance documents interpreting regulations that have a significant economic impact on small businesses, and improves the periodic review process for regulations.

Background and Need for the Legislation

The RFA,¹ enacted in 1980, requires “federal agencies to consider the effects of their regulations on small businesses and other small entities.”² The RFA’s goal is to reduce the economic impact of agency regulation on small businesses.³ In 1996, Congress amended the RFA to add judicial review relative to some of its provisions, require some agencies to hold small business advocacy review panels, and mandate that federal agencies produce regulatory compliance guidelines.⁴ Congress has not amended the RFA since 2010, when it made technical corrections and mandated that the newly-formed Consumer Financial Protection Bureau convene small business review panels when promulgating rules.⁵

Under the RFA, when an agency begins the rulemaking process, the head of the agency must determine whether the proposed rule will have a “significant economic impact on a substantial number of small entities.”⁶ The agency must either certify that the regulation will not have a significant economic impact on small businesses or conduct an initial regulatory flexibility analysis to determine the extent of the impact on small businesses.⁷ If such an analysis is conducted, it must contain a justification for the rule, a description of the agency’s goals for the rule, and a description of alternatives to the proposed regulation.⁸

When preparing the final rule, the agency conducts a final regulatory flexibility analysis where the agency must justify its choice of regulation and explain why the agency rejected less burdensome alternatives.⁹ The agency must publish all analyses and certifications in the Federal Register.¹⁰ In addition, the RFA gives small businesses a voice in the room when discussing proposed regulation. Whenever a rulemaking begins, the promulgating agency

¹ 5 U.S.C. § 601–612 (1980).

² Maeve P. Carey, *The Regulatory Flexibility Act: An Overview*, CONG. RESEARCH SERV. 1 (2021).

³ *Id.*

⁴ *Id.*

⁵ *The Regulatory Flexibility Act*, U.S. SMALL BUSINESS ADMINISTRATION (last accessed Mar. 14, 2024), available at <https://advocacy.sba.gov/resources/the-regulatory-flexibility-act/>; see also Dodd Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203 (2010), § 1100G; Small Business Jobs Act of 2010, Pub. L. No. 111–240 (2010), § 1601.

⁶ Maeve P. Carey, *supra* note 2.

⁷ *Id.*; see also *The Regulatory Flexibility Act*, *supra* note 5.

⁸ *Id.*

⁹ Maeve P. Carey, *supra* note 2.

¹⁰ *The Regulatory Flexibility Act*, *supra* note 5.

must notify the Small Business Administration’s Chief Counsel for Advocacy, who may choose to comment on the rulemaking.¹¹

NEED FOR THE LEGISLATION

After Congress enacted the RFA, some evidence has suggested that federal agencies took seriously the policy of reducing regulatory burden on small businesses—but evidence shows that the burden on small business continues to increase. For example, an analysis conducted by the National Federation of Independent Business (NFIB) found that proposed and final rules dropped significantly after the RFA’s enactment.¹² However, despite that initial reduction in the number of regulations affecting small businesses, the cost of compliance continued to grow significantly. For example, in 2001, small businesses spent nearly double what medium-sized businesses spent per employee to comply with federal regulations.¹³ By 2014, small businesses spent nearly five times as much per employee as medium-sized businesses on compliance.¹⁴ Today, small businesses spend over seven times as much per employee as medium-sized businesses on spent per employee on compliance.¹⁵

More recently it has become clear that federal agencies often blatantly ignore the RFA’s requirements. The NFIB found that in 75 percent of rulemakings, the SBA determined that federal agencies “either ignored costs on small business or underestimated [the regulation’s] cost.”¹⁶ Along with ignoring the RFA’s requirements, the Biden-Harris Administration has significantly increased the number of regulations affecting small businesses, with nearly half of the regulations affecting small businesses in 2022 requiring a regulatory flexibility analysis.¹⁷ Further, the other half affected small businesses “in some fashion,” but were below the RFA’s threshold for requiring regulatory flexibility analysis.¹⁸

While the direct cost of regulation is relatively simple to estimate,¹⁹ many costs are only *indirectly* associated with regulation but nonetheless impose a genuine cost on small businesses and the economy.²⁰ The average annual cost of regulation is independently estimated to be over \$14,000 per employee for American small businesses.²¹ However, agencies are not currently required to account for indirect costs borne by small business because of regula-

¹¹ Maeve P. Carey, *supra* note 2.

¹² See Rob Smith, *The Regulatory Flexibility Act: Turning a Paper Tiger into a Legitimate Constraint on One-Size-Fits-All Agency Rulemaking*, NFIB 4 (2023).

¹³ See W. Mark Crain & Thomas D. Hopkins, *The Impact of Regulatory Costs on Small Firms*, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION (2001).

¹⁴ W. Mark Crain & Nicole V. Crain, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing, and Small Business*, NATIONAL ASSOCIATION OF MANUFACTURERS (2014).

¹⁵ Nicole V. Crain & W. Mark Crain, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing, and Small Business*, NATIONAL ASSOCIATION OF MANUFACTURERS (2023).

¹⁶ Rob Smith, *supra* note 11, at 26.

¹⁷ See Clyde Wayne Crews, *Ten Thousand Commandments 2023*, COMPETITIVE ENTERPRISE INSTITUTE 5 (2023).

¹⁸ *Id.*

¹⁹ An example of direct regulatory costs is the direct purchase of equipment necessary to comply with the regulation. See *The Costs and Benefits of Government Regulation: Hearing Before the Subcomm. on Consumers of the S. Comm. on Commerce, Science, and Transportation*, 95th Cong. (1978) (Statement of Harry S. Havens, Dir., Prog. Analysis Div., U.S. Gen. Accounting Office).

²⁰ See Jerry Ellig, *What are the Indirect Costs of Regulation?*, MERCATUS CENTER (Dec. 1, 2011).

²¹ Nicole V. Crain & W. Mark Crain, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing, and Small Business*, NATIONAL ASSOCIATION OF MANUFACTURERS (2023).

tions, making the true economic costs of regulations on small business unclear.²²

This is particularly problematic because regulatory burdens make it more difficult and costly to start a business, suppressing entrepreneurial activity and new business formation.²³ Piling regulations on small businesses across the country makes it more likely that would-be entrepreneurs will abandon their ideas altogether instead of undergoing significant startup expense and related risk.²⁴ This reduction in small business activity harms innovation and competition.²⁵

H.R. 7198, the Prove It Act, will shift more power to small businesses and force regulators to better consider the overall effect that regulation has on small business before finalizing economically burdensome rules.²⁶ Among other things, H.R. 7198 creates a mechanism for small businesses to challenge regulations when regulators do not correctly consider the effects on small businesses, makes small businesses exempt from regulations under certain circumstances, and ensures that small businesses can more easily access regulatory compliance guidance documents.²⁷

The Regulatory Flexibility Act was a pivotal first step in ensuring that small businesses have a way to challenge the administrative state. But agencies still underreport, minimize, or ignore the effect regulations have on small businesses, rendering the RFA nearly toothless.²⁸ The Prove It Act strengthens the RFA, will help to force the administrative state to comply with the RFA, ensure that indirect costs on small business are properly accounted for, and gives small businesses a way to challenge non-compliant agencies.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to develop H.R. 7198: “Reining in the Administrative State: Reclaiming Congress’s Legislative Power,” a hearing held on March 10, 2023, before the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust of the Committee on the Judiciary. The Subcommittee heard testimony from the following witnesses:

- Allyson N. Ho, Partner and Co-Chair of Appellate and Constitutional Law, Gibson, Dunn & Crutcher LLP;
- Jonathan Wolfson, Chief Legal Officer and Policy Director, Cicero Institute;

²²Maeve P. Carey, *The Regulatory Flexibility Act: Implementation Issues and Proposed Reforms*, CONG. RESEARCH SERV. n. 31 (2011) (“The SBA Chief Counsel for Advocacy said his office’s “biggest concern with the RFA is that it does not require agencies to analyze indirect impacts.”).

²³See, e.g., *Triple Threat to Workers and Households: Impacts of Federal Regulations on Jobs, Wages, and Startups: Hearing Before the Subcomm. on Regulatory Reform, Commercial, and Antitrust Law of the H. Comm. on the Judic.*, 114th Cong. (2016) (Testimony of Patrick A McLaughlin, Senior Research Fellow, Mercatus Center at George Mason University).

²⁴See *id.*

²⁵See KATHRYN KOBE AND RICHARD SCHWINN, SMALL BUSINESS ADMINISTRATION OFFICE OF ADVOCACY, SMALL BUSINESS GDP 1998–2014 40 (2018).

²⁶See generally Press Release, Rep. Nathaniel Moran, Moran, Finstad, Caraveo Introduce the Prove It Act, Protecting Small Businesses from Burdensome Regulations (Feb. 2, 2024).

²⁷Prove It Act of 2024, H.R. 7198 (2024), §2(a)(3).

²⁸See generally Letter from Josh McLeod, Dir. Fed. Gov’t Relations, NFIB to Rep. Brad Finstad, Member, U.S. House of Representatives (Feb. 1, 2024).

- Ryan Cleckner, Co-Founder, Gun University LLC and Owner, Law office of Ryan M. Cleckner; and
- Emily Hammond, Professor, George Washington University Law School.

The hearing addressed the growth of the administrative state and how it has aggrandized legislative power.

Committee Consideration

On March 21, 2024, the Committee met in open session and ordered the bill, H.R. 7198, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 17 to 10, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee's consideration of H.R. 7198:

1. Vote on Amendment #1 to H.R. 7198 ANS, offered by Mr. Nadler, failed 9–14
2. Vote on Amendment #2 to H.R. 7198 ANS, offered by Mr. Nadler, failed 10–16
3. Vote on Amendment #3 to H.R. 7198 ANS, offered by Mr. Nadler, failed 10–16
4. Vote on Amendment #4 to H.R. 7198 ANS, offered by Ms. McBath, failed 8–13
5. Vote on Amendment #5 to H.R. 7198 ANS, offered by Ms. Balint, failed 7–8
6. Vote on favorably reporting H.R. 7198, as amended, passed 17–10

COMMITTEE ON THE JUDICIARY
118th CONGRESS
25-19

Date: 3/21/21

ROLL CALL

Vote on: Nadler Amndt (#1) to HR 7198 AJS

Roll Call #: 8

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. BIGGS (AZ)		✓		MR. JOHNSON (GA)			
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)	✓		
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)			
MR. BISHOP (NC)				MR. CORREA (CA)			
MS. SPARTZ (IN)				MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)			
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. ARMSTRONG (ND)		✓		MS. ESCOBAR (TX)	✓		
MR. GOODEN (TX)				MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)		✓		MS. BUSH (MO)			
MR. NEHLS (TX)				MR. IVEY (MD)	✓		
MR. MOORE (AL)		✓		MS. BALINT (VT)			
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 9 Nays: 14 Present: X
Failed: _____

COMMITTEE ON THE JUDICIARY
118th CONGRESS
25-19

Date: 3/21/19

ROLL CALL

Vote on: Nadler Amendment (H.R. 7198) to H.R. 7198 ANS

Roll Call #: 9

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. BIGGS (AZ)		✓		MR. JOHNSON (GA)			
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)			
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. ARMSTRONG (ND)		✓		MS. ESCOBAR (TX)	✓		
MR. GOODEN (TX)				MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)		✓		MS. BUSH (MO)			
MR. NEHLS (TX)				MR. IVEY (MD)	✓		
MR. MOORE (AL)		✓		MS. BALINT (VT)			
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 10 Nays: 16 Present: X Failed: X

COMMITTEE ON THE JUDICIARY
118th CONGRESS
25-19

Date: 3/21/24

ROLL CALL

Vote on: Nadler Amndt (#3) to HR 7198 Ams

Roll Call #: 10

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. BIGGS (AZ)		✓		MR. JOHNSON (GA)			
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)			
MR. BISHOP (NC)				MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. ARMSTRONG (ND)		✓		MS. ESCOBAR (TX)	✓		
MR. GOODEN (TX)				MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)		✓		MS. BUSH (MO)			
MR. NEHLS (TX)				MR. IVEY (MD)	✓		
MR. MOORE (AL)		✓		MS. BALINT (VT)			
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 10 Nays: 16 Present: X
Failed: _____

COMMITTEE ON THE JUDICIARY
118th CONGRESS
25-19

Date: 3/21/21

ROLL CALL

Vote on: McBath Amendment (#4) to HR 7198 ANS

Roll Call #: 11

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)	✓		
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. BIGGS (AZ)		✓		MR. JOHNSON (GA)			
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)			
MR. BISHOP (NC)				MR. CORREA (CA)			
MS. SPARTZ (IN)				MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)		✓		MS. DEAN (PA)			
MR. ARMSTRONG (ND)				MS. ESCOBAR (TX)	✓		
MR. GOODEN (TX)				MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)		✓		MS. BUSH (MO)			
MR. NEHLS (TX)				MR. IVEY (MD)	✓		
MR. MOORE (AL)		✓		MS. BALINT (VT)			
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 6 Nays: 13 Present: X
Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY
118th CONGRESS
25-19

Date: 3/21/24

ROLL CALL

Vote on: *Balint Amndt (H) to HR 7198 ANS*

Roll Call #: 12

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)	✓		
MR. BUCK (CO)				MS. JACKSON LEE (TX)			
MR. GAETZ (FL)				MR. COHEN (TN)			
MR. BIGGS (AZ)				MR. JOHNSON (GA)	✓		
MR. McCLINTOCK (CA)		✓		MR. SCHIFF (CA)			
MR. TIFFANY (WI)				MR. SWALWELL (CA)			
MR. MASSIE (KY)				MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)	✓		
MR. BISHOP (NC)				MR. CORREA (CA)			
MS. SPARTZ (IN)				MS. SCANLON (PA)			
MR. FITZGERALD (WI)				MR. NEGUSE (CO)			
MR. BENTZ (OR)		✓		MS. McBATH (GA)	✓		
MR. CLINE (VA)				MS. DEAN (PA)			
MR. ARMSTRONG (ND)				MS. ESCOBAR (TX)			
MR. GOODEN (TX)				MS. ROSS (NC)	✓		
MR. VAN DREW (NJ)		✓		MS. BUSH (MO)			
MR. NEHLS (TX)				MR. IVEY (MD)			
MR. MOORE (AL)		✓		MS. BALINT (VT)	✓		
MR. KILEY (CA)							
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)		✓					
MR. FRY (SC)							

Roll Call Totals: Ayes: 7 Nays: 8 Present: X
Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY
 118th CONGRESS
 25-19
 ROLL CALL

Date: 3/21/24

Vote on: Full passage of HR 7198, as amended

Roll Call #: 13

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)		✓	
MR. BUCK (CO)				MS. JACKSON LEE (TX)		✓	
MR. GAETZ (FL)	✓			MR. COHEN (TN)			
MR. BIGGS (AZ)				MR. JOHNSON (GA)		✓	
MR. McCLINTOCK (CA)	✓			MR. SCHIFF (CA)			
MR. TIFFANY (WI)				MR. SWALWELL (CA)			
MR. MASSIE (KY)	✓			MR. LIEU (CA)			
MR. ROY (TX)				MS. JAVAPAL (WA)		✓	
MR. BISHOP (NC)				MR. CORREA (CA)			
MS. SPARTZ (IN)				MS. SCANLON (PA)		✓	
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)			
MR. BENTZ (OR)	✓			MS. McBATH (GA)		✓	
MR. CLINE (VA)	✓			MS. DEAN (PA)			
MR. ARMSTRONG (ND)	✓			MS. ESCOBAR (TX)			
MR. GOODEN (TX)	✓			MS. ROSS (NC)		✓	
MR. VANDREW (NJ)	✓			MS. BUSH (MO)		✓	
MR. NEHLS (TX)				MR. IVEY (MD)			
MR. MOORE (AL)	✓			MS. BALINT (VT)		✓	
MR. KILEY (CA)	✓						
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)	✓						
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)	✓						

Roll Call Total: Ayes: 17 Nays: 10 Present: _____
 Passed: A Failed: _____

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the *Congressional Record* upon its receipt by the Committee.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, 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.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 7198 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 7198 would amend the Regulatory Flexibility Act to require agencies to better account for the effects of regulations on small businesses.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 7198 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House Rule XXI.

Federal Mandates Statement

An estimate of federal mandates prepared by the Director of the Congressional Budget office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Advisory Committee Statement

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

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* (Pub. L. 104-1).

ROGER WILLIAMS, TEXAS
CHAIRMANNYDIA M. VELAZQUEZ, NEW YORK
RANKING MEMBER

Correspondence

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-0715

November 21, 2024

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Jordan:

I write concerning H.R. 7198, the *Prove It Act*. The bill was referred primarily to the Committee on the Judiciary, with an additional referral to the Committee on Small Business. As you know, the Small Business Committee marked up the bill on September 10, 2024.

I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, the Committee on Small Business will forgo further action on the bill. However, this is conditional on our mutual understanding that doing so will not prejudice the Committee on Small Business with respect to the appointment of conferees or to any future jurisdictional claim over the subject matter contained in the bill or similar legislation that falls within the Committee on Small Business's Rule X jurisdiction. Further, should a conference on the bill be necessary, I appreciate your agreement to support my request to have the Committee represented on the conference committee.

Finally, I would ask that a copy of this letter and your response acknowledging our jurisdictional interest in the bill be included in the Congressional Record during consideration of H.R. 7198 on the House floor.

Sincerely,



Roger Williams
Chairman
Committee on Small Business

The Honorable Jim Jordan
Chairman
Page 2 of 2

cc: The Honorable Mike Johnson, Speaker
The Honorable Nydia Velázquez, Ranking Member, Committee on Small Business
The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Jason Smith, Parliamentarian

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-6906
judiciary.house.gov

November 21, 2024

The Honorable Roger Williams
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Williams:

Thank you for consulting with the Committee on the Judiciary and agreeing to be discharged from further consideration of H.R. 7198, the Prove It Act of 2024, so that the measure may proceed expeditiously to the House floor.

I agree that your forgoing further action on this measure does not in any way diminish or alter the jurisdiction of your committee, or prejudice its jurisdictional prerogatives on this measure or similar legislation in the future. I would support your effort to seek appointment of an appropriate number of conferees from your committee to any House-Senate conference on this legislation.

I will include the exchange of these letters in the Judiciary Committee's report to accompany this legislation and in the *Congressional Record* during consideration of this legislation on the House floor. I appreciate your cooperation regarding this legislation and look forward to continuing to work together on matters of shared jurisdiction during this Congress. Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Nydia Velazquez, Ranking Member, Committee on Small Business
The Honorable Jason Smith, Parliamentarian

Section-by-Section Analysis

Section 1. Short title

This section sets forth the short title of the bill as the “Prove It Act of 2024”.

Section 2. Initial Regulatory Flexibility Analysis

This section amends 5 U.S.C. § 603(b) to require that an agency’s Initial Regulatory Flexibility Analysis (IRFA) include, where feasible, the reasonably foreseeable potential indirect costs that a proposed rule may impose on small entities. This section also amends 5 U.S.C. § 605(b) to impose a new 10-day deadline for when the head of an agency certifying that a rule will not have a significant economic impact on a substantial number of small entities must provide that certification to the Chief Counsel for Advocacy at the Small Business Administration (Chief Counsel).

This section further creates after 5 U.S.C. § 605 a new section, “§ 605A, Review procedures relating to initial regulatory flexibility analysis certifications.” The new section:

- Authorizes small entities to petition the Chief Counsel for Advocacy to review a certification under section 605(b); requires the Chief Counsel to determine and publish the process and form for submitting petitions; and establishes requirements for the contents of petitions.
- Establishes an opportunity for consultation with the Chief Counsel before or after an entity files a petition; requires the Chief Counsel to determine and publish the process and form for requesting consultation; and sets limits on the scope of the Chief Counsel’s assistance during consultation.
- Sets forth standards for the Chief Counsel’s initial review of petitions; directs the Chief Counsel how to proceed if a petition lacks merit; and requires that the Chief Counsel tell the petitioner and relevant agency if the Chief Counsel will conduct a “full review” of the certification and proposed rule.
- Sets forth requirements for the Chief Counsel’s conducting a “full review” with respect to an agency certification, including what the Chief Counsel shall consider in conducting the review, and that the Chief Counsel convene a meeting with the petitioner and agency that issued the proposed rule to help the Chief Counsel assess the certification. Requires that the Chief Counsel provide and publish the results of the full review within 30 days after the full review begins.
- Requires that if the Chief Counsel determines—notwithstanding the agency’s certification—that the proposed rule will have a significant economic impact on a substantial number of small entities, the agency must perform an initial and final regulatory flexibility analysis for the rule under sections 603 and 604.
- Provides that if an agency fails to assist the Chief Counsel’s full review, the Chief Counsel may determine the final rule shall not apply to small entities.
- Provides that an agency certification under section 605(b) for which a petition is filed shall be considered final agency action for purposes of judicial review.

Section 3. Publication of guidance

This section amends 5 U.S.C. § 609 by requiring that an agency publish and collect comments on guidance or other relevant documents related to any rule the agency determines is likely to have a significant economic impact on a substantial number of small entities.

Section 4. Review Procedures for Section 610 periodic review of rules

This section amends 5 U.S.C. § 610(b) to require that an agency’s review to minimize a rule’s significant economic impact upon a substantial number of small entities shall consider certain indirect costs.

The section also provides that if an agency fails to timely conduct review of a rule as 5 U.S.C. § 610 requires, the Chief Counsel shall notify the agency the rule is no longer effective; the agency must notify the public that the rule has ceased to be effective and solicit comments for why the rule should be reinstated; and, if the agency determines based on comments the rule should be reinstated, it will have 180 days to review the rule as required, and the rule shall be reinstated. These requirements apply to any final rule issued on or after the date of enactment, or during the 5-year period before the date of enactment.

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

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

Sec.

601. Definitions.

* * * * *

605A. *Review procedures relating to initial regulatory flexibility analysis certifications.*

* * * * *

§ 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^[1]; and

(6) *where feasible, any reasonably foreseeable potential indirect costs the proposed rule may impose on small entities, including small entities that—*

(A) purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule;

(B) are directly regulated by other governmental entities as a result of the rule; or

(C) are not directly regulated by the agency as a result of the rule but are otherwise subject to other agency rules as a result of the rule.

(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).

* * * * *

§ 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.
- (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. **[The agency]** *Not later than 10 days after completing the certification described in this subsection, 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.

§ 605A. Review procedures relating to initial regulatory flexibility analysis certifications

- (a) *FILING A PETITION TO REVIEW AGENCY CERTIFICATION OF A PROPOSED RULE.—*
 - (1) *IN GENERAL.—Any small entity, group of small entities, or organization representing the interests of small entities may petition the Chief Counsel for Advocacy of the Small Business Ad-*

ministration (in this section referred to as the “Chief Counsel”) to review a certification published under section 605(b) that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

(2) *FORM.*—The Chief Counsel shall—

(A) determine the method, timing, and form of disseminating a petition described in paragraph (1); and

(B) display the information described in subparagraph

(A) on the website of the Office of Advocacy of the Small Business Administration in a conspicuous manner.

(3) *CONTENTS.*—Each petition described in paragraph (1) with respect to a certification published under section 605(b) for a proposed rule shall clearly and concisely—

(A) specify the name of the petitioner and a telephone number, a mailing address, and an email address that the Chief Counsel may use to communicate with the petitioner;

(B) if the petitioner is an organization, provide additional identifying information, as applicable, including the organizational or corporate status of the petitioner, the State of incorporation of the petitioner, the registered agent of the petitioner, the interest of the petitioner in representing small entities affected by the proposed rule and the certification at issue, and the name and authority of the individual who signed the petition on behalf of the organizational or corporate petitioner;

(C) present the specific problems or issues that the petitioner believes should be addressed or considered through a review of the certification, such as—

(i) any specific circumstances in which the determination of the certification that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities is incorrect, incomplete, or inadequate; or

(ii) why the proposed rule would, if promulgated, have a significant economic impact on a substantial number of small entities;

(D) cite, enclose, or reference any relevant and non-protected or confidential technical, scientific, or other data or information supporting any assertion of the problems or issues with the certification;

(E) present a proposed solution to the problems or issues raised in the petition, including potential regulatory or compliance alternatives to the proposed rule;

(F) provide an analysis, discussion, or argument that explains how the proposed solution described in subparagraph (E) solves the problems or issues raised in the petition; and

(G) cite, enclose, or reference any other publicly available data or information supporting the proposed solution described in subparagraph (E).

(b) *CONSULTATION.*—

(1) *IN GENERAL.*—Any entity or organization desiring to file a petition under subsection (a) may request a consultation with the Chief Counsel before or after filing the petition.

(2) *FORM.*—The Chief Counsel shall—

(A) determine the method, timing, and form of requesting a consultation with the Chief Counsel under paragraph (1); and

(B) display the information described in subparagraph (A) on the website of the Office of Advocacy of the Small Business Administration in a conspicuous manner.

(3) *LIMITATIONS ON ASSISTANCE.*—In any consultation regarding a petition under paragraph (1), the Chief Counsel—

(A) may only—

(i) describe the process for filing, docketing, tracking, closing, amending, withdrawing, and resolving the petition; and

(ii) assist the petitioner to clarify the petition so that the Chief Counsel is able to understand the issues of concern to the petitioner; and

(B) may not advise a petitioner on whether the petition should be amended or withdrawn.

(c) *PRIMA FACIE REVIEW.*—

(1) *IN GENERAL.*—Upon receipt of a petition filed under this section with respect to the certification of a proposed rule, the Chief Counsel shall make an initial prima facie determination on the merit of the issues raised in petition as to the propriety of the certification and whether the proposed rule in question would, if promulgated, have a significant economic impact on a substantial number of small entities.

(2) *NO FURTHER REVIEW.*—If, following the prima facie review of a petition under paragraph (1), the Chief Counsel determines that the issues raised in the petition do not merit further review by the Chief Counsel, the Chief Counsel shall, not later than 10 days after receipt of the petition, inform the petitioner of that determination and the matter shall be closed.

(3) *FURTHER REVIEW.*—If, following the prima facie review of a petition under paragraph (1), the Chief Counsel determines that the issues raised in the petition do merit further review by the Chief Counsel, the Chief Counsel shall, not later than 10 days after receipt of the petition, inform the petitioner and the agency that promulgated the proposed rule that the Chief Counsel shall conduct a full review of the certification and proposed rule to which the petition relates under subsection (d).

(d) *FULL REVIEW.*—

(1) *CONSIDERATIONS; MEETING.*—In conducting a full review under this subsection with respect to the certification made under section 605(b), the Chief Counsel shall—

(A) consider—

(i) whether the agency that promulgated the proposed rule correctly determined which small entities will be affected by the proposed rule;

(ii) whether the agency considered adequate economic data to assess whether the proposed rule will have a significant impact on a substantial number of small entities; and

(iii) the economic implications of the proposed rule; and

(B) convene a virtual or in-person meeting between the Chief Counsel, the petitioner, representatives of the agency

that promulgated the proposed rule who are determined appropriate by the Chief Counsel, and the Administrator of the Office of Information and Regulatory Affairs to—

(i) provide positions and support for those positions regarding the certification of the proposed rule; and

(ii) allow the Chief Counsel to ask questions as the Chief Counsel determines necessary to make a final determination as to the validity of the certification.

(2) PUBLICATION.—Not later than 30 days after the date on which the Chief Counsel begins a full review of a certification made with respect to a proposed rule under paragraph (1), the Chief Counsel shall submit to the petitioner and the agency that promulgated the proposed rule, and publish in the Federal Register and on the website of the Office of Advocacy of the Small Business Administration, the results of the review conducted under paragraph (1).

(3) REQUIREMENT TO PERFORM ANALYSES.—If, after a full review of a certification made with respect to a proposed rule under paragraph (1), the Chief Counsel determines that the proposed rule will, if promulgated, have a significant economic impact on a substantial number of small entities, the agency that promulgated the proposed rule shall perform an initial regulatory flexibility analysis and a final regulatory flexibility analysis for the proposed rule under sections 603 and 604, respectively.

(4) PENALTY.—If an agency fails to attend the required meeting under paragraph (1)(B) or in any other way fails to assist the Chief Counsel in a full review under paragraph (1) with respect to a proposed rule of the agency, as determined by the Chief Counsel, the final rule shall not apply to small entities.

(5) JUDICIAL REVIEW.—For purposes of judicial review under chapter 7 of this title, a certification made by an agency under section 605(b) for which a petition is filed under subsection (a) shall be considered final agency action as of the date on which the Chief Counsel—

(A) makes a determination under subsection (c)(2) that the issues raised in the petition do not merit further review; or

(B) publishes the results of a full review of the certification under paragraph (1).

* * * * *

§ 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term “covered agency” means—

(1) the Environmental Protection Agency;

(2) the Consumer Financial Protection Bureau of the Federal Reserve System; and

(3) the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

(2) Special circumstances requiring prompt issuance of the rule.

(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

(f) *With respect to any rule that an agency determines is likely to have a significant economic impact on a substantial number of small entities, the head of the agency shall, on regulations.gov or any similar internet website—*

(1) publish all guidance documents and other relevant documents, as determined by the agency, including any updated guidance documents that set forth interpretations of the rule; and

(2) allow for comments on the documents described in paragraph (1) to ensure that small entities may access and provide feedback on those documents.

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider **【the following factors】**—

- (1) the continued need for the rule;
- (2) the nature of complaints or comments received concerning the rule from the public;
- (3) the complexity of the rule;
- (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; **[and]**
- (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule~~[\.]~~; and
- (6) *any indirect costs described in the initial regulatory flexibility analysis under section 603(b)(6), and any other indirect costs that may have arisen during the 10-year period described in subsection (a).*

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

(d) *If an agency fails to conduct a review of a rule as required under this section within the 10-year period described in subsection (a)—*

(1) the Chief Counsel for Advocacy of the Small Business Administration shall notify the agency that the rule has ceased to be effective;

(2) the agency shall publish in the Federal Register a notification that the rule has ceased to be effective, and solicit comments for why the rule should be reinstated; and

(3) if, based on the comments received under paragraph (2), the agency determines that the rule should be reinstated—

(A) the agency shall have 180 days beginning on the date of that determination to complete the review of the rule under this section; and

(B) upon completion of the review under subparagraph (A), the rule shall be reinstated, notwithstanding the notice and comment rulemaking procedures under section 553 of this title.

* * * * *

Dissenting Views

I. INTRODUCTION

H.R. 7198, the “Prove It Act of 2024,” imposes a series of requirements on regulatory agencies, and provides substantial authority to the Chief Counsel of a little-known office at the Small Business Administration, that would empower large companies and undermine the regulatory process that keeps Americans safe.

Regulatory agencies write rules designed to protect our food supply, environment, physical infrastructure, and more. These regulations safeguard the freedoms that all Americans enjoy. While efforts to ease burdens on small businesses can be useful, they should not prevent regulators from doing their jobs in the public

interest. The Prove It Act, under the guise of helping small businesses, would give powerful special interests an effective veto over whole swathes of regulations.

The bill would task a single official in the Small Business Administration with responding to petitions to review agency rules. As structured, the law could allow big trade associations to game the system and flood the SBA with more challenges to regulations than it can possibly review under its current structure. The chaos that would result would subject important rules to delays and uncertainty while doing nothing to help small businesses.

II. CONCERNS

A. BACKGROUND ON THE REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act¹ (“RFA”) requires agencies to analyze the effects of most proposed rules on small entities. The agency must prepare an initial regulatory flexibility analysis when it issues a notice of proposed rulemaking (“NPRM”) describing “the impact of the proposed rule on small entities,”² defined to include small businesses, small nonprofits, and small governments.³ The initial regulatory flexibility analysis must include an estimate of how many small entities the rule will impact and describe “any significant alternatives” available to the agency.⁴ The agency must publish the initial regulatory flexibility analysis in the Federal Register and transmit a copy to the Chief Counsel in the Office of Advocacy (the “Chief Counsel”) at the Small Business Administration (“SBA”).

When the agency promulgates its final rule, it must publish a final regulatory flexibility analysis.⁵ The final regulatory flexibility analysis must describe the comments it received in response to the initial regulatory flexibility analysis, responding to any comments from the Chief Counsel, and describing the number of impacted small entities and the effects of the final rule on those small entities.⁶ For either regulatory flexibility analysis, the law allows the agency to describe the effects of the proposed rule with “a quantifiable or numerical description” or by “more general descriptive statements if quantification is not practicable or reliable.”⁷

An agency is not required to perform either regulatory flexibility analysis if the agency head certifies at the time of the NPRM or at the time of publishing the final rule that the rule will not “have a significant economic impact on a substantial number of small entities.”⁸ The agency must publish its certification in the Federal Register with “a statement providing the factual basis for such certification,” and provide a copy to the Chief Counsel.⁹ The law also requires agencies to conduct periodic reviews of all regulations with significant economic impact on small entities and determine if they

¹ 5 U.S.C. § 601 *et seq.*

² 5 U.S.C. § 603(a).

³ 5 U.S.C. § 601.

⁴ 5 U.S.C. § 603.

⁵ 5 U.S.C. § 604(a).

⁶ 5 U.S.C. § 604(a).

⁷ 5 U.S.C. § 607.

⁸ 5 U.S.C. § 605(b).

⁹ *Id.*

are still needed.¹⁰ Finally, the law provides for judicial review of agencies' compliance with its major terms.¹¹

B. THE PROVE IT ACT WOULD GIVE SPECIAL INTERESTS A VETO OVER REGULATIONS

Congress passed the RFA in 1980 out of concern that uniform regulations disproportionately burdened small firms.¹² Rather than increase the competitiveness of small firms against their larger rivals, however, the law has instead become another tool for rent-seeking corporate titans to obstruct the regulatory process. The Prove It Act would exacerbate the flaws in the original legislation, giving the biggest companies a powerful new cudgel to wield against regulations and causing further harm to the very small entities it purports to help.

The bill creates an unworkable quasi-judicial process within the SBA for reviewing agencies' determinations that regulatory flexibility analyses are not required. Unlike the original RFA, which only allows small entities to seek judicial review,¹³ the Prove It Act would also allow an "organization representing the interests of small entities" to file a petition for review with the Chief Counsel. This addition would let powerful trade associations like the U.S. Chamber of Commerce petition the SBA to review a certification if the organization can claim to represent some small entities affected by the underlying rule.

Once a petition is filed, the Chief Counsel would have 10 days to determine if the petition warrants a full review. If the Chief Counsel determines that a full review is required, the Chief Counsel has a further 30 days to conduct the review and publish the results. The Chief Counsel would also have *unreviewable* discretion to sanction the agency promulgating the rule by making the final rule inapplicable to small agencies upon a finding that the agency failed to assist the Chief Counsel. Moreover, the bill would require agencies to include indirect economic effects of rules in their regulatory flexibility analyses, giving petitioners a stronger basis to argue that any rule would have a significant economic impact on a substantial number of small entities.

Beyond requiring the Chief Counsel to review petitions related to new rules, the bill also charges the Chief Counsel with tracking agencies' completion of mandatory reviews of existing rules every 10 years. If the Chief Counsel finds that an agency failed to conduct a required review of a rule, the Chief Counsel can suspend operation of the rule. The bill would require the Chief Counsel to conduct such a review retroactively for every rule issued in the five years prior to enactment, as well as to all rules after enactment.

The bill thus vests an enormous amount of authority in a chronically underfunded office within the SBA that has not been headed by a Senate-confirmed appointee since 2017.¹⁴ By opening the door

¹⁰ 5 U.S.C. § 610.

¹¹ 5 U.S.C. § 611.

¹² Stuart Shapiro & Deanna Moran, *The Checkered History of Regulatory Reform*, 19 N.Y.U. J. Legis. & Pub. Pol'y 141, 153–54 (2016) (describing hearings leading up to passage of the RFA).

¹³ 5 U.S.C. § 611.

¹⁴ See Letter from Chairman Roger Williams and Ranking Member Nydia M. Velázquez to President Joseph R. Biden (Feb. 16, 2023), <https://smallbusiness.house.gov/uploadedfiles/>

for well-resourced trade associations to challenge virtually any rule, the bill could end up requiring the Chief Counsel to review agencies' RFA compliance for many of the thousands of rules issued each year, to say nothing of agencies' periodic reviews of existing rules. That will do little to help small businesses, but for powerful companies with money to hire well-connected lobbyists, it could prove to be a windfall.

During markup, Democrats offered a number of amendments to address some of the bill's most glaring weaknesses. I offered three amendments: (1) to strike the provision of the bill related to indirect costs, which are notoriously unreliable and nearly impossible to calculate; (2) to strike the retroactive review provision nullification in the bill; and (3) to exclude rules related to environmental permits under the Clean Air Act or the Clean Water Act. Rep. Lucy McBath (D-GA) offered an amendment to exempt rules related to the health and safety of children and Rep. Balint (D-VT) offered an amendment to exempt rules from the National Labor Relations Board. Unfortunately, each amendment was defeated on party line votes.

III. CONCLUSION

The Prove It Act is a dangerous proposal that is designed to hamper and undermine the good and expert work of our public agencies. It would undermine the effective enforcement of the laws Congress passes and it would give one small and underfunded office in the Small Business Administration (SBA) nearly unchecked veto power over critical rules that protect public health and safety. This veto power is likely to be wielded in service of the most well-resourced businesses who can bend the ear of the SBA and convince them to work on their behalf rather than the American people.

For all these reasons, I dissent, and I urge my colleagues to oppose this bill.

JERROLD NADLER,
Ranking Member.

