

118TH CONGRESS
2D SESSION

H. R. 7198

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2024

Received

AN ACT

To amend title 5, United States Code, to require greater transparency for Federal regulatory decisions that impact small businesses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

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

3 **SEC. 2. INITIAL REGULATORY FLEXIBILITY ANALYSIS.**

4 (a) IN GENERAL.—Chapter 6 of title 5, United
5 States Code, is amended—

6 (1) in section 603(b)—

7 (A) in paragraph (5), by striking the pe-
8 riod at the end and inserting “; and”; and

9 (B) by adding at the end the following:

10 “(6) where feasible, any reasonably foreseeable
11 potential indirect costs the proposed rule may im-
12 pose on small entities, including small entities
13 that—

14 “(A) purchase products or services from,
15 sell products or services to, or otherwise con-
16 duct business with entities directly regulated by
17 the rule;

18 “(B) are directly regulated by other gov-
19 ernmental entities as a result of the rule; or

20 “(C) are not directly regulated by the
21 agency as a result of the rule but are otherwise
22 subject to other agency rules as a result of the
23 rule.”;

24 (2) in section 605(b), by striking “The agency”
25 and inserting “Not later than 10 days after com-

1 pleting the certification described in this subsection,
 2 the agency”; and

3 (3) by inserting after section 605 the following:

4 **“§ 605A. Review procedures relating to initial regu-**
 5 **latory flexibility analysis certifications**

6 “(a) FILING A PETITION TO REVIEW AGENCY CER-
 7 TIFICATION OF A PROPOSED RULE.—

8 “(1) IN GENERAL.—Any small entity, group of
 9 small entities, or organization representing the inter-
 10 ests of small entities may petition the Chief Counsel
 11 for Advocacy of the Small Business Administration
 12 (in this section referred to as the ‘Chief Counsel’) to
 13 review a certification published under section 605(b)
 14 that a proposed rule will not, if promulgated, have
 15 a significant economic impact on a substantial num-
 16 ber of small entities.

17 “(2) FORM.—The Chief Counsel shall—

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

21 “(B) display the information described in
 22 subparagraph (A) on the website of the Office
 23 of Advocacy of the Small Business Administra-
 24 tion in a conspicuous manner.

1 “(3) CONTENTS.—Each petition described in
2 paragraph (1) with respect to a certification pub-
3 lished under section 605(b) for a proposed rule shall
4 clearly and concisely—

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

9 “(B) if the petitioner is an organization,
10 provide additional identifying information, as
11 applicable, including the organizational or cor-
12 porate status of the petitioner, the State of in-
13 corporation of the petitioner, the registered
14 agent of the petitioner, the interest of the peti-
15 tioner in representing small entities affected by
16 the proposed rule and the certification at issue,
17 and the name and authority of the individual
18 who signed the petition on behalf of the organi-
19 zational or corporate petitioner;

20 “(C) present the specific problems or
21 issues that the petitioner believes should be ad-
22 dressed or considered through a review of the
23 certification, such as—

24 “(i) any specific circumstances in
25 which the determination of the certification

1 that the proposed rule will not, if promul-
2 gated, have a significant economic impact
3 on a substantial number of small entities is
4 incorrect, incomplete, or inadequate; or

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

9 “(D) cite, enclose, or reference any rel-
10 evant and non-protected or confidential tech-
11 nical, scientific, or other data or information
12 supporting any assertion of the problems or
13 issues with the certification;

14 “(E) present a proposed solution to the
15 problems or issues raised in the petition, includ-
16 ing potential regulatory or compliance alter-
17 natives to the proposed rule;

18 “(F) provide an analysis, discussion, or ar-
19 gument that explains how the proposed solution
20 described in subparagraph (E) solves the prob-
21 lems or issues raised in the petition; and

22 “(G) cite, enclose, or reference any other
23 publicly available data or information sup-
24 porting the proposed solution described in sub-
25 paragraph (E).

1 “(b) CONSULTATION.—

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

6 “(2) FORM.—The Chief Counsel shall—

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

10 “(B) display the information described in
11 subparagraph (A) on the website of the Office
12 of Advocacy of the Small Business Administra-
13 tion in a conspicuous manner.

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

17 “(A) may only—

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

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

1 “(B) may not advise a petitioner on wheth-
2 er the petition should be amended or with-
3 drawn.

4 “(c) PRIMA FACIE REVIEW.—

5 “(1) IN GENERAL.—Upon receipt of a petition
6 filed under this section with respect to the certifi-
7 cation of a proposed rule, the Chief Counsel shall
8 make an initial prima facie determination on the
9 merit of the issues raised in petition as to the
10 properness of the certification and whether the pro-
11 posed rule in question would, if promulgated, have
12 a significant economic impact on a substantial num-
13 ber of small entities.

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

22 “(3) FURTHER REVIEW.—If, following the
23 prima facie review of a petition under paragraph (1),
24 the Chief Counsel determines that the issues raised
25 in the petition do merit further review by the Chief

1 Counsel, the Chief Counsel shall, not later than 10
2 days after receipt of the petition, inform the peti-
3 tioner and the agency that promulgated the pro-
4 posed rule that the Chief Counsel shall conduct a
5 full review of the certification and proposed rule to
6 which the petition relates under subsection (d).

7 “(d) FULL REVIEW.—

8 “(1) CONSIDERATIONS; MEETING.—In con-
9 ducting a full review under this subsection with re-
10 spect to the certification made under section 605(b),
11 the Chief Counsel shall—

12 “(A) consider—

13 “(i) whether the agency that promul-
14 gated the proposed rule correctly deter-
15 mined which small entities will be affected
16 by the proposed rule;

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

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

24 “(B) convene a virtual or in-person meet-
25 ing between the Chief Counsel, the petitioner,

1 representatives of the agency that promulgated
2 the proposed rule who are determined appro-
3 priate by the Chief Counsel, and the Adminis-
4 trator of the Office of Information and Regu-
5 latory affairs to—

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

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

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

22 “(3) REQUIREMENT TO PERFORM ANALYSES.—
23 If, after a full review of a certification made with re-
24 spect to a proposed rule under paragraph (1), the
25 Chief Counsel determines that the proposed rule

1 will, if promulgated, have a significant economic im-
2 pact on a substantial number of small entities, the
3 agency that promulgated the proposed rule shall per-
4 form an initial regulatory flexibility analysis and a
5 final regulatory flexibility analysis for the proposed
6 rule under sections 603 and 604, respectively.

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

14 “(5) JUDICIAL REVIEW.—For purposes of judi-
15 cial review under chapter 7 of this title, a certifi-
16 cation made by an agency under section 605(b) for
17 which a petition is filed under subsection (a) shall
18 be considered final agency action as of the date on
19 which the Chief Counsel—

20 “(A) makes a determination under sub-
21 section (c)(2) that the issues raised in the peti-
22 tion do not merit further review; or

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

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

“605A. Review procedures relating to initial regulatory flexibility analysis certifi-
 cations.”.

5 **SEC. 3. PUBLICATION OF GUIDANCE.**

6 Section 609 of title 5, United States Code, is amend-
 7 ed by adding at the end the following:

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

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

17 “(2) allow for comments on the documents de-
 18 scribed in paragraph (1) to ensure that small enti-
 19 ties may access and provide feedback on those docu-
 20 ments.”.

21 **SEC. 4. REVIEW PROCEDURES FOR SECTION 610 PERIODIC**
 22 **REVIEW OF RULES.**

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

1 (1) in subsection (b)—

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

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

6 (C) in paragraph (5), by striking the pe-
7 riod at the end and inserting “; and”; and

8 (D) by adding at the end the following:

9 “(6) any indirect costs described in the initial
10 regulatory flexibility analysis under section
11 603(b)(6), and any other indirect costs that may
12 have arisen during the 10-year period described in
13 subsection (a).”; and

14 (2) by adding at the end the following:

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

18 “(1) the Chief Counsel for Advocacy of the
19 Small Business Administration shall notify the agen-
20 cy that the rule has ceased to be effective;

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

8 “(B) upon completion of the review under
9 subparagraph (A), the rule shall be reinstated,
10 notwithstanding the notice and comment rule-
11 making procedures under section 553 of this
12 title.”.

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

Passed the House of Representatives December 5,
2024.

HR 7198 RDS