

# Union Calendar No. 631

118<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 7198

**[Report No. 118–761, Part I]**

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2024

Mr. FINSTAD (for himself, Ms. CARAVEO, and Mr. MORAN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

NOVEMBER 22, 2024

Additional sponsors: Mr. GALLAGHER, Ms. HAGEMAN, Ms. SALAZAR, Mr. VALADAO, Mrs. MILLER of West Virginia, Mr. STAUBER, Mr. BACON, Mrs. FISCHBACH, Mr. FLOOD, Mr. STEIL, Mr. CAREY, Mr. MOONEY, Mr. D'ESPOSITO, Mr. BEAN of Florida, and Mr. LAMBORN

NOVEMBER 22, 2024

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

NOVEMBER 22, 2024

Committee on Small Business discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 1, 2024]

# **A BILL**

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,*

3 **SECTION 1. SHORT TITLE.**

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

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

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

8 *(1) in section 603(b)—*

9 *(A) in paragraph (5), by striking the period*  
10 *at the end and inserting “; and”; and*

11 *(B) by adding at the end the following:*

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

15 *“(A) purchase products or services from, sell*  
16 *products or services to, or otherwise conduct*  
17 *business with entities directly regulated by the*  
18 *rule;*

19 *“(B) are directly regulated by other govern-*  
20 *mental entities as a result of the rule; or*

21 *“(C) are not directly regulated by the agen-*  
22 *cy as a result of the rule but are otherwise sub-*  
23 *ject to other agency rules as a result of the 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 CERTIFI-*  
7        *CATION 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 a*  
15                        *significant economic impact on a substantial number*  
16                        *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 of*  
23                                *Advocacy of the Small Business Administration*  
24                                *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 to*  
8                     *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 incor-*  
13                    *poration of the petitioner, the registered agent of*  
14                    *the petitioner, the interest of the petitioner in*  
15                    *representing small entities affected by the pro-*  
16                    *posed rule and the certification at issue, and the*  
17                    *name and authority of the individual who signed*  
18                    *the petition on behalf of the organizational or*  
19                    *corporate petitioner;*

20                    “(C) *present the specific problems or issues*  
21                    *that the petitioner believes should be addressed or*  
22                    *considered through a review of the certification,*  
23                    *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 relevant  
10          and non-protected or confidential technical, sci-  
11          entific, or other data or information supporting  
12          any assertion of the problems or issues with the  
13          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 of*  
12 *Advocacy of the Small Business Administration*  
13 *in a conspicuous manner.*

14 “(3) *LIMITATIONS ON ASSISTANCE.*—*In any con-*  
15 *sultation regarding a petition under paragraph (1),*  
16 *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 to*  
24 *understand the issues of concern to the peti-*  
25 *tioner; and*

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

3           “(c) *PRIMA FACIE REVIEW*.—

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

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

21          “(3) *FURTHER REVIEW*.—If, following the prima  
22          facie review of a petition under paragraph (1), the  
23          Chief Counsel determines that the issues raised in the  
24          petition do merit further review by the Chief Counsel,  
25          the Chief Counsel shall, not later than 10 days after



1 *receipt of the petition, inform the petitioner and the*  
2 *agency that promulgated the proposed rule that the*  
3 *Chief Counsel shall conduct a full review of the cer-*  
4 *tification and proposed rule to which the petition re-*  
5 *lates under subsection (d).*

6 *“(d) FULL REVIEW.—*

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

11 *“(A) consider—*

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

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

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

23 *“(B) convene a virtual or in-person meeting*  
24 *between the Chief Counsel, the petitioner, rep-*  
25 *resentatives of the agency that promulgated the*

1           *proposed rule who are determined appropriate*  
2           *by the Chief Counsel, and the Administrator of*  
3           *the Office of Information and Regulatory affairs*  
4           *to—*

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

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

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

21                   “(3) *REQUIREMENT TO PERFORM ANALYSES.—If,*  
22                   *after a full review of a certification made with respect*  
23                   *to a proposed rule under paragraph (1), the Chief*  
24                   *Counsel determines that the proposed rule will, if pro-*  
25                   *mulgated, have a significant economic impact on a*

1        *substantial number of small entities, the agency that*  
2        *promulgated the proposed rule shall perform an ini-*  
3        *tial regulatory flexibility analysis and a final regu-*  
4        *latory flexibility analysis for the proposed rule under*  
5        *sections 603 and 604, respectively.*

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

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

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

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

24               *(b) TECHNICAL AND CONFORMING AMENDMENT.—The*  
25       *table of sections for chapter 6 of title 5, United States Code,*

1 *is amended by inserting after the item relating to section*  
2 *605 the following:*

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

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

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

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

11 *“(1) publish all guidance documents and other*  
12 *relevant documents, as determined by the agency, in-*  
13 *cluding any updated guidance documents that set*  
14 *forth interpretations of the rule; and*

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

19 **SEC. 4. REVIEW PROCEDURES FOR SECTION 610 PERIODIC**  
20 **REVIEW OF RULES.**

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

23 *(1) in subsection (b)—*

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

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

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

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

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

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

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

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

20                 “(2) the agency shall publish in the Federal Reg-  
21                 ister a notification that the rule has ceased to be effec-  
22                 tive, and solicit comments for why the rule should be  
23                 reinstated; and

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

4                   “(A) the agency shall have 180 days begin-  
5                   ning on the date of that determination to com-  
6                   plete the review of the rule under this section;  
7                   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.”.

13           (b) APPLICATION.—The amendment made by sub-  
14           section (a)(2) shall apply with respect to any final rule  
15           issued by an agency—

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

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



Union Calendar No. 631

118<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 7198**

[Report No. 118-761, Part I]

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## **A BILL**

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