

**FULL COMMITTEE MARKUP OF
H.R. 4458, THE SMALL BUSINESS
REGULATORY IMPROVEMENT ACT**

**COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF
REPRESENTATIVES**

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**FULL COMMITTEE MARKUP OF HR. 4458,
THE SMALL BUSINESS REGULATORY
IMPROVEMENT ACT**

Thursday, December 13, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:13 a.m., in Room 2360, Rayburn House Office Building, Hon. Nydia M. Velázquez [chair of the Committee] Presiding.

Present: Representatives Velázquez, Shuler, Larsen, Grijalva, Michaud, Cuellar, Altmire, Braley, Clarke, Ellsworth, Johnson, Sestak, Higgins, Hirono, Chabot, Bartlett, Graves, Akin, Shuster, Musgrave, King, Fortenberry, Westmoreland, Gohmert, Davis, Fallin, Buchanan, and Jordan.

OPENING STATEMENT OF CHAIRWOMAN VELÁZQUEZ

Chairwoman VELÁZQUEZ. I am pleased to call this morning's markup to order. Today we are considering H.R. 4458, the Small Business Regulatory Improvement Act. This legislation, offered by Mr. Ellsworth, strengthens key sections of the Regulatory Flexibility Act to help alleviate the growing burdens facing small firms.

Since 1980 RegFlex has served to ensure that America's entrepreneurs are not placed at a disadvantage by Federal regulations. However, as we approach 28 years of RegFlex on the books, it is clear that certain parts of the law are not working as well as they should be. Over the past several weeks, this Committee has examined ways to improve RegFlex. The bill before us represents the final result of that work.

The Small Business Regulatory Improvement Act was developed with the input of the small business community, policymakers and the chief counsel for advocacy. In these discussions, one thing that was abundantly clear was a concern of the growing regulatory burden on small businesses and its impact on entrepreneurship. Tens of thousands of pages of regulations continue to flow from agencies annually. In fact, just this Monday, the Federal Register exceeded the 70,000-page mark for the year.

It is time to rein in the rapidly increasing regulatory costs facing America's entrepreneurs. Although critics of RegFlex have long labeled it as an impediment to the regulatory process, this is simply not the case. For the nearly three decades the law has been on the books, the volume of regulations continue to grow. By making certain that regulators consider the needs of small businesses when

they write and review regulations, the law actually enhances transparency and makes for a better informed regulatory process.

The legislation we are marking up today will significantly strengthen RegFlex by addressing the weaknesses that were identified in our recent discussions. Many of the witnesses expressed concerns that agencies were not living up to their obligations to review the burdens of existing rule on small business.

The General Accounting Office has reported on numerous occasions that agency compliance with this requirement was poor. The legislation holds the agencies more accountable by requiring them to report the results of their reviews to Congress annually.

The Small Business Regulatory Improvement Act also addresses what the chief counsel for advocacy has described as the biggest loophole in the law, the fact that agencies do not have to consider the full economic impact of the rules and regulations on small businesses. By fixing this problem, the Small Business Regulatory Improvement Act will require agencies to consider the indirect impacts of the rule on small businesses.

The Federal Government should be using its resources to make sure that regulations accomplish their goal without adding unnecessary costs to small businesses. This bill will increase the role of the Office of Advocacy in helping agencies identify ways to achieve this. The goal here is not to limit regulations. It is to create a regulatory process that is balanced and fair to small businesses. Regulations should be designed to ensure protections are in place without creating burdens that do nothing to further policy objectives. As the regulatory burden increases, small businesses are finding it harder to keep up.

A study recently commissioned by the Small Business Administration Office of Advocacy determined that regulatory costs for small businesses are 45 percent greater than for larger firms. These costs amount to over \$7,600 annually. Having consulted with the minority, the Office of Advocacy, and the small business community on this bill, I believe we have drafted commonsense legislation that will improve this important law and ensure that small businesses are not overlooked in the regulatory process. By strengthening and clarifying many aspects of RegFlex, this legislation can help stop the growth of complying costs.

I would like to thank Mr. Ellsworth for introducing this legislation as well as thanking the Ranking Member Mr. Chabot and his staff for their efforts in working with us on marking this bill. I now would like to yield to Mr. Chabot for his opening remarks.

OPENING STATEMENT OF MR. CHABOT

Mr. CHABOT. Thank you, Madam Chairwoman, for yielding. And the bill that we are considering today has some useful improvements, the Regulatory Flexibility Act. I would like to thank the Chairwoman and Mr. Ellsworth for their hard work in bringing this bill forward and working on it. While I will vote for the bill, I do believe the bill needs some enhancements to be truly effective in reducing the regulatory burdens on our small businesses.

More than a quarter of a century ago the growth of the regulatory state was imposing undue burdens on the capacity of small businesses to compete. The situation was exacerbated by the Fed-

eral agencies issuing a one-size-fits-all rule that may work for large firms but fail small businesses, which often lack the financial and legal resources to interpret and comply with these regulations.

Senator John Culver, a Democrat who was quite liberal, responded by drafting a statute, the Regulatory Flexibility Act, or RFA, that forced agencies to consider the impacts on their rules on small businesses in the same way that the Federal Government considers the environmental impact when building a dam or a road or that type of thing.

The RFA represents a simple yet profound change to the Administrative Procedure Act which requires that rulemaking be conducted rationally. To conduct rational rulemaking, an agency must understand the scope of the problem. Since the vast majority of entities regulated by the Federal Government are small businesses, the Regulatory Flexibility Act plays a key role in helping agencies understand the scope of the problem and ultimately conduct rational rulemaking. It is important to understand that the RFA affects the process by which an agency issues regulations, not the substance of the rule. No changes we are considering today or that have been considered in the past will force an agency to reduce burdens on small businesses. Instead, it will provide the agency with evidence that its regulatory objective can be attained in a more cost-effective manner. Logic would then dictate that the agency take the more cost-effective approach in reaching its objectives.

The bill we are considering today will improve the process by which agencies consider the impacts of their proposed and final rules on small businesses and other small entities, including rules that have been in effect for 10 years. The bill also codifies an executive order, granting the chief counsel for advocacy certain authority. I am concerned that the codification of the executive order conflicts with the requirements of the government in the Sunshine Act. That act requires independent collegial bodies like the FCC or SEC to adopt their regulation in open meetings. Authorizing these agencies to provide such rules to the chief counsel prior to an open meeting violates, in my view, the government and Sunshine Act. And I would ask the Chairwoman to work with us to resolve this issue as the bill moves forward in the legislative process.

While these changes in the bill are necessary, they are not sufficient to really force agencies to consider the impact of their rules on small businesses. The only way to do that is to empower the chief counsel for advocacy to write governmentwide regulations that all agencies would follow in implementing the RFA. This would bring regularity to a process now fraught with the idiosyncratic views of each agency. More importantly, agencies and courts would give deference to the opinions of the chief counsel in the same way that the rules of the Council for Environmental Quality are given deference in the drafting of environmental impact statements.

I would ask the Chairwoman to assist us in making sure that the chief counsel has not only the necessary powers but sufficient powers to see the agencies will care that the RFA is on the books.

And with that, I will yield back.

Chairwoman VELÁZQUEZ. Well, let me just say, Mr. Chabot, that you have got my commitment to continue to work in trying to move the process forward.

Mr. CHABOT. Thank you very much.

Chairwoman VELÁZQUEZ. And now I would like to recognize the lead sponsor of this legislation, Mr. Ellsworth, for his statement on the legislation.

OPENING STATEMENT OF MR. ELLSWORTH

Mr. ELLSWORTH. Thank you, Madam Chairwoman, thank you Ranking Member Chabot. I practiced this week after last week's hearing to get that right again.

Mr. CHABOT. Thank you very much, Mr. Ellsworth.

Mr. ELLSWORTH. Thank you both very much for scheduling this markup on this bill. I want to thank the members of the Small Business Committee as well as staff who worked so closely with the Committee to ensure we could develop the bipartisan bill that we have with us today.

As we discussed before this Committee, small businesses are too often put on a competitive disadvantage as a result of Federal regulations. Big corporations who have teams of lawyers, accountants, and compliance officers have a much easier time with small competitors when it comes to complying with complex regulations and paperwork. In fact, on a per-employee basis, as the Chairwoman said, it costs about 45 percent more for small companies to comply with Federal regulations than their larger competitors. That is why American small businesses need the Regulatory Flexibility Act.

For over 25 years, this act has required Federal agencies to take into account the negative impact of their regulations on small businesses. In fact, under the Regulatory Flexibility Act, in many cases agencies are required to adjust their regulations to ease the burden on small companies. Unfortunately, some bureaucrats ignore the spirit of this law by finding loopholes that allow them to push on without considering the effects of new regulation on American small businesses. And that is why we are here today. The Small Business Regulatory Improvement Act closes these loopholes and brings small businesses back to the table when regulations are written.

There is no doubt that this bill is going to help small businesses. The list of organizations who have endorsed this bill continues to grow. I would like to list a few of those who have already endorsed this plan. They are the U.S. Chamber of Commerce, the Farm Bureau, the American Medical Association, the American Dental Association, the American Hospitals Association, the Food Marketing Institute, the National Association of Manufacturers, the National Association of Wheat Growers, the National Electrical Contractors Association, the National Council for Farmers Cooperatives, the National Retail Federation, the National Roofing Contracting Association, the Owner-Operator Independent Driver Association, and, just in, is the Association of General Contractors. These groups have apparently heard the same thing from their members as I have heard from small business owners: It is time for the Federal Government to stop ignoring the unique negative impacts of certain regulations on small businesses. I am glad we are here today to ad-

dress this issue. I urge all my colleagues to help ease the burden for the small businesses in their districts and support this important bill.

Thank you, Madam Chair. I yield back my time.

Chairwoman VELÁZQUEZ. Thank you. Are there any other members that wish to be recognized on the legislation?

The Committee now moves to consideration of the bill, H.R. 4458. The clerk will report the title of the bill.

The CLERK. A bill to amend chapter 6 of title 5, United States Code, commonly known as the Regulatory Flexibility Act, to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

Chairwoman VELÁZQUEZ. I ask unanimous consent that the bill in its entirety be open for amendments at this time. Does any member seek recognition for the purpose of offering an amendment?

Seeing no amendments, the question is on passing and reporting the bill H.R. 4458.

All those in favor say aye.

All those opposed, no.

Mr. CHABOT. Recorded vote, please, Madam Chair.

Chairwoman VELÁZQUEZ. A recorded vote has been requested. And The clerk will call the vote.

The CLERK. Ms. Velázquez.

Ms. VELÁZQUEZ. Aye.

The CLERK. Ms. Velázquez votes aye.

Mr. Schuler.

Mr. SCHULER. Aye.

The CLERK. Mr. Schuler votes aye.

Mr. Gonzalez.

[No response.]

The CLERK. Mr. Larsen.

[No response.]

The CLERK. Mr. Grijalva.

Mr. GRIJALVA. Aye.

The CLERK. Mr. Grijalva votes aye.

Mr. Michaud.

Mr. MICHAUD. Aye.

The CLERK. Mr. Michaud votes aye.

Ms. Bean.

[No response.]

The CLERK. Mr. Cuellar.

Mr. CUELLAR. Aye.

The CLERK. Mr. Cuellar votes aye.

Mr. Lipinski.

[No response.]

The CLERK. Ms. Moore.

[No response.]

The CLERK. Mr. Altmire.

Mr. ALTMIRE. Aye.

The CLERK. Mr. Altmire votes aye.

Mr. Braley.

Mr. BRALEY. Aye.

The CLERK. Mr. Braley votes aye.

Ms. Clarke.
 Ms. CLARKE. Aye.
 The CLERK. Ms. Clarke votes aye.
 Mr. Ellsworth.
 Mr. ELLSWORTH. Aye.
 The CLERK. Mr. Ellsworth votes aye.
 Mr. Johnson.
 Mr. JOHNSON. Aye.
 The CLERK. Mr. Johnson votes aye.
 Mr. Sestak.
 Mr. SESTAK. Aye.
 The CLERK. Mr. Sestak votes aye.
 Mr. Higgins.
 Mr. HIGGINS. Aye.
 The CLERK. Mr. Higgins votes aye.
 Ms. Hirono.
 Ms. HIRONO. Aye.
 The CLERK. Ms. Hirono votes aye.
 Mr. Chabot.
 Mr. CHABOT. Aye.
 The CLERK. Mr. Chabot votes aye.
 Mr. Bartlett.
 Mr. BARTLETT. Aye.
 The CLERK. Mr. Bartlett votes aye.
 Mr. Graves.
 Mr. GRAVES. Aye.
 The CLERK. Mr. Graves votes aye.
 Mr. Akin.
 Mr. AKIN. Yes.
 The CLERK. Mr. Akin votes aye.
 Mr. Shuster.
 [No response.]
 The CLERK. Mrs. Musgrave.
 Mrs. MUSGRAVE. Yes.
 The CLERK. Mrs. Musgrave votes aye.
 Mr. King.
 [No response.]
 The CLERK. Mr. Fortenberry.
 Mr. FORTENBERRY. Yes.
 The CLERK. Mr. Fortenberry votes aye.
 Mr. Westmoreland.
 [No response.]
 The CLERK. Mr. Gohmert.
 Mr. GOHMERT. Yes.
 The CLERK. Mr. Gohmert votes aye.
 Mr. Heller.
 [No response.]
 The CLERK. Mr. Davis.
 Mr. DAVIS. Aye.
 The CLERK. Mr. Davis votes aye.
 Ms. Fallin.
 Ms. FALLIN. Aye.
 The CLERK. Ms. Fallin votes aye.
 Mr. Buchanan.

Mr. BUCHANAN. Aye.

The CLERK. Mr. Buchanan votes aye.

Mr. JORDAN.

Mr. JORDAN. Yes.

The CLERK. Mr. Jordan votes aye.

Chairwoman VELÁZQUEZ. Are there any other members present seeking to change or record their vote? Mr. Westmoreland?

Mr. WESTMORELAND. Yes.

The CLERK. Mr. Westmoreland votes aye.

Chairwoman VELÁZQUEZ. The Clerk will report the vote.

The CLERK. Twenty-five ayes, zero noes.

Chairwoman VELÁZQUEZ. The ayes have it, and H.R. 4458 is adopted and ordered reported.

I ask unanimous consent that the Committee be authorized to correct section numbers, punctuation, and cross-references, and to make other necessary technical and conforming corrections on the bills considered today. Without objection, so ordered.

Mr. CHABOT. Madam Chair, I ask unanimous consent that the gentleman's vote be recorded.

Chairwoman VELÁZQUEZ. Mr. Larsen, how do you want to be recorded?

Mr. LARSEN. Thank you, Mr. Chabot. Yes.

Chairwoman VELÁZQUEZ. This markup is adjourned.

[Whereupon, at 10:30 a.m., the Committee was adjourned.]

STATEMENT

Of the Honorable Nydia M. Velázquez, Chairwoman
United States House of Representatives, Committee on Small Business
Markup of: "HR 4458, *Small Business Regulatory Improvement Act*"
Thursday, December 13, 2007 at 10:00 am

Today, we are considering HR, 4458, the Small Business Regulatory Improvement Act. This legislation offered by Mr. Ellsworth strengthens key sections of the Regulatory Flexibility Act to help alleviate the growing burdens facing small firms.

Since 1980, RegFlex has served to ensure that America's entrepreneurs are not placed at a disadvantage by federal regulations. However, as we approach 28 years of RegFlex on the books, it is clear that certain parts of the law are not working as well as they should be.

Over the past several weeks, this Committee has examined ways to improve RegFlex. The bill before us represents the final result of that work.

The Small Business Regulatory Improvement Act was developed with the input of the small business community, policymakers, and the Chief Counsel for Advocacy.

In these discussions, one thing that was abundantly clear was the concern over the growing regulatory burden on small businesses and its impact on entrepreneurship. Tens of thousands of pages of regulations continue to flow from agencies annually. In fact, just this Monday, the Federal Register exceeded the 70,000 page mark for the year.

It is time to reign in the rapidly increasing regulatory costs facing America's entrepreneurs. Although critics of RegFlex have long labeled it as an impediment to the regulatory process, this is simply not the case.

For the nearly three decades the law has been on the books, the volume of regulations continues to grow. By making certain that regulators consider the needs of small businesses when they write and review regulations, the law actually enhances transparency and makes for a better informed regulatory process.

The legislation we are marking up today will significantly strengthen RegFlex by addressing the weaknesses that were identified in our recent discussions. Many of the witnesses expressed concerns that agencies were not living up to their obligations to review the burdens of existing rules on small businesses.

The GAO has reported on numerous occasions that agency compliance with this requirement was poor. The legislation holds the agencies more accountable by requiring them to report the results of their reviews to Congress annually.

The Small Business Regulatory Improvement Act also addresses what the Chief Counsel for Advocacy has described as the “biggest loophole” in the law --- the fact that agencies do not have to consider the full economic impact of their rules and regulations on small businesses. By fixing this problem, the Small Business Regulatory Improvement Act will require agencies to consider the indirect impacts of their rules on small businesses.

The federal government should be using its resources to make sure that regulations accomplish their goal without adding unnecessary costs to small businesses. This bill will increase the role of the Office of Advocacy in helping agencies identify ways to achieve this.

The goal here is not to limit regulations -- it is to create a regulatory process that is balanced and fair to small businesses. Regulations should be designed to ensure protections are in place without creating burdens that do nothing to further policy objectives.

As the regulatory burden increases, small businesses are finding it harder to keep up. A study recently commissioned by the SBA Office of Advocacy determined that regulatory costs for small businesses are 45% greater than for larger firms. These costs amount to over \$7,600 annually.

Having consulted with the Minority, the Office of Advocacy and the small business community on this bill, I believe we have crafted common sense legislation that will improve this important law and ensure that small businesses are not overlooked in the regulatory process. By strengthening and clarifying many aspects of RegFlex, this legislation can help stop the growth of compliance costs.

U.S. House of Representatives

SMALL BUSINESS COMMITTEE

Thursday,
December 13, 2007

Representative Steve Chabot, Republican Leader

Opening Statement of Ranking Member Steve Chabot

Markup of H.R. 4458, Small Business Regulatory Improvement Act

The bill being considered today has some useful improvements to the Regulatory Flexibility Act. I would like to thank the Chairwoman and Mr. Ellsworth for their hard work on this bill. While I will vote for the bill, I believe that the bill needs enhancements to be truly effective in reducing the regulatory burdens on our small businesses.

More than a quarter of a century ago the growth of the regulatory state was imposing undue burdens on the capacity of small businesses to compete. The situation was exacerbated by the federal agencies issuing one-size-fits-all rules that may work for large firms, but fail small businesses lacking the financial and legal resources to interpret and comply with these regulations.

Senator John Culver, a liberal Democrat, responded by drafting a statute, the Regulatory Flexibility Act or RFA, that forced agencies to consider the impacts of their rules on small businesses in the same way that the federal government considers the environmental impact when building dams or roads.

The RFA represents a simple yet profound change to the Administrative Procedure Act which requires that rulemaking be conducted rationally. To conduct rational rulemaking an agency must understand the scope of the problem. Since the vast majority of entities regulated by the federal government are small businesses, the RFA plays a key role in helping agencies understand the scope of the problem and, ultimately, conduct rational rulemaking.

It is important to understand that the RFA affects the process by which an agency issues regulations not the substance of the rule. No changes we are considering today or that have been considered in the past will force an agency to reduce burdens on small businesses. Instead, it will provide the agency with evidence that its regulatory objective can be attained in a more cost-effective manner. Logic would then dictate that the agency take the more cost-effective approach in reaching its objectives.

The bill we are considering today will improve the process by which agencies consider the impacts of their proposed and final rules on small businesses and other small entities, including rules that have been in effect for ten years. The bill also codifies an Executive Order granting the Chief Counsel for Advocacy certain authority.

I am concerned that the codification of the Executive Order conflicts with the requirements of the Government-in-Sunshine Act. That Act requires independent collegial bodies, like the FCC or SEC, to adopt their regulations in open meetings. Authorizing these agencies to provide such rules to the Chief Counsel prior to an open meeting violates the Government-in-Sunshine Act. I would ask that the Chairwoman work with me to resolve this issue as the bill moves through the legislative process.

While these changes in the bill are necessary, they are not sufficient, conditions to really force agencies to consider the impacts of their rules on small businesses. The only way to do that is to empower the Chief Counsel for Advocacy to write government-wide regulations that all agencies will follow in implementing the RFA. This would bring regularity to a process now fraught with idiosyncratic views of each agency. More importantly, agencies and courts would give deference to the opinions of the Chief Counsel in the same way that the rules of the Council of Environmental Quality are given deference in the drafting of environmental impact statements. I would ask the Chairwoman to assist me in making sure that the Chief Counsel has not only the necessary powers but the sufficient powers to see that agencies will care that the RFA is on the books.

With that I yield back.

**RegFlex MARK-UP
OPENING STATEMENT – Rep. Brad Ellsworth**

Thank you. I want to thank Chairwoman Velazquez and Ranking Member Chabot for scheduling a mark-up on this important bill. I also want to thank all the members of the small business community who have worked so closely with the Committee to ensure we could develop the bipartisan bill we have before us today.

As we've discussed before in this committee, small businesses are too often put at a competitive disadvantage as a result of federal regulations. Big corporations—with their teams of lawyers, accountants, and compliance officers—have a much easier time than their small competitors when it comes to complying with complex regulations and paperwork. In fact, on a per-employee basis, it costs about 45% more for small companies to comply with federal regulations than their larger competitors.

That's why American small businesses need the Regulatory Flexibility Act. For over 25 years, this Act has required federal agencies to take into account the negative impact of their regulations on small businesses. In fact, under the Regulatory Flexibility Act, in many cases, agencies are required to adjust their regulations to ease the burden on small companies.

Unfortunately, some bureaucrats have ignored the spirit of this law by finding loopholes that allow them to push on without considering the effects of a new regulation on American small businesses.

That's why we're here today. The Small Business Regulatory Improvement Act closes those loopholes and brings small businesses back to the table when regulations are written.

There is no doubt that this bill is going to help small businesses. The list of organizations who have endorsed this bill keeps growing:

- the US Chamber of Commerce
- the Farm Bureau
- the American Medical Association
- the American Dental Association
- the American Hospital Association
- the Food Marketing Institute
- the National Association of Manufacturers
- the National Association of Wheat Growers
- the National Electrical Contractors Association
- the National Council for Farmer Cooperatives
- the National Retail Federation
- the National Roofing Contracting Association
- the Owner-Operator Independent Drivers Association
- and the Associated General Contractors.

These groups have apparently heard the same thing from their members as I've heard from my constituents: It's time for the federal government to stop ignoring the unique negative impacts of certain regulations on small businesses.

So, I'm glad we're here to address that issue today. I urge all my colleagues to help ease the burden for small businesses in your districts and support this important bill.

Thank you Madam Chair. I yield back my time.