

TO AMEND THE SMALL BUSINESS ACT TO REQUIRE THE SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT OMBUDSMAN TO CREATE A CENTRALIZED WEBSITE FOR COMPLIANCE GUIDES, AND FOR OTHER PURPOSES

JUNE 13, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. VELÁZQUEZ, from the Committee on Small Business, submitted the following

R E P O R T

[To accompany H.R. 2142]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 2142) to amend the Small Business Act to require the Small Business and Agriculture Regulatory Enforcement Ombudsman to create a centralized website for compliance guides, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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I. PURPOSE AND BILL SUMMARY

The purpose of H.R. 2142 is to require the Office of the National Ombudsman at the Small Business Administration (SBA) to create a centralized website with hyperlinks to small entity compliance guides and the contact person at agencies who could provide small businesses with assistance. The legislation would also require the Office of the National Ombudsman to report on federal agencies' compliance with the Section 212 requirements of the Small Business Regulatory Enforcement Fairness Act (SBREFA) in its annual report to Congress.

II. BACKGROUND AND NEED FOR LEGISLATION

H.R. 2142 was introduced by Representative Antonio Delgado (D-NY) and Representative John Joyce (R-PA) on April 9, 2018. Section 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires federal agencies to publish a "small entity compliance guide" for every rule that requires a regulatory flexibility analysis (RFA). The guide must be posted the day the final rule is published or shortly thereafter, but no later than the day the rule becomes effective. Agencies are also required to publish the guides on their websites, distribute the guides to small entities affected by the rules, and report annually to Congress.

A. BACKGROUND ON SBA'S OFFICE OF THE NATIONAL OMBUDSMAN

The SBA's Office of the National Ombudsman was created in 1996 to help small businesses overcome excessive or unfair regulatory enforcement actions by federal agencies, such as repetitive audits, investigations, or excessive fines. The Ombudsman works directly with federal agencies to ensure that actions taken against small businesses are fair and not excessive. In Fiscal Year 2017, the Office of the National Ombudsman advocated on behalf of 460 small businesses, conducted more than 130 outreach events across the country to raise the visibility of the Office, and strengthened relationships with 28 interagency partners.

B. THE NEED FOR THE CHANGES OUTLINED IN THE BILL

Section 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires federal agencies to publish a "small entity compliance guide" for every rule that requires a regulatory flexibility analysis (RFA). The guide must be posted the day the final rule is published or shortly thereafter, but no later than the day the rule becomes effective. Agencies are also required to publish the guides on their websites, distribute the guides to small entities affected by the rules, and report annually to Congress.

Small businesses rarely have the resources to navigate multiple agency websites to understand their responsibilities under new laws. H.R. 2142, would make it easier for small businesses by requiring the Office of the National Ombudsman at the Small Business Administration (SBA) to create a centralized website, which would provide a "one stop shop" for small entities compliance guides. Specifically, the legislation would require the Office of the National Ombudsman at the Small Business Administration (SBA) to create a centralized website with hyperlinks to small entity compliance guides and the contact person at agencies who could pro-

vide small businesses with assistance. The legislation would also require the Ombudsman to report on federal agencies' compliance with the section 212 requirements in its annual report to Congress.

In addition, the bill would provide transparency and ensure federal agencies are complying with the SBREFA requirements. Federal agencies' compliance with the requirements has been varied. For example, the Federal Trade Commission (FTC) has a long-standing small business education program and regularly submits reports to the Small Business Committee each year. In the 2018 annual report, the FTC reported that the Commission did not issue any rules that were subject to Section 212 of SBREFA for the reporting period. However, it made compliance materials available for several rulemakings even though they were not required to do so by the Act. Conversely, the Surface Transportation Board reported in its 2018 annual report that the Board failed to issue a timely compliance guide for a particular rule, but promptly remedied the omission once it was realized. The legislation would require the Office of the National Ombudsman to report on federal agencies' compliance with the SBREFA requirements in its annual report to Congress.

III. HEARINGS

While multiple hearings have been held by the Committee over the past several years exploring regulatory compliance burdens specific to the small business community, no specific hearings in the 116th Congress have been held to explore reforms to SBA's Office of the National Ombudsman.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on May 1, 2019 and ordered H.R. 2142 favorably reported to the House. During the markup, no amendments were offered.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted by voice vote to favorably report H.R. 2142 to the House at 11:58 A.M.

**COMMITTEE ON SMALL BUSINESS
TALLY SHEET**

DATE: 06-01-19

BILL NUMBER: H.R. 2142

ROLL CALL: *voice vote*

VOTE: (AYE) *✓* (NO)

QUORUM:

AMENDMENT NUMBER:

agreed to 11:58

reported to house

MEMBER	AYE	NO	NOT VOTING
Ms. Velázquez, Chairwoman			
Ms. Finkenauer			
Mr. Golden			
Mr. Kim			
Mr. Crow			
Ms. Davids			
Ms. Chu			
Mr. Veasey			
Mr. Evans			
Mr. Schneider			
Mr. Espaillet			
Mr. Delgado			
Ms. Houlahan			
Ms. Craig			
MR. Chabot Ranking Member			
Ms. Radewagen			
Mr. Kelly			
Mr. Balderson			
Mr. Hern			
Mr. Hagedorn			
Mr. Stauber			
Mr. Burchett			
Mr. Spano			
Mr. Joyce			
TOTALS			

On this vote there were _____ ayes and _____ nos.

VI. SECTION-BY-SECTION OF H.R. 2142

Section 1: Centralized compliance guides

This section amends section 30 of the Small Business Act by adding a new subsection requiring the Office of the National Ombudsman at the Small Business Administration (SBA) to create a centralized website that would: 1) provide hyperlinks to small entity compliance guides described under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996; and 2) provide the contact information for the person at the agency who could provide small entities with assistance with respect to the rules that are the subject of such guide.

This section would also require the Ombudsman to report on federal agencies' compliance with the Section 212 requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 in its annual report to Congress.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Congressional Budget Office pursuant to 402 of the Congressional Budget Act of 1974, submitted a cost estimate for H.R. 2142 that stated enacting the legislation would not increase net direct spending or on budget deficits in any of the four consecutive 10-year periods beginning in 2030.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 4, 2019.

Hon. NYDIA M. VELÁZQUEZ,
*Chairwoman, Committee on Small Business,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2142, a bill to amend the Small Business Act to require the Small Business and Agriculture Regulatory Enforcement Ombudsman to create a centralized website for compliance guides, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hughes.

Sincerely,

PHILLIP SWAGEL,
Director.

Enclosure.

H.R. 2142 would require the Small Business Administration's (SBA's) Office of the National Ombudsman to maintain a public website with links to small-entity compliance guides issued by federal agencies and those agencies' contact information. Federal agencies create small-entity compliance guides to assist small businesses in complying with federal rules and regulations. Under the bill, the National Ombudsman would assess the extent to which federal agencies are publishing those guides.

CBO estimates that implementing H.R. 2142 would have an insignificant cost. The Small Business Paperwork Relief Act of 2002 already requires the Office of Management and Budget, in consultation with the SBA, to post small-entity compliance guides online each year. The agency's compliance contacts are posted as well.

Any additional spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is David Hughes. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VIII. UNFUNDED MANDATES

H.R. 2142 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act, Public Law No. 104-4, and would impose no costs on state, local, or tribal governments.

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

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to § 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 2142 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

X. OVERSIGHT FINDINGS

In accordance with clause 2(b)(1) of rule X of the Rules of the House, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 2142 are incorporated into the descriptive portions of this report.

XI. STATEMENT OF CONSTITUTIONAL AUTHORITY

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

XII. CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 2142 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of § 102(b)(3) of Public Law No. 104-1.

XIII. FEDERAL ADVISORY COMMITTEE ACT STATEMENT

H.R. 2142 does not establish or authorize the establishment of any new advisory committees as that term is defined in the Federal Advisory Committee Act, 5 U.S.C. App.2.

XIV. STATEMENT OF NO EARMARKS

Pursuant to clause 9 of rule XXI, H.R. 2142 does not contain any congressional earmarks, limited tax benefits, or limited tariff bene-

fits as defined in subsections (d), (e), or (f) of clause 9 of rule XXI of the Rules of the House.

XV. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3 of rule XIII of the Rules of the House, no provision of H.R. 2142 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the United States Government Accountability Office pursuant to §21 of Pub. L. No. 111–139, or a program related to a program identified in the most recent catalog of federal domestic assistance.

XVI. DISCLOSURE OF DIRECTED RULEMAKINGS

Pursuant to clause 3 of rule XIII of the Rules of the House, H.R. 2142 does not direct any rulemaking.

XVII. PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XII of the Rules of the House, the Committee establishes the following performance-related goals and objectives for this legislation:

H.R. 2142 includes a couples of provisions designed to make it easier for small businesses to understand their responsibilities under the laws.

XVIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SMALL BUSINESS ACT

* * * * *

SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

(a) DEFINITIONS.—For purposes of this section, the term—

(1) “Board” means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

(2) “Ombudsman” means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

(b) SBA ENFORCEMENT OMBUDSMAN.—

(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing per-

sonnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

(2) The Ombudsman shall—

(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall—

(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

(d) POWERS OF THE BOARDS.—

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(e) *CENTRALIZED WEBSITE.*—*Not later than 6 months after the date of the enactment of this subsection, the Ombudsman shall maintain a publicly available website that includes—*

(1) *hyperlinks to small entity compliance guides described under section 212(a)(1) of the Small Business Regulatory Enforcement Fairness Act of 1996; and*

(2) *with respect to each such small entity compliance guide, the contact information for an individual who can offer assistance to small entities with respect to the rules that are the subject of such guide.*

(f) *REPORT ON AGENCY COMPLIANCE.*—*The Ombudsman shall include in the annual report required under subsection (b)(2)(C) an assessment of agency compliance with the requirements of section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 for the year covered by such annual report.*

* * * * *