

PROVIDING OPPORTUNITIES TO SHOW TRANSPARENCY
VIA INFORMATION TECHNOLOGY ACT OF 2023

SEPTEMBER 1, 2023.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. WILLIAMS of Texas, from the Committee on Small Business,
submitted the following

R E P O R T

[To accompany H.R. 4668]

The Committee on Small Business, to whom was referred the bill (H.R. 4668) to amend the Small Business Act to require the Small Business and Agriculture Regulatory Enforcement Ombudsman to publish guidance documents for certain rules, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose and Bill Summary	1
II. Need for Legislation	2
III. Hearings	2
IV. Committee Consideration	2
V. Committee Votes	2
VI. Section-by-Section of H.R. 4668	5
VII. Congressional Budget Office Cost Estimate	5
VIII. New Budget Authority, Entitlement Authority, and Tax Expenditures	5
IX. Oversight Findings & Recommendations	5
X. Performance Goals and Objectives	5
XI. Statement of Duplication of Federal Programs	6
XII. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits	6
XIII. Federal Mandates Statement	6
XIV. Federal Advisory Committee Statement	6
XV. Applicability to Legislative Branch	6
XVI. Statement of Constitutional Authority	6
XVII. Changes in Existing Law, Made by the Bill, As Reported	6

I. PURPOSE AND BILL SUMMARY

H.R. 4668 was introduced by Rep. Molinaro (R-NY) and Rep. Scholten (D-MI) on July 17, 2023. The purpose of H.R. 4668, the

POST IT Act, is to amend the Small Business Act to require the Small Business and Agriculture Regulatory Enforcement Ombudsman to publish guidance documents for rules that have a significant impact on a substantial number of small entities. The legislation will make it easier for small businesses to better understand and comply with guidance that may otherwise be difficult for them to find and understand.

II. NEED FOR LEGISLATION

The POST IT Act creates a centralized repository so small businesses can find information on how to comply with regulations. While there are official guidance documents that are released when a rule is initially finalized, over time, agencies often release additional materials clarifying and providing guidance on compliance. This includes updated policy statements and technical clarifications. This legislation ensures all of these updates will be housed in a centralized location on the Ombudsman's website.

III. HEARINGS

In the 118th Congress, the Committee held one hearing examining the issues covered in H.R. 4668. On June 22, 2023, the Committee held a hearing titled "Reviewing the SBA's Office of Advocacy Report on the Regulatory Flexibility Act." During the hearing, the Office of Advocacy's (Advocacy) Deputy Chief Counsel for Advocacy, Mr. Major L. Clark, testified about Advocacy's recent report on the Regulatory Flexibility Act.

The Committee examined how the increasing regulatory burdens promulgated by federal agencies are crushing small businesses. The hearing highlighted the importance of communication with the private sector in order to ease the burden of regulatory compliance.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on July 18, 2023 and ordered H.R. 4668 reported favorably to the House of Representatives. 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 to favorably report H.R. 4668 to the House of Representatives at 12:00 PM.

118th Congress House Committee on Small Business Vote Record

Date:
Convened:

Bill: HR 4668

Adjourned:

Republicans	Aye	Nay	Present
Mr. Luetkemeyer (MO-03)	✓		
Mr. Stauber (MN-08)	✓		
Mr. Meuser (PA-09)	✓		
Ms. Van Duyne (TX-24)	✓		
Ms. Salazar (FL-27)	✓		
Mr. Mann (KS-01)	✓		
Mr. Ellzey (TX-06)	✓		
Mr. Molinaro (NY-19)	✓		
Mr. Alford (MO-04)	✓		
Mr. Crane (AZ-02)	✓		
Mr. Bean (FL-04)	✓		
Mr. Hunt (TX-38)	✓		
Mr. (La-Low-ta) Lalota (NY-01)	✓		
Chairman Williams (TX-25)	✓		
TOTALS:			

Mr. Chairman _____ Votes _____

Mr. Chairman _____ Off _____, Votes _____

Mr. Chairman on that vote 26 Ayes 0 Nays and 0 Present

118th Congress House Committee on Small Business Vote Record

Date:

Bill:

Democrats	Aye	Nay	Present
Mr. Golden (ME-02)	✓		
Mr. M-fume (MD-07)	✓		
Mr. Phillips (MN-03)	✓		
Mr. Landsman (OH-01)	✓		
Mr. Mc-Gar-vey (KY-03)	✓		
Ms. Glue-sen-kamp Perez (WA-03)	✓		
Ms. (Skull- ton) Scholten (MI-03)	✓		
Mr. (Tan-a-dar) Thanedar (MI-13)	✓		
Ms. (Chew) Chu (CA-28)	✓		
Ms. Davids (KS-03)	✓		
Mr. Pappas (NH-01)	✓		
Ranking Member Nydia Velazquez (NY-07)	✓		
TOTALS:			

26

VI. SECTION-BY-SECTION OF H.R. 4668

Section 1. Short title

This legislation may be cited as the “Providing Opportunity to Show Transparency via Information Technology Act of 2023” or the “POST IT Act of 2023.”

Section 2. Inclusion of guidance on Ombudsman website

Guidance as well as updated policy directives relating to rules determined to have a significant impact on a substantial number of small entities must be posted on the SBA’s National Ombudsman’s website.

Section 3. Compliance with CUTGO

This section does not authorize any additional appropriations for this bill.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(d)(1) of House rule XIII, 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. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee’s provisions. Once available, the cost estimate will be published in the Congressional Record.

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

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures: H.R. 4668 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. OVERSIGHT FINDINGS & RECOMMENDATIONS

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in the H.R. 4668 are incorporated into the descriptive portions of this report.

X. PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 4668 are to require subsequent guidance and updated policy directive for rules that have a significant impact on a substantial number of small entities to be posted to the SBA’s National Ombudsman’s website.

XI. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 4668 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

XIV. FEDERAL ADVISORY COMMITTEE STATEMENT

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

XV. 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.

XVI. STATEMENT OF CONSTITUTIONAL AUTHORITY

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

XVII. 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):

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):

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 personnel 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 407 of title 5, United States Code;

(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[.]; and

(3) to the extent practicable, hyperlinks for such guidance that is designed to set forth policy on a statutory, regulatory, or technical issue, or an interpretation of such issue, for any rule for which an agency produces a small entity compliance 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.

(g) PROTECTION OF CONFIDENTIAL INFORMATION.—Subsection (e) does not require the public availability of information that is exempt from public disclosure under section 552(b) of title 5, United States Code (commonly known as the “Freedom of Information Act”).

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