

LET AMERICAN BUSINESSES BE ON RECORD ACT OF 2024

DECEMBER 10, 2024.—Ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 9033]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 9033) to amend title 5, United States Code, to apply regulatory flexibility analysis requirements for the Department of Labor, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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## I. PURPOSE AND BILL SUMMARY

On July 15, 2024, Rep. Bean introduced H.R. 9033. The purpose of H.R. 9033, the “LABOR Act,” is to expand Small Business Regulatory Enforcement Fairness Act (SBREFA) panel requirements to the full Department of Labor (DOL). Currently, only the Occupational Safety and Health Administration within the DOL, along with the Environmental Protection Agency, and the Consumer Financial Protection Bureau are required to conduct SBREFA panels.

## II. NEED FOR LEGISLATION

This bill expands Small Business Regulatory Enforcement Fairness Act (SBREFA) panels to the Department of Labor (DOL). Currently, only the Consumer Financial Protection Bureau, Environmental Protection Agency, and the Occupational Safety and Health Administration are required to hold SBREFA panels before publishing a proposed rule that will have a significant economic impact on a substantial number of small entities.

SBREFA panels are convened when there is a regulation from any of these agencies that have a significant impact on small businesses. The purpose of these panels is to hear directly from the affected entities as a rule is being proposed so changes can be made before it goes final. These panels are supposed to be more impactful to agencies than the normal notice and comment period, which is why they are reserved for these agencies that have the ability to effect small business operations the most.

The Committee’s investigation into the Biden Administration’s disregard for Regulatory Flexibility Act (RFA) requirements uncovered that the DOL is one of the federal government’s worst RFA offenders. Requiring the DOL to meet with entities directly impacted by their rules before publishing will offer the agency the opportunity to consider the real-world implications of their rules.

## III. HEARINGS

In the 118th Congress, the Committee held one hearing examining the issues covered in H.R. 9033. On May 22, 2024, the Committee held a hearing titled “Burdensome Regulations: Examining the Biden Administration’s Failure to Consider Small Businesses” which examined the impacts of the Biden Administration’s burdensome regulatory landscape and explored ways to support small businesses and overcome agencies’ noncompliance with the RFA.

## IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on September 10, 2024 and ordered H.R. 9033 reported 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. 9033 to the House of Representatives at 2:45 PM.

118<sup>th</sup> Congress House Committee on Small Business Vote Record

Date: Tuesday, September 10, 2024 at 9:45 AM ET

Bill: H.R. - 9033

Time of Vote: 2:45 PM

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. Lalota (NY-01)	✓		
Ms. Maloy (UT-02)	✓		
Chairman Williams (TX-25)	✓		
TOTALS:	13		

118<sup>th</sup> Congress House Committee on Small Business Vote Record

Date: Tuesday, September 10, 2024 At 9:45 AM ET

Bill: H.R. -9033

<b>Democrats</b>	<b>Aye</b>	<b>Nay</b>	<b>Present</b>
Mr. Golden (ME-02)		✓	
Mr. Phillips (MN-03)		✓	
Mr. Landsman (OH-01)		✓	
Mr. McGarvey (KY-03)		✓	
Ms. Gluesenkamp Perez (WA-03)		✓	
Ms. Scholten (MI-03)		✓	
Mr. Thanedar (MI-13)		✓	
Ms. Chu (CA-28)		✓	
Ms. Davids (KS-03)		✓	
Mr. Pappas (NH-01)		✓	
Ranking Member Velazquez (NY-07)		✓	
<b>TOTALS:</b>		<b>11</b>	

## VI. SECTION-BY-SECTION OF H.R. 9033

*Section 1: Short title*

This bill may be cited as the “Let American Businesses be On Record Act” or the “LABOR Act.”

*Section 2: Regulatory flexibility analysis requirements for the Department of Labor*

Requires the DOL to conduct SBREFA panels when proposing a rule that will have a significant economic impact on a substantial number of small entities.

## VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to 3(c)(3) of rule XIII of the Rules of the House of Representatives, 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 Congressional Budget Act of 1974 requires the Congressional Budget Office, to the extent practicable, to prepare estimates of the budgetary effects of legislation ordered reported by Congressional authorizing committees. In order to provide the Congress with as much information as possible, the attached table summarizes information about the estimated direct spending and revenue effects of some of the legislation that has been ordered reported by the House Committee on Small Business during the 118th Congress. The legislation listed in this table generally would have small effects, if any, on direct spending or revenues, CBO estimates. Where possible, the table also provides information about the legislation’s estimated effects on spending subject to appropriation and on inter-governmental and private-sector mandates as defined in the Unfunded Mandates Reform Act.

**ESTIMATED BUDGETARY EFFECTS AND MANDATES INFORMATION**

Bill Number	Title	Status	Last action	Budget function	Direct spending 2025-2034	Revenues 2025-2034	Spending subject to appropriation 2025-2029	Pay-As-You-Go procedures apply?	Budgetary effects after 2034	Mandates	Contact
H.R. 9030	Regulatory Agenda Clarity Act .....	Ordered reported	09/10/24	Multiple functions	Between zero and \$500,000	Between -\$500,000 and zero	Not estimated	Yes	Insignificant	Yes	Margot Berman
	<p>H.R. 9030 would require federal agencies to describe the type of business that would be affected by a proposed rule, explain whether the rule would impose significant economic effects on a substantial number of small entities, and display that information on their website. CBO estimates that enacting H.R. 9030 could increase direct spending by some regulatory agencies, a few of which are allowed to charge fees to cover their operating costs. CBO estimates that the net increase in direct spending would be insignificant. Enacting H.R. 9030 could reduce revenues because costs incurred by the Federal Reserve reduce remittances to the Treasury, which are recorded in the budget as revenues. However, CBO estimates that any reduction in revenues would be insignificant. CBO has not estimated the bill's effects on spending subject to appropriation. If federal regulators increase annual fees to offset the costs of implementing the bill, H.R. 9030 would increase the costs of an existing private-sector mandate on entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and would fall well below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$200 million in 2024, adjusted annually for inflation). The bill contains no intergovernmental mandates as defined in UMRA.</p>										
H.R. 9031	Assurance for Small Business Act of 2024.	Ordered reported	09/10/24	Multiple functions	Between zero and \$500,000	Between -\$500,000 and zero	Not estimated	Yes	Insignificant	Yes	Margot Berman
	<p>H.R. 9031 would require each rulemaking agency to report to the Congress on how the agency determines whether a rule would impose significant economic effects on a substantial number of small entities. Enacting H.R. 9031 could increase direct spending by some regulatory agencies, a few of which are allowed to charge fees to cover their operating costs. CBO estimates that the net increase in direct spending would be insignificant. Enacting H.R. 9031 could reduce revenues because costs incurred by the Federal Reserve reduce remittances to the Treasury, which are recorded in the budget as revenues. However, CBO estimates that any reduction in revenues would be insignificant. CBO has not estimated the bill's effects on spending subject to appropriation. If federal regulators increase annual fees to offset the costs of implementing the bill, H.R. 9031 would increase the costs of an existing private-sector mandate on entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and would fall well below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$200 million in 2024, adjusted annually for inflation). The bill contains no intergovernmental mandates as defined in UMRA.</p>										
H.R. 9033	LABOR Act of 2024 .....	Ordered reported	09/10/24	500	0	0	Not estimated	No	No	No	Margot Berman
	<p>H.R. 9033 would require the Department of Labor to convene a small business advocacy review panel before proposing rules that would have significant economic effects on a substantial number of small entities. Under current law, only the Occupational Safety and Health Administration within the Department of Labor is required to do so. CBO estimates that enacting H.R. 9033 would not affect direct spending or revenues. CBO has not estimated the bill's effects on spending subject to appropriation. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.</p>										
H.R. 9085	Regulatory Review Improvement Act of 2024.	Ordered reported	09/10/24	Multiple functions	Between zero and \$500,000	Between -\$500,000 and zero	Not estimated	Yes	Insignificant	Yes	Margot Berman

H.R. 9085 would expand the information that agencies must include in a 10-year review of a rule's effect on small entities, including the cost for entities to comply with the rule once it goes into effect and an analysis of public comments an agency receives about the rule. The bill also would reduce the time from 5 years to 1 year for an agency to complete a review. CBO estimates that enacting H.R. 9085 could increase direct spending by some agencies, a few of which are allowed to charge fees to cover their operating costs. CBO estimates that the net increase in direct spending would be insignificant. Enacting H.R. 9085 could reduce revenues because costs incurred by the Federal Reserve reduce remittances to the Treasury, which are recorded in the budget as revenues. However, CBO estimates that any reduction in revenues would be insignificant. CBO has not estimated the bill's effects on spending subject to appropriation. If federal regulators increase annual fees to offset the costs of implementing the bill, H.R. 9085 would increase the costs of an existing private-sector mandate on entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and would fall well below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$200 million in 2024, adjusted annually for inflation). The bill contains no intergovernmental mandates as defined in UMRA.

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### 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. The Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 9033 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. 9033 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. 9033 are to expand Small Business Regulatory Enforcement Fairness Act (SBREFA) panel requirements to the full Department of Labor (DOL).

### 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. 9033 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):

### TITLE 5, UNITED STATES CODE

\* \* \* \* \*

### PART I—THE AGENCIES GENERALLY

\* \* \* \* \*

### CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

\* \* \* \* \*

#### § 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—

- (1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;
- (2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

- (3) the direct notification of interested small entities;
  - (4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and
  - (5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rule-making by small entities.
- (b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—
- (1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;
  - (2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;
  - (3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;
  - (4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);
  - (5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and
  - (6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.
- (c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.
- (d) For purposes of this section, the term “covered agency” means—
- (1) the Environmental Protection Agency;
  - (2) the Consumer Financial Protection Bureau of the Federal Reserve System; and
  - 【(3) the Occupational Safety and Health Administration of the Department of Labor.】
- (3) *the Department of Labor.*
- (e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator

of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

- (1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.
- (2) Special circumstances requiring prompt issuance of the rule.
- (3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

\* \* \* \* \*

## XVIII. MINORITY VIEWS

In 1996, the Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the Regulatory Flexibility Act (RFA) to require the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) to hold SBREFA panels when the RFA is triggered. In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act required the Consumer Financial Protection Bureau (CFPB) to convene these SBREFA panels, as well. The RFA requires panels to be comprised of representatives from the agency, Office of Advocacy (Advocacy), Office of Management and Budget (OMB) and Office of Information and Regulatory Affairs (OIRA), and small businesses. The purpose of the panel is to better understand the ramifications of the proposed rule on small businesses. Within 60 days of convening the panel, the panel is to report on the comments it received, their findings, and publish in the Federal Register.<sup>1</sup>

This bill would expand the requirement to the entire Department of Labor (DOL), not just OSHA. The current process at OSHA entails 120 days of formal work with OIRA and Advocacy. More specifically, it includes 60 days of interagency work and time for finding small entity representatives (SERs) to serve on the panels, 30 days to mail information to the SERs and hold the panel discussions, and 30 days for the agencies to draft and finalize the panel report. Prior to convening a SBREFA panel, OSHA spends a significant amount of time developing the information and analysis necessary to host a panel. Generally, OSHA needs 4 to 8 months to complete the work, which includes drafting a regulatory framework or text, developing proposed regulatory alternatives, identifying a well-defined industry profile, developing supporting materials and crafting questions for SERs. After convening a SBREFA panel, OSHA must respond to the report in the subsequent Notice of Proposed Rulemaking—depending on the recommendations, which could result in minimal impact on the rulemaking, or it could result in additional months of work—depending on the rule. The costs of convening a SBREFA are substantial. The DOL dedicates the full salary time of numerous technical staff, economists, and lawyers to the task, which amounts to substantial costs to the agency.<sup>2</sup>

On June 22, 2023, The Honorable Major L. Clark, III, Deputy Chief Counsel, Office of Advocacy, testified before the House Small Business Committee, and said, “Advocacy does not see the need to include all regulatory agencies in the SBREFA panel process.” Expanding these panels to all agencies at the Department of Labor

<sup>1</sup>See Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, tit. II (1996) (codified in scattered sections of 5 U.S.C.).

<sup>2</sup>Email from the U.S. DEP’T OF LAB. to the H. COMM. ON SMALL BUS. (May 21, 2024) (on file with the Committee).

would require more resources for the agencies and potentially delay the final implementation of rules.

NYDIA M. VELÁZQUEZ,  
*Ranking Member.*

