

Minority Views

H.R. 9030, the “Regulatory Agenda Clarity Act”

Section 602 of the Regulatory Flexibility Act (RFA) requires federal agencies to publish a regulatory flexibility agenda in the Federal Register during the months of April and October every year. Each agency is required to list all rules it expects to propose or promulgate that are likely to have a significant economic impact on a substantial number of small entities, (SEISNSE). The regulatory agenda must include:

- A brief description of the subject area of any rule the agency expects to propose or promulgate that is likely to have a significant economic impact on a substantial number of small entities.
- A summary of the nature of each such rule under consideration, the objectives and the legal basis for issuing each rule, and an approximate schedule for completing action on any rule for which an agency has issued a general notice of proposed rulemaking.
- The name and telephone number of an agency official knowledgeable about the rule.¹

In addition, the regulatory flexibility agenda is published on [Regulations.gov](https://www.regulations.gov) with links to all the relevant information.

The Majority is concerned that agencies are not taking the 602 requirements seriously, and only providing links on their websites to regulations.gov website. Their bill would require (1) each federal agency to post a plain language summary of the information contained in the regulatory flexibility agenda prominently on their websites, (2) The Office of Advocacy (Advocacy) to post the summaries on its website, and (3) each federal agency to provide a brief description of the sector, by NAICS code, that is affected by the rule.

I have concerns with the requirement for each federal agency to provide a brief description of the sector, by NAICS code. The regulatory flexibility agenda is a comprehensive collection of rules the agencies are considering or currently working on. Agencies do not always move forward with every rule. Requiring more detailed information at this pre-planning stage, like NAICS code, may lead agencies to exclude rules from the regulatory flexibility agenda, unless they are certain to move forward with the rulemaking process. This, in turn, would hurt small businesses because they would not be able to weigh in during the initial stages.

Committee Democrats offered common-sense legislation to make regulations and regulatory processes more accessible to small businesses. To that end, Mr. Thanedar and Ms. Chu each proposed amendments in the nature of a substitute to this bill. Mr. Thanedar’s common sense amendment would require agencies to publish their brief description of rules under consideration that may have a significant economic impact on a substantial number of small entities (SEISNSE) in plain language and require that they publish the information on their website within five days of the publication of the regulatory flexibility agenda.

Ms. Chu’s amendment would strike provisions in the text and require agencies to conduct comprehensive outreach to small businesses when developing their regulatory flexibility agendas. The types of outreach include: community-based outreach; outreach to organizations that work with small entities; agency field offices; and the use of alternative platforms and media for engaging with small entities. The Chu

¹ OFF. OF ADVOCACY, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, U.S. SMALL BUS. ADMIN. (Aug. 2017), <https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf>.

amendment will encourage agencies to get out of the Capital beltway and connect directly with small businesses. This is a far better solution.



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