

Minority Views
H.R. 9031, the “Assurance for Small Business Act of 2024”

The Regulatory Flexibility Act (RFA) requires federal agencies to consider the effects of their regulations on small businesses and other small entities. If a regulation is determined to have a “significant economic impact on a substantial number of small entities” (SEISNSE), the RFA requires agencies to conduct more detailed regulatory analysis and consider alternatives.¹

The RFA does not define the terms, “significant economic impact” and “substantial number of small entities.” With regard to the term “significant economic impact,” the Office of Advocacy (Advocacy) relies on the legislative history of the RFA and has said that these terms should not be measured in absolute terms. Significant impact should be viewed as relative to the size of the business, the size of the competitors’ business, and the impact the regulation has on larger businesses, and Advocacy believes that agencies are in the best position to gauge the impact of the regulation on small entities.² In terms of “substantial number of small entities”, Advocacy has also relied on the legislative history, and its guidance encourages agencies to examine the number of affected firms in a particular economic industry. For example, five firms in an industry of more than 1,000 regulated entities would not be the same as five firms in an industry with 20 regulated entities. Advocacy has issued specific guidance on these particular terms and trains agencies on how to comply with the Regulatory Flexibility Act.³

This bill would require federal agencies to submit a report to Congress on the application of the RFA on the rulemaking of their respective agencies within 90 days of enactment. With that said, the bill requires each agency head to review *every* rule that was issued by the agency since 1980, when the RFA was first enacted. The analysis of the rules includes the definitions used by the agency to determine “significant economic impact” and “substantial number of small entities”, as well as a comprehensive list of factors for the regulatory flexibility analysis, which includes the threshold analysis, initial regulatory flexibility analysis, and the final regulatory flexibility analysis. The requirement for additional analysis is exceptionally broad, and it is unclear how the report would be helpful to Congress. Moreover, it is highly unlikely the reports could be completed within 90 days. Advocacy has indicated that the report will not provide any consistent response.

Agencies have written procedures and have developed criteria, and these procedures are posted on their websites. Executive Order 13272 requires Advocacy to provide compliance training to federal regulatory officials, and in FY 2023, Advocacy offered nine training sessions for 139 federal officials.⁴ More training of rule-writing staff at agencies would help to further improve the RFA process.



Nydia M. Velázquez
Ranking Member

¹ CONG. RESEARCH SERV., THE REGULATORY FLEXIBILITY ACT: AN OVERVIEW, 2 (Aug. 16, 2021)

² 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>.

³ *Id.*

⁴ OFF. OF ADVOCACY, REPORT ON THE REGULATORY FLEXIBILITY ACT, FY 2023 (Jun. 2024).