

Minority Views
H.R. 9032, the “Enhanced Regulatory Flexibility Assessment Act”

Under the Regulatory Flexibility Act (RFA), if an agency determines that a proposed rule would have a significant economic impact on a substantial number of small entities, (SEISNSE), then it must, to the extent practicable, determine the economic impact the rule would have on small businesses and consider alternatives to accomplish the objectives without unduly burdening the small entities. The economic analysis consists of an initial regulatory flexibility (IRFA) and a final regulatory flexibility analysis (FRFA), which are published at the proposed and final rule stages, respectively.

The “*Enhanced Regulatory Flexibility Assessment Act*” would require agencies to include more analytical and procedural requirements in the IRFA and FRFA. First, the addition of an estimate of the cumulative impact to the IRFA would require agencies to look not just at the rule but look at it in the context of all rules, as well as the past, present and future costs. This requirement is time-consuming for agencies to do and would slow the rule-making process down considerably. Under current law, agencies have not been required to complete this analysis, so the information is not presently available. An estimate of the cumulative impact would also require an economic assessment justifying certification for IRFAs. Congress has never explicitly required cost-benefit analyses for every proposed rule. Moreover, agencies have limited resources to conduct this type of analysis.

Second, these new additional analytical and procedural requirements included in the FRFA would be subject to judicial review, meaning they could be used as a basis for those who don’t like the rule to attempt to overturn it. Additionally, it is unclear why the bill asks for a "legal basis" in addition to a factual basis. The legal basis is already established in section 605 (permitting such certifications).

Third, the bill requires the agency to provide a quantitative or numerical description of the effects of the proposed rule in the IRFA and FRFA. This tightens up the current 607 requirement and reduces the amount of flexibility agencies have in providing a general description statement if the quantification is not practicable or reliable. This new provision would require agencies to provide a justification for the rule, and the justification for the FRFA would be judicially reviewable.

Agencies must consider the impact of rulemaking on small entities, and the Office Advocacy monitors their compliance with the RFA. These additional requirements are unnecessary, burdensome to agencies, delay the implementation of rules that benefit small businesses and Americans, add limited value to small businesses, and require more agency resources, without improving the rule-making process.

It is important to note, that agencies are carrying out the laws that Congress passed, and agencies have to operate within the guidelines to improve public participation, respond to comments, ensure benefits justify the costs, and follow the procedural requirements of the APA and RFA.

We have learned from Committee hearings that smart, well-crafted regulations can spur innovation and the development of new technologies that provide new opportunities for entrepreneurs.

This bill gets stuck on the message that regulations hinder the growth of small businesses, rather than look to the future and understand that regulations can drive innovation, grow the economy, and protect the environment, labor, and consumer safety.



Nydia M. Velázquez
Ranking Member