

Minority Views

H.R. 9033, the “Let American Businesses be On Record Act of 2024” or “LABOR Act of 2024”

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.¹

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.²

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



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Ranking Member

¹ 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.).

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