

117TH CONGRESS
1ST SESSION

S. 2074

To require greater transparency for Federal regulatory decisions that impact small businesses.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2021

Ms. ERNST introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To require greater transparency for Federal regulatory decisions that impact small businesses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prove It Act of 2021”.

5 **SEC. 2. REVIEW PROCEDURES RELATED TO THE CERTIFI-**
6 **CATION.**

7 (a) IN GENERAL.—Section 605(b) of title 5, United
8 States Code, is amended—

9 (1) by inserting “(1)” before “Sections 603”;

10 (2) in paragraph (1), as so designated—

1 (A) by striking “the preceding sentence”
2 and inserting “this subsection”; and

3 (B) by striking “statement to the Chief
4 Counsel for Advocacy of the Small Business
5 Administration” and inserting “statement pro-
6 viding the factual basis to the Chief Counsel for
7 Advocacy of the Small Business Administration
8 (in this subsection referred to as the ‘Chief
9 Counsel’)”; and

10 (3) by adding at the end the following:

11 “(2)(A) If the Chief Counsel disagrees with a certifi-
12 cation and statement providing the factual basis for the
13 certification published in the Federal Register under para-
14 graph (1) with respect to a proposed rule, the Chief Coun-
15 sel may, not later than 14 days after the date on which
16 the statement and factual basis were published in the Fed-
17 eral Register, submit to the head of the Federal agency
18 proposing the rule a letter (in this subsection referred to
19 as an ‘advisement letter’) advising the head of the Federal
20 agency to—

21 “(i) review the certification and the detailed
22 statement submitted by the Chief Counsel under
23 subparagraph (B); and

24 “(ii) reconsider the certification.

1 “(B) An advisement letter submitted by the Chief
2 Counsel under subparagraph (A) shall—

3 “(i) include a detailed statement of why the
4 Chief Counsel disagreed with the certification or the
5 statement providing the factual basis received under
6 paragraph (1); and

7 “(ii) be published on the website of the Office
8 of Advocacy of the Small Business Administration.

9 “(C) Not later than 7 days after the date on which
10 the head of a Federal agency receives an advisement letter
11 under subparagraph (A) with respect to a proposed rule,
12 the head of the Federal agency shall—

13 “(i) publish in the Federal Register and on the
14 website of the Federal agency an acknowledgment of
15 receipt of the advisement letter;

16 “(ii) allow the public comment period for the
17 rule to remain open for a period of not less than 30
18 days; and

19 “(iii) if, during the 30-day period described in
20 clause (ii), the head of the Federal agency deter-
21 mines that the certification and statement providing
22 the factual basis should be modified, shorten or
23 eliminate the 30-day period.

24 “(D)(i) Not later than 30 days after the date on
25 which the Chief Counsel submits to the head of a Federal

1 agency an advisement letter under subparagraph (A), the
2 Federal agency shall submit to the Chief Counsel and pub-
3 lish in the Federal Register and on the website of the Fed-
4 eral agency the results of the review and reconsideration.

5 “(ii) If, after conducting the review and reconsider-
6 ation under subparagraph (A), the head of the Federal
7 agency determines—

8 “(I) that there was not a sufficient factual basis
9 to support the certification, the Federal agency shall
10 perform and publish in the Federal Register an ini-
11 tial regulatory flexibility analysis under section 603,
12 with an opportunity for public comment, before pro-
13 mulgating the final rule;

14 “(II) that the certification was appropriate but
15 the factual basis was inadequate to support the cer-
16 tification, the Federal agency shall revise the factual
17 basis to support the certification; or

18 “(III) that the certification was appropriate and
19 the factual basis was adequate to support the certifi-
20 cation, the Federal agency may continue with the
21 rule making.”.

22 **SEC. 3. JUDICIAL REVIEW.**

23 Section 611(a) of title 5, United States Code, is
24 amended—

1 (1) in paragraph (1), by striking “605(b)” and
2 inserting “605(b)(1)”; and

3 (2) in paragraph (2), by striking “605(b)” and
4 inserting “605(b)(1)”.

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