

## Calendar No. 484

114TH CONGRESS  
2D SESSION**S. 2847**

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

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## IN THE SENATE OF THE UNITED STATES

APRIL 25, 2016

Mrs. ERNST introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

MAY 24, 2016

Reported by Mr. VITTER, without amendment

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**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 2016”.

1 **SEC. 2. REVIEW PROCEDURES RELATING TO INITIAL REGU-**  
2 **LATORY FLEXIBILITY ANALYSIS CERTIFI-**  
3 **CATIONS.**

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

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

7 (2) in paragraph (1), as so designated, by in-  
8 serting “(in this subsection referred to as the ‘Chief  
9 Counsel’)” after “Administration”; 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 submitted by a Federal agency under para-  
14 graph (1) with respect to an initial regulatory flexibility  
15 analysis for a proposed rule, the Chief Counsel may sub-  
16 mit a request to the Administrator of the Office of Infor-  
17 mation and Regulatory Affairs (in this section referred to  
18 as the ‘Administrator’) for review of the certification and  
19 statement in accordance with this paragraph.

20 “(B) A request for review under subparagraph (A)  
21 shall—

22 “(i) be published in the Federal Register and  
23 on the website of the Office of Advocacy of the  
24 Small Business Administration not later than 10  
25 days after the date on which the Federal agency

1 submitted the certification and statement to the  
2 Chief Counsel under paragraph (1);

3 “(ii) include any documentation or comments  
4 the Chief Counsel provided or made during the no-  
5 tice and comment period for the proposed rule; and

6 “(iii) include an explanation of why the Chief  
7 Counsel disagreed with the certification and state-  
8 ment received under paragraph (1), which may in-  
9 clude—

10 “(I) an identification of any material facts  
11 in controversy;

12 “(II) an analysis of why the proposed rule  
13 will, if promulgated, have a significant economic  
14 impact on a substantial number of small enti-  
15 ties, including any data determined relevant to  
16 the analysis by the Chief Counsel; and

17 “(III) any other information the Chief  
18 Counsel determines relevant.

19 “(C) Not later than 10 days after the date on which  
20 the Chief Counsel publishes in the Federal Register a re-  
21 quest for review under subparagraph (A), the Federal  
22 agency shall submit to the Administrator and publish in  
23 the Federal Register and on the website of the Federal  
24 agency a response to the request for review.

1 “(D) In conducting a review of a certification and  
2 a statement of a Federal agency under this paragraph  
3 with respect to a proposed rule, the Administrator shall  
4 consider—

5 “(i) whether the agency correctly determined  
6 which small entities will be affected by the proposed  
7 rule;

8 “(ii) whether the Federal agency considered  
9 adequate economic data to assess whether the pro-  
10 posed rule will have a significant impact on a sub-  
11 stantial number of small entities; and

12 “(iii) the economic implications of the proposed  
13 rule, including whether the data supplied by the  
14 Chief Counsel in the request for review under sub-  
15 paragraph (A) would lead to the proposed rule hav-  
16 ing a significant economic impact on a substantial  
17 number of small entities.

18 “(E) Not later than 40 days after the date on which  
19 the Chief Counsel submits to the Administrator a request  
20 for review under subparagraph (A), the Administrator  
21 shall submit to the Chief Counsel and the Federal agency  
22 and publish in the Federal Register and on the website  
23 of the Office of Information and Regulatory Affairs the  
24 results of the review. If the Administrator determines that  
25 the proposed rule will, if promulgated, have a significant

1 economic impact on a substantial number of small entities,  
2 the Federal agency shall perform an initial regulatory  
3 flexibility analysis and a final regulatory flexibility anal-  
4 ysis for the proposed rule under sections 603 and 604,  
5 respectively.”.

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