

114TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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Mrs. ERNST introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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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”.

5 **SEC. 2. REVIEW PROCEDURES RELATING TO INITIAL REGU-**

6 **LATORY FLEXIBILITY ANALYSIS CERTIFI-**

7 **CATIONS.**

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

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

1           (2) in paragraph (1), as so designated, by in-  
2           serting “(in this subsection referred to as the ‘Chief  
3           Counsel’)” after “Administration”; and

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

5           “(2)(A) If the Chief Counsel disagrees with a certifi-  
6           cation and statement providing the factual basis for the  
7           certification submitted by a Federal agency under para-  
8           graph (1) with respect to an initial regulatory flexibility  
9           analysis for a proposed rule, the Chief Counsel may sub-  
10          mit a request to the Administrator of the Office of Infor-  
11          mation and Regulatory Affairs (in this section referred to  
12          as the ‘Administrator’) for review of the certification and  
13          statement in accordance with this paragraph.

14          “(B) A request for review under subparagraph (A)  
15          shall—

16                 “(i) be published in the Federal Register and  
17                 on the website of the Office of Advocacy of the  
18                 Small Business Administration not later than 10  
19                 days after the date on which the Federal agency  
20                 submitted the certification and statement to the  
21                 Chief Counsel under paragraph (1);

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

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

5           “(I) an identification of any material facts  
6 in controversy;

7           “(II) an analysis of why the proposed rule  
8 will, if promulgated, have a significant economic  
9 impact on a substantial number of small enti-  
10 ties, including any data determined relevant to  
11 the analysis by the Chief Counsel; and

12           “(III) any other information the Chief  
13 Counsel determines relevant.

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

20           “(D) In conducting a review of a certification and  
21 a statement of a Federal agency under this paragraph  
22 with respect to a proposed rule, the Administrator shall  
23 consider—

1           “(i) whether the agency correctly determined  
2           which small entities will be affected by the proposed  
3           rule;

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

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

14          “(E) Not later than 40 days after the date on which  
15          the Chief Counsel submits to the Administrator a request  
16          for review under subparagraph (A), the Administrator  
17          shall submit to the Chief Counsel and the Federal agency  
18          and publish in the Federal Register and on the website  
19          of the Office of Information and Regulatory Affairs the  
20          results of the review. If the Administrator determines that  
21          the proposed rule will, if promulgated, have a significant  
22          economic impact on a substantial number of small entities,  
23          the Federal agency shall perform an initial regulatory  
24          flexibility analysis and a final regulatory flexibility anal-

1 ysis for the proposed rule under sections 603 and 604,  
2 respectively.”.