

The Regulatory Flexibility Act (RFA)

Background

The Regulatory Flexibility Act (RFA) was passed by the federal government in 1980 as an attempt to address the ever-growing burden on small businesses posed by federal regulations. If a proposed rule is expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis must be prepared. According to the U.S. Small Business Administration:

This is done in order to ensure that the agency has considered all reasonable regulatory alternatives that would minimize the rule's economic burdens or increase its benefits for the affected small entities, while achieving the objectives of the rule or statute. The analysis describes the objectives of the proposed rule, addresses [sic] its direct and indirect effects and explains why the agency chose the regulatory approach described in the proposal over the alternatives.ⁱ

Each RFA analysis is required to address five specific items:

- Reasons why the agency is considering the action;
- The objectives and legal basis for the proposed rule;
- The type and number of small entities to which the proposed rule will apply;
- The projected reporting, recordkeeping and other compliance requirements of the proposed rule; and
- All federal rules that may duplicate, overlap or conflict with the proposed rule.ⁱⁱ

In addition, each analysis must also contain a description of any significant alternatives to the proposal that allow it to accomplish its objectives while minimizing its

ISSUE SNAPSHOT

Alabama is one of only six states, two territories, and the District of Columbia that does not have any Regulatory Flexibility statutes.

Regulatory flexibility statutes ensure that agencies have considered all reasonable regulatory alternatives in order to create the least oppressive regulations possible.

impact on small businesses. These can include the following accommodations to small businesses:

- Establishing different compliance or reporting requirements or timetables;
- Clarifying, consolidating or simplifying compliance and reporting requirements;
- Using performance rather than design standards; or
- Exempting small businesses from any or all parts of the rule.ⁱⁱⁱ

When completed, the initial analysis or a summary of it must be published in the *Federal Register* with the proposed rule, as well as any significant alternatives.

At present, Alabama is one of only six states, two territories, and the District of Columbia that does not have any Regulatory Flexibility statutes.

GUIDE TO THE ISSUES

How has RFA helped small businesses in other states?

In early 2011, the U.S. Small Business Administration's Office of Advocacy released a report detailing the impact of RFA and Executive Order 13272, which strengthens the RFA. They found that in 2010 the Act had helped small businesses save almost \$15 billion in regulatory costs, and almost \$5.5 billion in annually recurring savings.^{iv}

Recommendation

Alabama should develop RFA requirements for regulations generated by state agencies.

ⁱ U.S. Small Business Administration, "A Guide to the Regulatory Flexibility Act." May 1996. Available at <http://tinyurl.com/654xxn3>. Access verified July 15, 2011.

ⁱⁱ *Ibid.*

ⁱⁱⁱ *Ibid.*

^{iv} U.S. Small Business Administration, Office of Advocacy, "Report on Regulatory Flexibility Act, FY 2010." March 2011. Available at <http://tinyurl.com/5vmtf6>. Access verified July 15, 2011.