

# Federal Regulations Affecting Small Business

Given discrepancies seen in the final rule counts, the overall counts of both small business rules and significant small business rules could also be understated. Congress should inquire into counting practices as part of its needed regulatory reforms.<sup>408</sup>

Assessment of small business burdens are rooted in the Regulatory Flexibility Act (RFA), which directs federal agencies to consider their rules' effects on small entities.<sup>409</sup> Figure 22 depicts the number of rules requiring such annual regulatory flexibility analysis that are acknowledged in the Unified Agenda. Figure 22 also depicts the number of other rules anticipated by agencies to affect small businesses, but that presumably do not rise to the level of requiring a regulatory flexibility analysis.

The overall number of rules acknowledged to significantly affect small business dropped substantially between 2012 and 2013 during the Obama administration, likely reflecting election-related reporting changes. They dropped substantially again under Trump, despite the count being amplified by some rules aimed at rollback. Under Biden, the tally has topped 700 again in 2022, but with no deregulatory designation mitigating the rise.

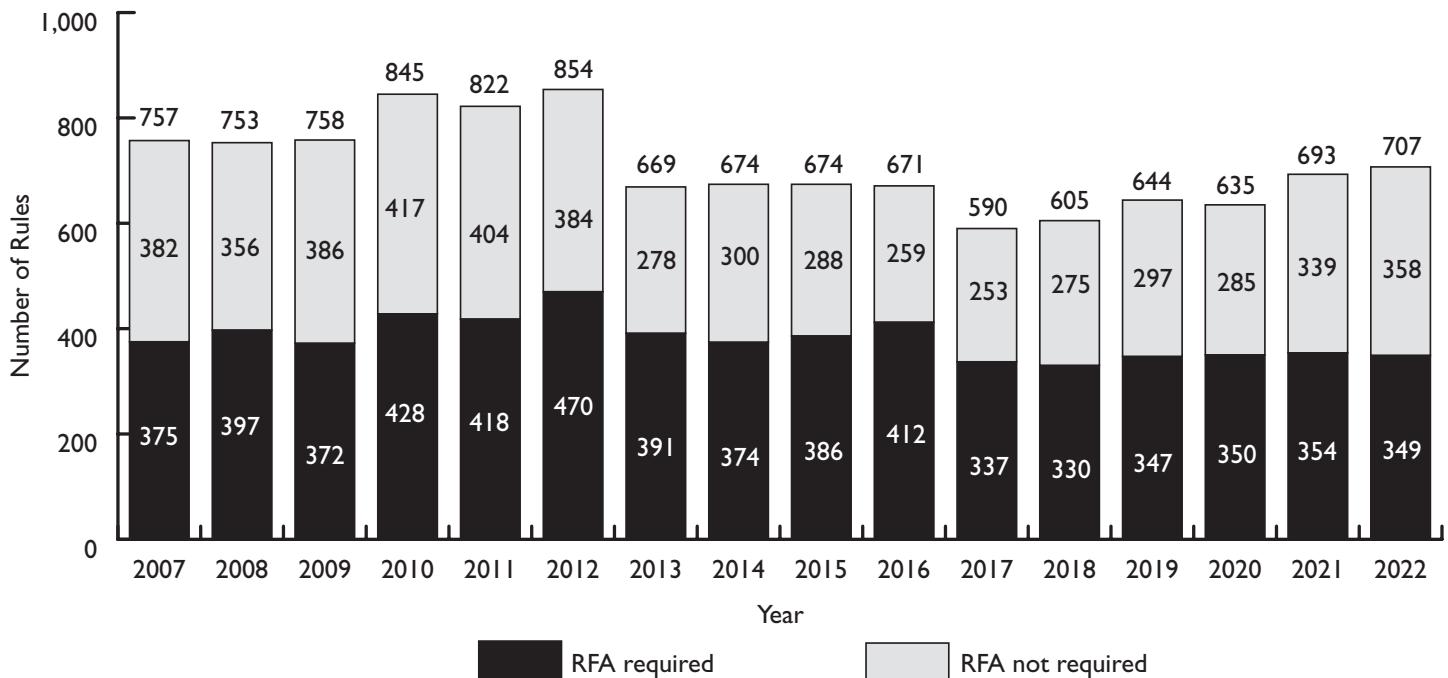
As Figure 22 shows, according to the fall 2022 Unified Agenda, at the end of 2022, of the 707 rules affecting small business, 349 required RFA analysis and another 358 were deemed by agencies to affect small business but not rise to the level of requiring RFA analysis.<sup>410</sup> Under Trump in 2020, there were 635 rules affecting small business, of which 83 were deemed deregulatory. Earlier deregu-

latory counts for small business rules under Trump were 102 in both 2019 and 2018, and 83 in 2017. Biden's increase in small business rules over Trump in 2020 was 11 percent. Netting out Trump's deregulatory rules affecting small business, Biden's increase in rules affecting small business since Trump is 28 percent.

There had been 671 rules affecting small business in Obama's final year of 2016. The number of rules with small-business impacts during the Obama administration in some years exceeded 800. The average number of rules affecting small business during Obama's eight years and requiring an RFA was 406, exceeding George W. Bush's eight-year average of 377. Trump's average annual number of rules affecting small business was lower than either at 341, dozens of which were also deemed deregulatory each year. Biden's two-year average is 351.5.

Table 8 breaks out the 2022 fall Unified Agenda's 707 rules affecting small business by department, agency, and commission. The top five—the Federal Communications Commission; the departments of Commerce, Health and Human Services, and the Treasury; and the multiagency federal acquisition rules—are the standouts, accounting for 334 rules, or 42 percent of the total 707 rules affecting small business. The FCC alone contributes 67 long-term rules deemed to require RFA analysis, whereas the IRS's contributions to Treasury rules is a noticeable component. The overall proportion of total rules affecting small business in Table 8 stands at 19 percent but varies widely among agencies. (For the numbers of rules in the Unified Agenda affecting small business

Figure 22. Rules in the Pipeline Affecting Small Business, 2007–2022



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, fall edition, various years.

Table 8. Unified Agenda Entries Affecting Small Business by Department, Agency, and Commission, Fall 2022

|  | Total Rules | Number Affecting Small Business |           |     |                  |           |     | Total | Affecting Small Business | Top 5 |
|--|-------------|---------------------------------|-----------|-----|------------------|-----------|-----|-------|--------------------------|-------|
|  |             | RFA Required                    |           |     | RFA Not Required |           |     |       |                          |       |
|  |             | Active                          | Completed | L-T | Active           | Completed | L-T |       |                          |       |
| Dept. of Agriculture                   | 168         | 15                              | 2         | 7   | 6                | 3         | 3   | 36    | 21.4%                    |       |
| Dept. of Commerce                      | 272         | 20                              | 8         | 2   | 33               | 8         | 1   | 72    | 26.5%                    | 72    |
| Dept. of Defense                       | 186         | 3                               |           |     | 28               | 3         | 3   | 37    | 19.9%                    |       |
| Dept. of Education                     | 47          | 2                               | 1         |     |                  |           |     | 3     | 6.4%                     |       |
| Dept. of Energy                        | 133         | 4                               | 6         |     | 3                | 1         |     | 14    | 10.5%                    |       |
| Dept. of Health and Human Services     | 236         | 21                              | 6         | 5   | 31               | 1         | 6   | 70    | 29.7%                    | 70    |
| Dept. of Homeland Security             | 143         | 10                              |           | 1   | 1                |           | 3   | 15    | 10.5%                    |       |
| Dept. of Housing and Urban Development | 59          |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Dept. of the Interior                  | 350         | 8                               | 1         | 2   | 15               | 1         |     | 27    | 7.7%                     |       |
| Dept. of Justice                       | 127         |                                 |           |     | 20               | 1         | 1   | 22    | 17.3%                    |       |
| Dept. of Labor                         | 103         | 10                              | 2         |     | 5                | 1         | 4   | 22    | 21.4%                    |       |
| Dept. of State                         | 54          |                                 |           |     | 13               | 1         | 3   | 17    | 31.5%                    |       |
| Dept. of Transportation                | 306         | 7                               | 2         | 7   | 12               | 1         | 9   | 38    | 12.4%                    |       |
| Dept. of the Treasury                  | 337         | 9                               | 6         | 4   | 39               | 2         | 6   | 66    | 19.6%                    | 66    |

|  | Total Rules | Number Affecting Small Business |           |     |                  |           |     | Total | Affecting Small Business | Top 5 |
|--|-------------|---------------------------------|-----------|-----|------------------|-----------|-----|-------|--------------------------|-------|
|  |             | RFA Required                    |           |     | RFA Not Required |           |     |       |                          |       |
|  |             | Active                          | Completed | L-T | Active           | Completed | L-T |       |                          |       |
| Dept. of Veterans Affairs                                  | 93          |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Agency for International Development                       | 15          |                                 |           |     | 1                |           |     | 1     | 6.7%                     |       |
| Architectural and Transportation Barriers Compliance Board | 5           |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| CPBSD*   | 4           |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Commodity Futures Trading Commission                       | 24          |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Consumer Financial Protection Bureau                       | 11          | 3                               |           |     |                  | 1         |     | 4     | 36.4%                    |       |
| Consumer Product Safety Commission                         | 25          | 4                               | 1         | 1   |                  |           |     | 6     | 24.0%                    |       |
| Corporation for National and Community Service             | 14          |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Council of Inspector General on Integrity and Efficiency   | 0           |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Council on Environmental Quality                           | 3           |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Court Services/Offender Supervision, DC                    | 7           |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Environmental Protection Agency                            | 212         | 9                               |           | 3   | 13               | 1         | 3   | 29    | 13.7%                    |       |
| Federal Acquisition Regulation                             | 57          | 34                              | 6         | 2   | 9                |           | 1   | 52    | 91.2%                    | 52    |
| Farm Credit Administration                                 | 18          |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Federal Communications Commission                          | 92          |                                 | 3         | 67  |                  | 1         | 3   | 74    | 80.4%                    | 74    |
| Federal Deposit Insurance Corporation                      | 22          |                                 |           |     | 1                | 2         |     | 3     | 13.6%                    |       |
| Federal Energy Regulatory Commission                       | 23          |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Federal Housing Finance Agency                             | 15          |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Federal Maritime Commission                                | 5           |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Federal Mediation and Conciliation Service                 | 6           |                                 |           |     | 2                | 1         |     | 3     | 50.0%                    |       |
| Federal Mine Safety and Health Review Commission           | 1           |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Federal Permitting Improvement Steering Committee          | 2           |                                 |           |     | 1                |           |     | 1     | 50.0%                    |       |
| Federal Reserve System                                     | 32          | 1                               | 1         |     |                  |           |     | 2     | 6.3%                     |       |
| Federal Trade Commission                                   | 25          |                                 |           |     | 22               |           | 1   | 23    | 92.0%                    |       |
| General Services Administration                            | 38          | 13                              | 1         | 1   | 15               | 4         |     | 34    | 89.5%                    |       |
| Institute of Museum and Library Services                   | 1           |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |
| Inter-American Foundation                                  | 2           |                                 |           |     |                  |           |     | 0     | 0.0%                     |       |

|   | Total Rules  | Number Affecting Small Business |           |            |                  |           |           | Total      | Affecting Small Business | Top 5               |
|---|--------------|---------------------------------|-----------|------------|------------------|-----------|-----------|------------|--------------------------|---------------------|
|   |              | RFA Required                    |           |            | RFA Not Required |           |           |            |                          |                     |
|   |              | Active                          | Completed | L-T        | Active           | Completed | L-T       |            |                          |                     |
| National Aeronautics and Space Administration                   | 5            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| National Archives and Records Administration                    | 12           |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| National Credit Union Administration                            | 30           |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| National Endowment for the Arts                                 | 5            |                                 |           |            | 2                |           |           | 2          | 40.0%                    |                     |
| National Endowment for the Humanities                           | 3            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| National Indian Gaming Commission                               | 16           |                                 |           |            |                  |           | 2         | 2          | 12.5%                    |                     |
| National Labor Relations Board                                  | 4            | 1                               |           |            |                  |           |           | 1          | 25.0%                    |                     |
| National Mediation Board  | 1            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| National Science Foundation                                     | 5            |                                 |           |            |                  |           |           |            |                          |                     |
| National Transportation Safety Board                            | 10           |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| Nuclear Regulatory Commission                                   | 58           | 2                               | 1         | 2          | 1                |           |           | 6          | 60.0%                    |                     |
| Office of Government Ethics                                     | 11           |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| Office of Management and Budget                                 | 8            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| Office of National Drug Control Policy                          | 1            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| Office of Personnel Management                                  | 40           |                                 | 1         |            |                  |           |           | 1          | 100.0%                   |                     |
| Office of the Intellectual Property and Enforcement Coordinator | 1            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| Peace Corps   | 4            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| Pension Benefit Guaranty Corporation                            | 11           |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| Postal Regulatory Commission                                    | 8            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| Railroad Retirement Board                                       | 4            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| Securities and Exchange Commission                              | 65           | 7                               | 3         |            | 1                |           |           | 11         | 16.9%                    |                     |
| Small Business Administration                                   | 75           | 8                               | 2         |            |                  |           |           | 11         | 14.7%                    |                     |
| Social Security Administration                                  | 25           |                                 |           |            | 1                |           |           | 1          | 4.0%                     |                     |
| Surface Transportation Board                                    | 11           |                                 |           | 1          |                  |           |           | 1          | 9.1%                     |                     |
| Tennessee Valley Authority                                      | 0            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| U.S. Agency for Global Media                                    | 3            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| U.S. Commission on Civil Rights                                 | 1            |                                 |           |            |                  |           |           | 0          | 0.0%                     |                     |
| <b>TOTAL</b>  | <b>3,690</b> | <b>191</b>                      | <b>53</b> | <b>105</b> | <b>275</b>       | <b>34</b> | <b>49</b> | <b>707</b> | <b>19.2%</b>             | <b>334</b>          |
|   |              | <b>349</b>                      |           |            | <b>358</b>       |           |           |            |                          | <b>47% of total</b> |

Source: Compiled from "The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions," and from online edition at <http://www.reginfo.gov>.

RFA = regulatory flexibility analysis; L-T = long term.

\* Committee for Purchase from People Who Are Blind or Severely Disabled.

## Box 3. Federal Workplace Regulations Affecting Growing Businesses

Assumes nonunion, nongovernment contractor, with interstate operations and a basic employee benefits package. Includes general workforce-related regulation only. Omitted are (a) categories such as environmental and consumer product safety regulations and (b) regulations applying to specific types of businesses, such as mining, farming, trucking, or financial firms.

### 1 EMPLOYEEE

- Fair Labor Standards Act (overtime and minimum wage)
- Social Security matching and deposits
- Medicare, Federal Insurance Contributions Act
- Military Selective Service Act (allowing 90 days' leave for reservists, rehiring of discharged veterans)
- Equal Pay Act (no sex discrimination in wages)
- Immigration Reform Act (eligibility that must be documented)
- Federal Unemployment Tax Act (unemployment compensation)
- Employee Retirement Income Security Act (standards for pension and benefit plans)
- Occupational Safety and Health Act
- Polygraph Protection Act

### 4 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Immigration Reform Act (no discrimination with regard to national origin, citizenship, or intention to obtain citizenship)

### 15 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Civil Rights Act Title VII (no discrimination with regard to race, color, national origin, religion, or sex; pregnancy-related protections; record keeping)

- Americans with Disabilities Act (no discrimination, reasonable accommodations)

### 20 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Age Discrimination Act (no discrimination on the basis of age against those 40 and older)
- Older Worker Benefit Protection Act (benefits for older workers to be commensurate with younger workers)
- Consolidated Omnibus Budget Reconciliation Act (continuation of medical benefits for up to 18 months upon termination)

### 25 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Health Maintenance Organization (HMO) Act (HMO option required)
- Veterans' Reemployment Act (reemployment for persons returning from active, reserve, or National Guard duty)

### 50 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Family and Medical Leave Act (12 weeks of unpaid leave for care of newborn or ill family member)

### 100 EMPLOYEES: ALL OF THE ABOVE, PLUS

- Worker Adjustment and Retraining Notification Act (60-day written notice of plant closing)—Civil Rights Act (annual EEO-1 form)

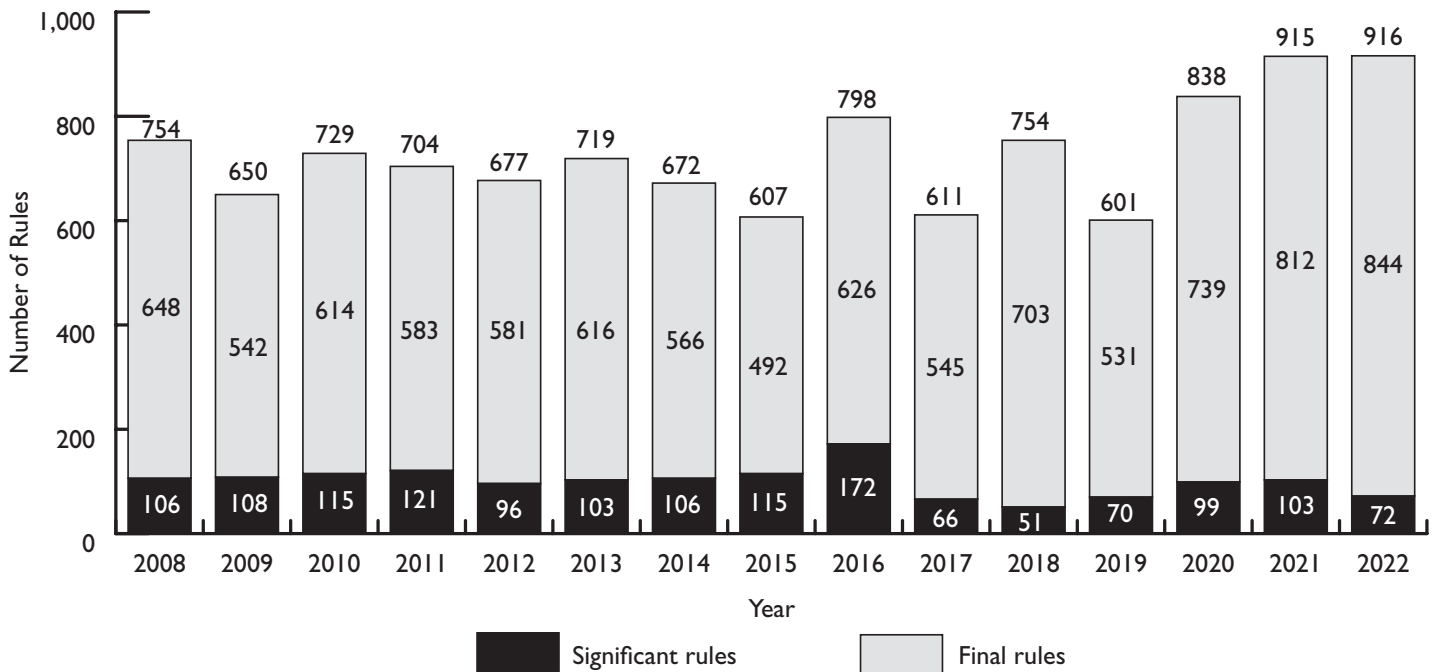
broken down by department and agency for fall Agenda editions since 1999–2020, see Appendix: Historical Tables, Part H.)

As a comparison with the fall Unified Agenda snapshots, Figure 23 depicts total completed final rules and the significant subset of them in the *Federal Register* deemed to affect small business by calendar year. The total count of 916 in 2022 stands well above both Trump's and Obama's. These tallies may fluctuate in the National Archives database, and subsequent editions of this report will reflect that, but these new heights are note-

worthy and likewise indicative of overall regulation levels. If policymakers are attempting to look ahead, proposed rules in the *Federal Register* affecting small business also bear close scrutiny in 2023. Those peaked at 804 in 2021, and despite dropping in 2022 have reattained Obama levels (Figure 24).

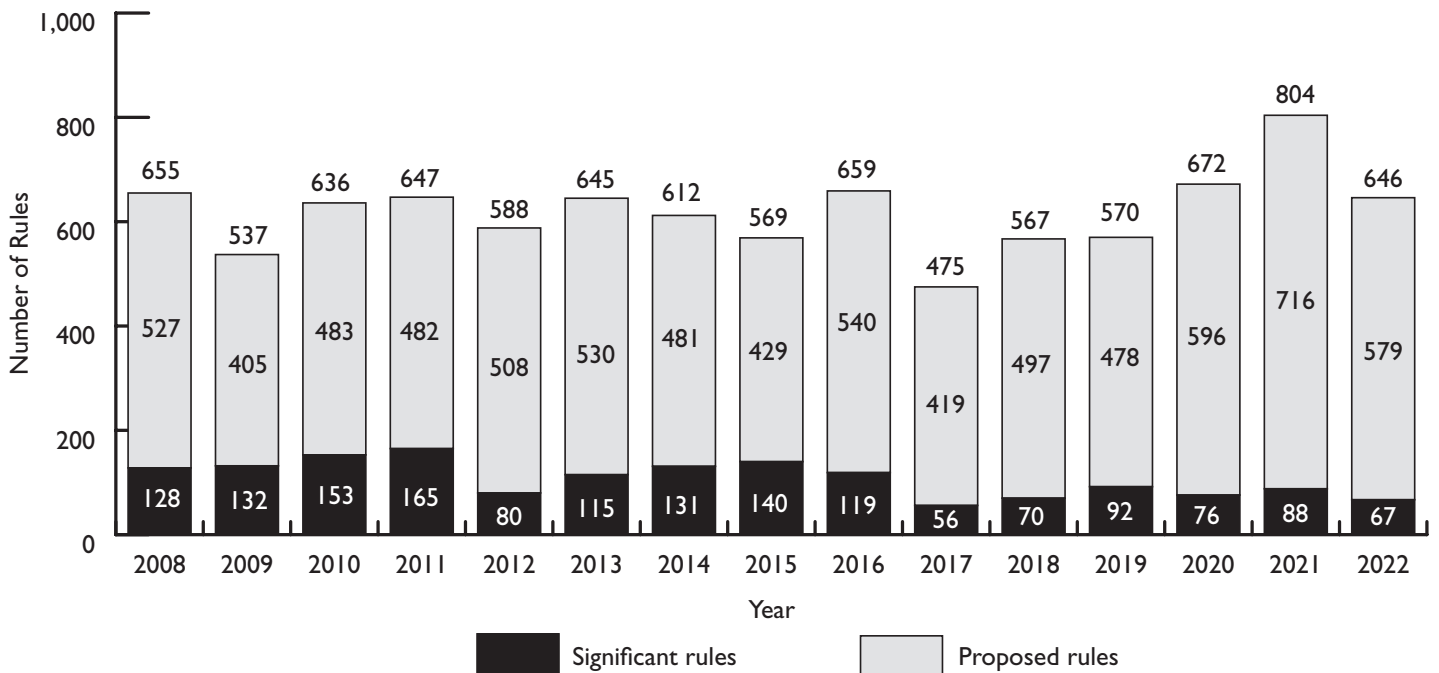
Box 3 depicts a partial list of the basic, non-sector-specific laws whose regulations affect small business, stacking as these firms grow. Post-COVID-19 legislation will play a role as well.

Figure 23. Number of Final Rules in the *Federal Register* Affecting Small Business, 2008–2022



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions, and from online edition at <http://www.reginfo.gov>.

Figure 24. Number of Proposed Rules in the *Federal Register* Affecting Small Business, 2008–2022



Sources: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions, and from online edition at <http://www.reginfo.gov>.