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S. 3941

To reopen the United States by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery from the COVID–19 pandemic, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2020

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

A BILL

To reopen the United States by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery from the COVID–19 pandemic, and for other purposes.

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 “Regulatory Relief to
5 Support Economic Recovery Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ADJUDICATOR.**—The term “adjudicator”—

1 (A) means an agency official who makes a
 2 determination that has legal consequence (as
 3 defined in section 2(d) of Executive Order
 4 13892 (5 U.S.C. 551 note; relating to civil ad-
 5 ministrative enforcement and adjudication)) for
 6 a person; and

7 (B) does not include—

8 (i) the head of an agency;

9 (ii) a member of a multi-member
 10 board that heads an agency; or

11 (iii) a Presidential appointee.

12 (2) ADMINISTRATIVE ENFORCEMENT.—The
 13 term “administrative enforcement”, with respect to
 14 an agency, includes—

15 (A) an investigation;

16 (B) an assertion of a statutory or regu-
 17 latory violation; and

18 (C) an adjudication by an adjudicator.

19 (3) AGENCY.—The term “agency” has the
 20 meaning given the term in section 3502 of title 44,
 21 United States Code.

22 (4) EMERGENCY AUTHORITY.—The term
 23 “emergency authority” means, with respect to an
 24 agency, any statutory or regulatory authority that
 25 authorizes action by the agency—

- 1 (A) in an emergency;
- 2 (B) under exigent circumstances;
- 3 (C) for good cause; or
- 4 (D) in a situation similar to the situations
- 5 described in subparagraphs (A) through (C).

6 (5) PRE-ENFORCEMENT RULING.—The term
7 “pre-enforcement ruling” has the meaning given the
8 term in section 2(f) of Executive Order 13892 (5
9 U.S.C. 551 note; relating to civil administrative en-
10 forcement and adjudication).

11 (6) REGULATORY STANDARD.—The term “regu-
12 latory standard” includes—

13 (A) any requirement imposed on a person
14 or entity by a regulation (as defined in section
15 2(g) of Executive Order 13892 (5 U.S.C. 551
16 note; relating to civil administrative enforce-
17 ment and adjudication)); or

18 (B) any recommendation, best practice,
19 standard, or other provision of a guidance docu-
20 ment (as defined in section 2(c) of Executive
21 Order 13892 (5 U.S.C. 551 note; relating to
22 civil administrative enforcement and adjudica-
23 tion)).

24 (7) SIGNIFICANT REGULATORY ACTION.—The
25 term “significant regulatory action” has the mean-

1 ing given the term in section 3(f) of Executive Order
2 12866 (5 U.S.C. 601 note; relating to regulatory
3 planning and review).

4 (8) UNFAIR SURPRISE.—The term “unfair sur-
5 prise” has the meaning given the term in section
6 2(e) of Executive Order 13892 (5 U.S.C. 551 note;
7 relating to civil administrative enforcement and ad-
8 judication).

9 **SEC. 3. PURPOSE.**

10 The purpose of this Act is to direct agencies to com-
11 bat the economic consequences of the COVID–19 pan-
12 demic and respond to the economic emergency caused by
13 the COVID–19 pandemic—

14 (1) by rescinding, modifying, waiving, or pro-
15 viding exemptions from regulations, including sig-
16 nificant regulatory actions, and other requirements
17 that may inhibit economic recovery, consistent
18 with—

19 (A) applicable law;

20 (B) the protection of the public health and
21 safety;

22 (C) national and homeland security; and

23 (D) budgetary priorities and operational
24 feasibility;

1 (2) by giving businesses, especially small busi-
2 nesses, the confidence those businesses need to re-
3 open by providing guidance on what the law re-
4 quires;

5 (3) by recognizing the efforts of businesses to
6 comply with often complex regulations in com-
7 plicated and swiftly changing circumstances; and

8 (4) by committing to fairness in administrative
9 enforcement and adjudication.

10 **SEC. 4. FEDERAL RESPONSE.**

11 (a) IN GENERAL.—The head of each agency shall
12 use, to the fullest extent possible, any emergency authority
13 invoked before the date of enactment of this Act—

14 (1) in response to the COVID–19 pandemic; or

15 (2) that is otherwise available to the head of
16 the agency to support the economic response to the
17 COVID–19 pandemic.

18 (b) NON-REGULATORY ACTIONS.—It is the sense of
19 Congress that, in addition to action taken under sub-
20 section (a), the head of each agency should promote eco-
21 nomic recovery through non-regulatory actions.

22 **SEC. 5. RESCISSION AND WAIVER OF REGULATORY STAND-**
23 **ARDS.**

24 (a) IN GENERAL.—To promote job creation and eco-
25 nomic growth, the head of each agency—

1 (1) shall identify regulatory standards of the
2 agency that may inhibit economic recovery from the
3 COVID–19 pandemic; and

4 (2) may—

5 (A) temporarily or permanently rescind,
6 modify, waive, or exempt persons or entities
7 from the regulatory standards identified under
8 paragraph (1), including by issuing proposed
9 rules; and

10 (B) exercise appropriate temporary en-
11 forcement discretion or appropriate temporary
12 extensions of time as provided for in enforceable
13 agreements with respect to the regulatory
14 standards identified under paragraph (1).

15 (b) NOTICE AND COMMENT WAIVER.—During the
16 period beginning on the date of enactment of this Act and
17 ending on the date on which the national emergency de-
18 clared by the President under the National Emergencies
19 Act (50 U.S.C. 1601 et seq.) with respect to the Coronavi-
20 rus Disease 2019 (COVID–19) terminates, the head of an
21 agency acting under subsection (a) may waive the notice
22 and comment requirements under section 553 of title 5,
23 United States Code.

1 **SEC. 6. COMPLIANCE ASSISTANCE FOR REGULATED ENTI-**
2 **TIES.**

3 (a) **PRE-ENFORCEMENT RULINGS.—**

4 (1) **IN GENERAL.—**The head of each agency,
5 other than the Attorney General, shall accelerate the
6 procedures of the agency under which a regulated
7 person or entity receives a pre-enforcement ruling
8 under Executive Order 13892 (5 U.S.C. 551 note;
9 relating to civil administrative enforcement and ad-
10 judication) with respect to whether proposed conduct
11 in response to the COVID–19 pandemic, including
12 any response to legislative or executive economic
13 stimulus actions, is consistent with statutes and reg-
14 ulations administered by the agency.

15 (2) **WAIVER.—**The head of an agency that
16 issues a pre-enforcement ruling under paragraph (1)
17 may issue the pre-enforcement ruling without regard
18 to the requirements of section 6(a) of Executive
19 Order 13892 (5 U.S.C. 551 note; relating to civil
20 administrative enforcement and adjudication).

21 (b) **ENFORCEMENT DISCRETION POLICIES.—**

22 (1) **IN GENERAL.—**The head of each agency
23 may formulate, and make public, policies of enforce-
24 ment discretion that direct the agency to decline to
25 initiate administrative enforcement against persons
26 and entities that attempt in reasonable good faith to

1 comply with applicable statutory and regulatory
2 standards, including persons and entities that act in
3 conformity with a pre-enforcement ruling.

4 (2) CONSIDERATION.—In formulating a policy
5 of enforcement discretion under paragraph (1), the
6 head of an agency shall consider—

7 (A) the situation described in paragraph

8 (3) as a rationale for declining to initiate ad-
9 ministrative enforcement;

10 (B) the context of a particular statutory
11 and regulatory program; and

12 (C) the purpose of this Act.

13 (3) COVID–19 GUIDANCE.—The situation de-
14 scribed in this paragraph is a situation in which a
15 person or entity makes a reasonable attempt to com-
16 ply with guidance relating to suggested action to
17 stem the transmission and spread of COVID–19
18 that—

19 (A) is issued by—

20 (i) the Secretary of Health and
21 Human Services, including through the
22 Centers for Disease Control and Preven-
23 tion; or

24 (ii) the head of another agency; and

1 (B) the person or entity reasonably deter-
2 mines is applicable to the circumstances of the
3 person or entity.

4 (c) PROHIBITION.—The head of an agency may not
5 initiate an enforcement action against a person or entity
6 solely because the person or entity does not adhere to
7 guidance issued by the agency.

8 **SEC. 7. FAIRNESS IN ADMINISTRATIVE ENFORCEMENT AND**
9 **ADJUDICATION.**

10 (a) IN GENERAL.—The head of each agency shall,
11 with respect to administrative enforcement and adjudica-
12 tion of the agency—

13 (1) consider the principles of fairness described
14 in subsection (b); and

15 (2) if appropriate, revise procedures and prac-
16 tices of the agency—

17 (A) to conform with the principles of fair-
18 ness described in subsection (b); and

19 (B) with consideration for—

20 (i) the statutory and regulatory pro-
21 grams of the agency; and

22 (ii) the purpose of this Act.

23 (b) PRINCIPLES OF FAIRNESS.—The principles of
24 fairness of administrative enforcement and adjudication
25 described in this subsection are as follows:

1 (1) The Government should bear the burden of
2 proving an alleged violation of law, and the subject
3 of administrative enforcement should not bear the
4 burden of proving compliance with the law.

5 (2) Administrative enforcement should be
6 prompt and fair.

7 (3) Administrative adjudicators should be inde-
8 pendent of enforcement staff.

9 (4) Consistent with any executive branch con-
10 fidentiality interests, the Government should provide
11 favorable relevant evidence in possession of the agen-
12 cy to the subject of an administrative enforcement
13 action.

14 (5) All rules of evidence and procedure should
15 be public, clear, and effective.

16 (6) Penalties should be—

17 (A) proportionate, transparent, and im-
18 posed in adherence to consistent standards; and

19 (B) authorized by law.

20 (7) Administrative enforcement should be free
21 of improper Government coercion.

22 (8) Liability should be imposed only for viola-
23 tions of statutes or duly issued regulations after no-
24 tice and an opportunity to respond.

1 (9) Administrative enforcement should be free
2 of unfair surprise.

3 (10) An agency must be accountable for the ad-
4 ministrative enforcement decisions of the agency.

5 **SEC. 8. REPORT.**

6 Not later than the date determined by the Director
7 of the Office of Management and Budget under section
8 9(2), the head of each agency shall submit to the Director
9 of the Office of Management and Budget, the Assistant
10 to the President for Domestic Policy, and the Assistant
11 to the President for Economic Policy a report that in-
12 cludes—

13 (1) a review of—

14 (A) any regulatory standards of the agency
15 that are rescinded, suspended, modified, or
16 waived under section 5(a)(2); and

17 (B) other regulatory flexibilities imple-
18 mented by the agency in response to the
19 COVID–19 pandemic; and

20 (2) a determination of whether a rescinded, sus-
21 pended, modified, or waived regulatory standard de-
22 scribed in paragraph (1)(A) or a regulatory flexi-
23 bility described in paragraph (1)(B) would promote
24 economic recovery if made permanent.

1 **SEC. 9. IMPLEMENTATION.**

2 The Director of the Office of Management and Budg-
3 et, in consultation with the Assistant to the President for
4 Domestic Policy and the Assistant to the President for
5 Economic Policy—

6 (1) shall monitor compliance with this Act; and

7 (2) may issue guidance for the implementation
8 of this Act, including by setting a deadline for the
9 report required under section 8.

10 **SEC. 10. GENERAL PROVISIONS.**

11 (a) SAVINGS CLAUSE.—Nothing in this Act shall be
12 construed to impair or otherwise affect—

13 (1) the authority granted by law to the head of
14 an agency; or

15 (2) the functions of the Director of the Office
16 of Management and Budget relating to budgetary,
17 administrative, or legislative proposals.

18 (b) IMPLEMENTATION.—This Act shall be imple-
19 mented consistent with applicable law.

20 (c) EXCEPTIONS.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 nothing in Act shall apply to an action relating to—

23 (A) foreign or military affairs; or

24 (B) a national security or homeland secu-
25 rity function of the United States.

1 (2) **PROCUREMENT ACTIONS.**—This Act shall
2 apply to actions relating to—

3 (A) procurement; and

4 (B) the import and export of non-dense ar-
5 ticles and services.

6 (d) **NO CAUSE OF ACTION.**—This Act does not create
7 any—

8 (1) right or benefit for any party; or

9 (2) cause of action for any party against—

10 (A) the United States;

11 (B) a department, agency, entity, officer,
12 employee, or agent of the United States; or

13 (C) any other person.

14 **SEC. 11. SUNSET.**

15 This Act shall cease to be effective on the later of—

16 (1) the date on which the national emergency
17 declared by the President under the National Emer-
18 gencies Act (50 U.S.C. 1601 et seq.) with respect to
19 the Coronavirus Disease 2019 (COVID-19) termi-
20 nates; or

21 (2) January 1, 2021.

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