

113TH CONGRESS
1ST SESSION

S. 1730

To reform the regulatory process to ensure that small businesses are free to compete and to create jobs, to clear unnecessary regulatory burdens, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2013

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

A BILL

To reform the regulatory process to ensure that small businesses are free to compete and to create jobs, to clear unnecessary regulatory burdens, 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 **TITLE I—CLEARING UNNECES-**
4 **SARY REGULATORY BURDENS**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Clearing Unnecessary
7 Regulatory Burdens Act of 2013” or the “CURB Act”.

8 **SEC. 102. REGULATORY REFORM.**

9 (a) DEFINITIONS.—In this section—

1 (1) the term “Administrator” means the Ad-
2 ministrator of the Office of Information and Regu-
3 latory Affairs in the Office of Management and
4 Budget;

5 (2) the term “agency” has the same meaning as
6 in section 3502(1) of title 44, United States Code;

7 (3) the term “economically significant guidance
8 document” means a significant guidance document
9 that may reasonably be anticipated to lead to an an-
10 nual effect on the economy of \$100,000,000 or more
11 or adversely affect in a material way the economy or
12 a sector of the economy, except that economically
13 significant guidance documents do not include guid-
14 ance documents on Federal expenditures and re-
15 ceipts;

16 (4) the term “disseminated”—

17 (A) means prepared by an agency and dis-
18 tributed to the public or regulated entities; and

19 (B) does not include—

20 (i) distribution limited to Federal
21 Government employees;

22 (ii) intra- or interagency use or shar-
23 ing of Federal Government information;
24 and

1 (iii) responses to requests for agency
2 records under section 552 of title 5,
3 United States Code (commonly referred to
4 as the “Freedom of Information Act”),
5 section 552a of title 5, United States Code,
6 (commonly referred to as the “Privacy
7 Act”), the Federal Advisory Committee
8 Act (5 U.S.C. App.), or other similar laws;

9 (5) the term “guidance document” means an
10 agency statement of general applicability and future
11 effect, other than a regulatory action, that sets forth
12 a policy on a statutory, regulatory or technical issue
13 or an interpretation of a statutory or regulatory
14 issue;

15 (6) the term “regulation” means an agency
16 statement of general applicability and future effect,
17 which the agency intends to have the force and ef-
18 fect of law, that is designed to implement, interpret,
19 or prescribe law or policy or to describe the proce-
20 dure or practice requirements of an agency;

21 (7) the term “regulatory action” means any
22 substantive action by an agency (normally published
23 in the Federal Register) that promulgates or is ex-
24 pected to lead to the promulgation of a final regula-
25 tion, including notices of inquiry, advance notices of

1 proposed rulemaking, and notices of proposed rule-
2 making;

3 (8) the term “significant guidance document”—

4 (A) means a guidance document dissemi-
5 nated to regulated entities or the general public
6 that may reasonably be anticipated to—

7 (i) lead to an annual effect on the
8 economy of \$100,000,000 or more or affect
9 in a material way the economy, a sector of
10 the economy, productivity, competition,
11 jobs, the environment, public health or
12 safety, or State, local, or tribal govern-
13 ments or communities;

14 (ii) create a serious inconsistency or
15 otherwise interfere with an action taken or
16 planned by another agency;

17 (iii) materially alter the budgetary im-
18 pact of entitlements, grants, user fees, or
19 loan programs or the rights and obliga-
20 tions of recipients thereof; or

21 (iv) raise novel legal or policy issues
22 arising out of legal mandates and the pri-
23 orities, principles, and provisions of this
24 section; and

25 (B) does not include—

1 (i) legal advisory opinions for internal
2 Executive Branch use and not for release
3 (such as Department of Justice Office of
4 Legal Counsel opinions);

5 (ii) briefs and other positions taken by
6 agencies in investigations, pre-litigation,
7 litigation, or other enforcement pro-
8 ceedings;

9 (iii) speeches;

10 (iv) editorials;

11 (v) media interviews;

12 (vi) press materials;

13 (vii) congressional correspondence;

14 (viii) guidance documents that pertain
15 to a military or foreign affairs function of
16 the United States (other than guidance on
17 procurement or the import or export of
18 non-defense articles and services);

19 (ix) grant solicitations;

20 (x) warning letters;

21 (xi) case or investigatory letters re-
22 sponding to complaints involving fact-spe-
23 cific determinations;

24 (xii) purely internal agency policies;

1 (xiii) guidance documents that pertain
2 to the use, operation or control of a gov-
3 ernment facility;

4 (xiv) internal guidance documents di-
5 rected solely to other agencies; and

6 (xv) any other category of significant
7 guidance documents exempted by an agen-
8 cy head in consultation with the Adminis-
9 trator; and

10 (9) the term “significant regulatory action”
11 means any regulatory action that is likely to result
12 in a regulation that may—

13 (A) have an annual effect on the economy
14 of \$100,000,000 or more or adversely affect in
15 a material way the economy, a sector of the
16 economy, productivity, competition, jobs, the
17 environment, public health or safety, or State,
18 local, or tribal governments or communities;

19 (B) create a serious inconsistency or other-
20 wise interfere with an action taken or planned
21 by another agency;

22 (C) materially alter the budgetary impact
23 of entitlements, grants, user fees, or loan pro-
24 grams or the rights and obligations of recipi-
25 ents thereof; or

1 (D) raise novel legal or policy issues arising out of legal mandates and the priorities, principles, and provisions of this section.

4 (b) AGENCY ASSESSMENT OF SIGNIFICANT REGULATORY ACTIONS.—For each significant regulatory action, each agency shall submit, at such times specified by the Administrator, a report to the Office of Information and Regulatory Affairs that includes—

9 (1) an assessment, including the underlying analysis, of benefits anticipated from the significant regulatory action, such as—

12 (A) the promotion of the efficient functioning of the economy and private markets;

14 (B) the enhancement of health and safety;

15 (C) the protection of the natural environment; and

17 (D) the elimination or reduction of discrimination or bias;

19 (2) to the extent feasible, a quantification of the benefits assessed under paragraph (1);

21 (3) an assessment, including the underlying analysis, of costs anticipated from the regulatory action, such as—

24 (A) the direct cost both to the Federal Government in administering the significant

1 regulatory action and to businesses, consumers,
2 and others (including State, local, and tribal of-
3 ficials) in complying with the regulation; and

4 (B) any adverse effects on the efficient
5 functioning of the economy, private markets
6 (including productivity, employment, and com-
7 petitiveness), health, safety, the natural envi-
8 ronment, job creation, the prices of consumer
9 goods, and energy costs;

10 (4) to the extent feasible, a quantification of
11 the costs assessed under paragraph (3); and

12 (5) an assessment, including the underlying
13 analysis, of costs and benefits of potentially effective
14 and reasonably feasible alternatives to the planned
15 significant regulatory action, identified by the agen-
16 cy or the public (including improving the current
17 regulation and reasonably viable nonregulatory ac-
18 tions), and an explanation why the planned regu-
19 latory action is preferable to the identified potential
20 alternatives.

21 (c) AGENCY GOOD GUIDANCE PRACTICES.—

22 (1) AGENCY STANDARDS FOR SIGNIFICANT
23 GUIDANCE DOCUMENTS.—

24 (A) APPROVAL PROCEDURES.—

1 (i) IN GENERAL.—Each agency shall
2 develop or have written procedures for the
3 approval of significant guidance docu-
4 ments, which shall ensure that the issuance
5 of significant guidance documents is ap-
6 proved by appropriate senior agency offi-
7 cials.

8 (ii) REQUIREMENT.—Employees of an
9 agency may not depart from significant
10 guidance documents without appropriate
11 justification and supervisory concurrence.

12 (B) STANDARD ELEMENTS.—Each signifi-
13 cant guidance document—

14 (i) shall—

15 (I) include the term “guidance”
16 or its functional equivalent;

17 (II) identify the agency or office
18 issuing the document;

19 (III) identify the activity to
20 which and the persons to whom the
21 significant guidance document applies;

22 (IV) include the date of issuance;

23 (V) note if the significant guid-
24 ance document is a revision to a pre-
25 viously issued guidance document and,

1 if so, identify the document that the
2 significant guidance document re-
3 places;

4 (VI) provide the title of the docu-
5 ment and a document identification
6 number; and

7 (VII) include the citation to the
8 statutory provision or regulation (in
9 Code of Federal Regulations format)
10 which the significant guidance docu-
11 ment applies to or interprets; and

12 (ii) shall not include mandatory terms
13 such as “shall”, “must”, “required”, or
14 “requirement” unless—

15 (I) the agency is using those
16 terms to describe a statutory or regu-
17 latory requirement; or

18 (II) the terminology is addressed
19 to agency staff and will not foreclose
20 agency consideration of positions ad-
21 vanced by affected private parties.

22 (2) PUBLIC ACCESS AND FEEDBACK FOR SIG-
23 NIFICANT GUIDANCE DOCUMENTS.—

24 (A) INTERNET ACCESS.—

1 (i) IN GENERAL.—Each agency
2 shall—

3 (I) maintain on the Web site for
4 the agency, or as a link on the Web
5 site of the agency to the electronic list
6 posted on a Web site of a component
7 of the agency a list of the significant
8 guidance documents in effect of the
9 agency, including a link to the text of
10 each significant guidance document
11 that is in effect; and

12 (II) not later than 30 days after
13 the date on which a significant guid-
14 ance document is issued, update the
15 list described in clause (i).

16 (ii) LIST REQUIREMENTS.—The list
17 described in subparagraph (A)(i) shall—

18 (I) include the name of each—

19 (aa) significant guidance
20 document;

21 (bb) document identification
22 number; and

23 (cc) issuance and revision
24 dates; and

1 (II) identify significant guidance
2 documents that have been added, re-
3 vised, or withdrawn in the preceding
4 year.

5 (B) PUBLIC FEEDBACK.—

6 (i) IN GENERAL.—Each agency shall
7 establish and clearly advertise on the Web
8 site for the agency a means for the public
9 to electronically submit—

10 (I) comments on significant guid-
11 ance documents; and

12 (II) a request for issuance, recon-
13 sideration, modification, or rescission
14 of significant guidance documents.

15 (ii) AGENCY RESPONSE.—Any com-
16 ments or requests submitted under sub-
17 paragraph (A)—

18 (I) are for the benefit of the
19 agency; and

20 (II) shall not require a formal re-
21 sponse from the agency.

22 (iii) OFFICE FOR PUBLIC COM-
23 MENTS.—

24 (I) IN GENERAL.—Each agency
25 shall designate an office to receive and

1 address complaints from the public re-
2 lating to—

3 (aa) the failure of the agen-
4 cy to follow the procedures de-
5 scribed in this section; or

6 (bb) the failure to treat a
7 significant guidance document as
8 a binding requirement.

9 (II) WEB SITE.—The agency
10 shall provide, on the Web site of the
11 agency, the name and contact infor-
12 mation for the office designated under
13 clause (i).

14 (3) NOTICE AND PUBLIC COMMENT FOR ECO-
15 NOMICALLY SIGNIFICANT GUIDANCE DOCUMENTS.—

16 (A) IN GENERAL.—Except as provided in
17 paragraph (2), in preparing a draft of an eco-
18 nomically significant guidance document, and
19 before issuance of the final significant guidance
20 document, each agency shall—

21 (i) publish a notice in the Federal
22 Register announcing that the draft docu-
23 ment is available;

24 (ii) post the draft document on the
25 Internet and make a tangible copy of that

document publicly available (or notify the public how the public can review the guidance document if the document is not in a format that permits such electronic posting with reasonable efforts);

(iii) invite public comment on the draft document; and

(iv) prepare and post on the Web site of the agency a document with responses of the agency to public comments.

(B) EXCEPTIONS.—In consultation with the Administrator, an agency head may identify a particular economically significant guidance document or category of such documents for which the procedures of this subsection are not feasible or appropriate.

(4) EMERGENCIES.—

(A) IN GENERAL.—In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify the Administrator as soon as possible and, to the extent practicable, comply with this subsection.

(B) SIGNIFICANT GUIDANCE DOCUMENTS
SUBJECT TO STATUTORY OR COURT-IMPOSED

1 DEADLINE.—For a significant guidance docu-
2 ment that is governed by a statutory or court-
3 imposed deadline, the agency shall, to the ex-
4 tent practicable, schedule the proceedings of the
5 agency to permit sufficient time to comply with
6 this subsection.

7 (5) EFFECTIVE DATE.—This section shall take
8 effect 60 days after the date of enactment of this
9 Act.

10 **SEC. 103. REDUCTION OR WAIVER OF CIVIL PENALTIES IM-**
11 **POSED ON SMALL ENTITIES.**

12 (a) IN GENERAL.—Chapter 6 of title 5, United
13 States Code, is amended by adding at the end the fol-
14 lowing:

15 **“§ 613. Reduction or waiver of civil penalties imposed**
16 **on small entities**

17 “(a) Upon notifying a small entity of a violation by
18 the small entity of a collection of information or record-
19 keeping requirement, the agency shall provide the small
20 entity with an opportunity to request that the agency re-
21 duce or waive any civil penalty imposed on the small entity
22 as a result of the violation.

23 “(b) If a small entity requests a reduction or waiver
24 under subsection (a), the agency that receives the request
25 shall—

1 “(1) review the records of the agency; and

2 “(2) reduce or waive the civil penalty imposed
3 on the small entity if the agency determines that—

4 “(A) the civil penalty was the result of a
5 first-time violation by the small entity of a col-
6 lection of information or recordkeeping require-
7 ment; and

8 “(B) the reduction or waiver is consistent
9 with the conditions and exclusions described in
10 paragraphs (1), (3), (4), (5), and (6) of section
11 223(b) of the Small Business Regulatory En-
12 forcement Fairness Act of 1996 (5 U.S.C. 601
13 note).

14 “(c) Not later than 60 days after the receipt of a
15 request from a small entity under subsection (a), an agen-
16 cy shall send the small entity written notice of the deter-
17 mination of the agency with respect to the request and
18 the reasons for the determination.

19 “(d) The Chief Counsel for Advocacy shall submit to
20 Congress an annual report summarizing—

21 “(1) all requests received by the agencies under
22 subsection (a) during the previous year; and

23 “(2) the results of the requests described in
24 paragraph (1).”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—

2 The table of sections for chapter 6 of title 5, United States

3 Code, is amended by adding at the end the following:

“613. Reduction or waiver of civil penalties imposed on small entities.”.

4 **TITLE II—REGULATORY**
 5 **FLEXIBILITY IMPROVEMENT**

6 **SEC. 201. SHORT TITLE.**

7 This title may be cited as the “Regulatory Flexibility
 8 Improvement Act of 2013”.

9 **SEC. 202. FINDINGS.**

10 Congress finds the following:

11 (1) A vibrant and growing small business sector
 12 is critical to the recovery of the economy of the
 13 United States.

14 (2) Regulations designed for application to
 15 large-scale entities have been applied uniformly to
 16 small businesses and other small entities, sometimes
 17 inhibiting the ability of small entities to create new
 18 jobs.

19 (3) Uniform Federal regulatory and reporting
 20 requirements in many instances have imposed on
 21 small businesses and other small entities unneces-
 22 sary and disproportionately burdensome demands,
 23 including legal, accounting, and consulting costs,
 24 thereby threatening the viability of small entities

1 and the ability of small entities to compete and cre-
2 ate new jobs in a global marketplace.

3 (4) Since 1980, Federal agencies have been re-
4 quired to recognize and take account of the dif-
5 ferences in the scale and resources of regulated enti-
6 ties, but in many instances have failed to do so.

7 (5) In 2009, there were nearly 70,000 pages in
8 the Federal Register, and, according to research by
9 the Office of Advocacy of the Small Business Admin-
10 istration, the annual cost of Federal regulations to-
11 tals \$1,750,000,000,000. Small firms bear a dis-
12 proportionate burden, paying approximately 36 per-
13 cent more per employee than larger firms in annual
14 regulatory compliance costs.

15 (6) All agencies in the Federal Government
16 should fully consider the costs, including indirect
17 economic impacts and the potential for job loss, of
18 proposed rules, periodically review existing regula-
19 tions to determine their impact on small entities,
20 and repeal regulations that are unnecessarily dupli-
21 cative or have outlived their stated purpose.

22 (7) It is the intention of Congress to amend
23 chapter 6 of title 5, United States Code, to ensure
24 that all impacts, including foreseeable indirect ef-
25 fects, of proposed and final rules are considered by

1 agencies during the rulemaking process and that the
 2 agencies assess a full range of alternatives that will
 3 limit adverse economic consequences, enhance eco-
 4 nomic benefits, and fully address potential job loss.

5 **SEC. 203. INCLUDING INDIRECT ECONOMIC IMPACT IN**
 6 **SMALL ENTITY ANALYSES.**

7 Section 601 of title 5, United States Code, is amend-
 8 ed by adding at the end the following:

9 “(9) the term ‘economic impact’ means, with
 10 respect to a proposed or final rule—

11 “(A) the economic effects on small entities
 12 directly regulated by the rule; and

13 “(B) the reasonably foreseeable economic
 14 effects of the rule on small entities that—

15 “(i) purchase products or services
 16 from, sell products or services to, or other-
 17 wise conduct business with entities directly
 18 regulated by the rule;

19 “(ii) are directly regulated by other
 20 governmental entities as a result of the
 21 rule; or

22 “(iii) are not directly regulated by the
 23 agency as a result of the rule but are oth-
 24 erwise subject to other agency regulations
 25 as a result of the rule.”.

1 **SEC. 204. JUDICIAL REVIEW TO ALLOW SMALL ENTITIES TO**
2 **CHALLENGE PROPOSED REGULATIONS.**

3 Section 611(a) of title 5, United States Code, is
4 amended—

5 (1) in paragraph (1), by inserting “603,” after
6 “601,”;

7 (2) in paragraph (2), by inserting “603,” after
8 “601,”;

9 (3) by striking paragraph (3) and inserting the
10 following:

11 “(3) A small entity may seek such review during the
12 1-year period beginning on the date of final agency action,
13 except that—

14 “(A) if a provision of law requires that an ac-
15 tion challenging a final agency action be commenced
16 before the expiration of 1 year, the lesser period
17 shall apply to an action for judicial review under this
18 section; and

19 “(B) in the case of noncompliance with section
20 603 or 605(b), a small entity may seek judicial re-
21 view of agency compliance with such section before
22 the close of the public comment period.”; and

23 (4) in paragraph (4)—

24 (A) in subparagraph (A), by striking “,
25 and” and inserting a semicolon;

1 (B) in subparagraph (B), by striking the
2 period and inserting “; or”; and

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

4 “(C) issuing an injunction prohibiting an agen-
5 cy from taking any agency action with respect to a
6 rulemaking until that agency is in compliance with
7 the requirements of section 603 or 605.”.

8 **SEC. 205. PERIODIC REVIEW.**

9 Section 610 of title 5, United States Code, is amend-
10 ed to read as follows:

11 **“§ 610. Periodic review of rules**

12 “(a)(1) Not later than 180 days after the date of en-
13 actment of the Regulatory Flexibility Improvement Act of
14 2013, each agency shall establish a plan for the periodic
15 review of—

16 “(A) each rule issued by the agency that the
17 head of the agency determines has a significant eco-
18 nomic impact on a substantial number of small enti-
19 ties, without regard to whether the agency per-
20 formed an analysis under section 604 with respect to
21 the rule; and

22 “(B) any small entity compliance guide required
23 to be published by the agency under section 212 of
24 the Small Business Regulatory Enforcement Fair-
25 ness Act of 1996 (5 U.S.C. 601 note).

1 “(2) In reviewing rules and small entity compliance
2 guides under paragraph (1), the agency shall determine
3 whether the rules and guides should—

4 “(A) be amended or rescinded, consistent with
5 the stated objectives of applicable statutes, to mini-
6 mize any significant adverse economic impacts on a
7 substantial number of small entities (including an
8 estimate of any adverse impacts on job creation and
9 employment by small entities); or

10 “(B) continue in effect without change.

11 “(3) Each agency shall publish the plan established
12 under paragraph (1) in the Federal Register and on the
13 Web site of the agency.

14 “(4) An agency may amend the plan established
15 under paragraph (1) at any time by publishing the amend-
16 ment in the Federal Register and on the Web site of the
17 agency.

18 “(b) Each plan established under subsection (a) shall
19 provide for—

20 “(1) the review of each rule and small entity
21 compliance guide described in subsection (a)(1) in
22 effect on the date of enactment of the Regulatory
23 Flexibility Improvement Act of 2013—

1 “(A) not later than 9 years after the date
2 of publication of the plan in the Federal Reg-
3 ister; and

4 “(B) every 9 years thereafter; and

5 “(2) the review of each rule adopted and small
6 entity compliance guide described in subsection
7 (a)(1) that is published after the date of enactment
8 of the Regulatory Flexibility Improvement Act of
9 2013—

10 “(A) not later than 9 years after the publi-
11 cation of the final rule in the Federal Register;
12 and

13 “(B) every 9 years thereafter.

14 “(c) In reviewing rules under the plan required under
15 subsection (a), the agency shall consider—

16 “(1) the continued need for the rule;

17 “(2) the nature of complaints received by the
18 agency from small entities concerning the rule;

19 “(3) comments by the Regulatory Enforcement
20 Ombudsman and the Chief Counsel for Advocacy of
21 the Small Business Administration;

22 “(4) the complexity of the rule;

23 “(5) the extent to which the rule overlaps, du-
24 plicates, or conflicts with other Federal rules and,

1 unless the head of the agency determines it to be in-
2 feasible, State and local rules;

3 “(6) the contribution of the rule to the cumu-
4 lative economic impact of all Federal rules on the
5 class of small entities affected by the rule, unless the
6 head of the agency determines that such a calcula-
7 tion cannot be made;

8 “(7) the length of time since the rule has been
9 evaluated, or the degree to which technology, eco-
10 nomic conditions, or other factors have changed in
11 the area affected by the rule; and

12 “(8) the economic impact of the rule, includ-
13 ing—

14 “(A) the estimated number of small enti-
15 ties to which the rule will apply;

16 “(B) the estimated number of small entity
17 jobs that will be lost or created due to the rule;
18 and

19 “(C) the projected reporting, record-
20 keeping, and other compliance requirements of
21 the proposed rule, including—

22 “(i) an estimate of the classes of small
23 entities that will be subject to the require-
24 ment; and

1 “(ii) the type of professional skills
2 necessary for preparation of the report or
3 record.

4 “(d)(1) Each agency shall submit an annual report
5 regarding the results of the review required under sub-
6 section (a) to—

7 “(A) Congress; and

8 “(B) in the case of an agency that is not an
9 independent regulatory agency (as defined in section
10 3502(5) of title 44), the Administrator of the Office
11 of Information and Regulatory Affairs of the Office
12 of Management and Budget.

13 “(2) Each report required under paragraph (1) shall
14 include a description of any rule or guide with respect to
15 which the agency made a determination of infeasibility
16 under paragraph (5) or (6) of subsection (c), together with
17 a detailed explanation of the reasons for the determina-
18 tion.

19 “(e) Each agency shall publish in the Federal Reg-
20 ister and on the Web site of the agency a list of the rules
21 and small entity compliance guides to be reviewed under
22 the plan required under subsection (a) that includes—

23 “(1) a brief description of each rule or guide;

24 “(2) for each rule, the reason why the head of
25 the agency determined that the rule has a significant

1 economic impact on a substantial number of small
2 entities (without regard to whether the agency had
3 prepared a final regulatory flexibility analysis for the
4 rule); and

5 “(3) a request for comments from the public,
6 the Chief Counsel for Advocacy of the Small Busi-
7 ness Administration, and the Regulatory Enforce-
8 ment Ombudsman concerning the enforcement of the
9 rules or publication of the guides.

10 “(f)(1) Not later than 6 months after each date de-
11 scribed in subsection (b)(1), the Inspector General for
12 each agency shall—

13 “(A) determine whether the agency has con-
14 ducted the review required under subsection (b) ap-
15 propriately; and

16 “(B) notify the head of the agency of—

17 “(i) the results of the determination under
18 subparagraph (A); and

19 “(ii) any issues preventing the Inspector
20 General from determining that the agency has
21 conducted the review under subsection (b) ap-
22 propriately.

23 “(2)(A) Not later than 6 months after the date on
24 which the head of an agency receives a notice under para-
25 graph (1)(B) that the agency has not conducted the review

1 under subsection (b) appropriately, the agency shall ad-
 2 dress the issues identified in the notice.

3 “(B) Not later than 30 days after the last day of the
 4 6-month period described in subparagraph (A), the In-
 5 spector General for an agency that receives a notice de-
 6 scribed in subparagraph (A) shall—

7 “(i) determine whether the agency has ad-
 8 dressed the issues identified in the notice; and

9 “(ii) notify Congress if the Inspector General
 10 determines that the agency has not addressed the
 11 issues identified in the notice; and

12 “(C) Not later than 30 days after the date on which
 13 the Inspector General for an agency transmits a notice
 14 under subparagraph (B)(ii), an amount equal to 1 percent
 15 of the amount appropriated for the fiscal year to the ap-
 16 propriations account of the agency that is used to pay sal-
 17 aries shall be rescinded.

18 “(D) Nothing in this paragraph may be construed to
 19 prevent Congress from acting to prevent a rescission
 20 under subparagraph (C).”.

21 **SEC. 206. REQUIRING SMALL BUSINESS REVIEW PANELS**
 22 **FOR ADDITIONAL AGENCIES.**

23 (a) AGENCIES.—Section 609 of title 5, United States
 24 Code, is amended—

25 (1) in subsection (b)—

1 (A) by striking “a covered agency” the
 2 first place it appears and inserting “an agency
 3 designated under subsection (d)”;

4 (B) by striking “a covered agency” each
 5 place it appears and inserting “the agency”;

6 (2) by striking subsection (d), as amended by
 7 section 1100G(a) of Public Law 111–203 (124 Stat.
 8 2112), and inserting the following:

9 “(d)(1)(A) On and after the date of enactment of the
 10 Regulatory Flexibility Improvement Act of 2013, the En-
 11 vironmental Protection Agency and the Occupational Safe-
 12 ty and Health Administration of the Department of Labor
 13 shall be—

14 “(i) agencies designated under this subsection;
 15 and

16 “(ii) subject to the requirements of subsection
 17 (b).

18 “(B) On and after the designated transfer date estab-
 19 lished under section 1062 of Public Law 111–203 (12
 20 U.S.C. 5582), the Bureau of Consumer Financial Protec-
 21 tion shall be—

22 “(i) an agency designated under this subsection;
 23 and

24 “(ii) subject to the requirements of subsection
 25 (b).

1 “(2) The Chief Counsel for Advocacy shall designate
2 as agencies that shall be subject to the requirements of
3 subsection (b) on and after the date of the designation—

4 “(A) 3 agencies for the first year after the date
5 of enactment of the Regulatory Flexibility Improve-
6 ment Act of 2013;

7 “(B) in addition to the agencies designated
8 under subparagraph (A), 3 agencies for the second
9 year after the date of enactment of the Regulatory
10 Flexibility Improvement Act of 2013; and

11 “(C) in addition to the agencies designated
12 under subparagraphs (A) and (B), 3 agencies for the
13 third year after the date of enactment of the Regu-
14 latory Flexibility Improvement Act of 2013.

15 “(3) The Chief Counsel for Advocacy shall designate
16 agencies under paragraph (2) based on the economic im-
17 pact of the rules of the agency on small entities, beginning
18 with agencies with the largest economic impact on small
19 entities.”; and

20 (3) in subsection (e)(1), by striking “the cov-
21 ered agency” and inserting “the agency”.

22 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

23 (1) SECTION 603.—Section 603(d) of title 5,
24 United States Code, as added by section 1100G(b)

1 of Public Law 111–203 (124 Stat. 2112), is amend-
2 ed—

3 (A) in paragraph (1), by striking “a cov-
4 ered agency, as defined in section 609(d)(2)”
5 and inserting “the Bureau of Consumer Finan-
6 cial Protection”; and

7 (B) in paragraph (2), by striking “A cov-
8 ered agency, as defined in section 609(d)(2),”
9 and inserting “The Bureau of Consumer Finan-
10 cial Protection”.

11 (2) SECTION 604.—Section 604(a) of title 5,
12 United States Code, is amended—

13 (A) by redesignating the second paragraph
14 designated as paragraph (6) (relating to cov-
15 ered agencies), as added by section 1100G(c)(3)
16 of Public Law 111–203 (124 Stat. 2113), as
17 paragraph (7); and

18 (B) in paragraph (7), as so redesignated—

19 (i) by striking “a covered agency, as
20 defined in section 609(d)(2)” and inserting
21 “the Bureau of Consumer Financial Pro-
22 tection”; and

23 (ii) by striking “the agency” and in-
24 serting “the Bureau”.

1 (3) EFFECTIVE DATE.—The amendments made
 2 by this subsection shall take effect on the date of en-
 3 actment of this Act and apply on and after the des-
 4 ignated transfer date established under section 1062
 5 of Public Law 111–203 (12 U.S.C. 5582).

6 **SEC. 207. EXPANDING THE REGULATORY FLEXIBILITY ACT**
 7 **TO AGENCY GUIDANCE DOCUMENTS.**

8 Section 601(2) of title 5, United States Code, is
 9 amended by inserting after “public comment” the fol-
 10 lowing: “and any significant guidance document, as de-
 11 fined in the Office of Management and Budget Final Bul-
 12 letin for Agency Good Guidance Procedures (72 Fed. Reg.
 13 3432; January 25, 2007)”.

14 **SEC. 208. REQUIRING THE INTERNAL REVENUE SERVICE**
 15 **TO CONSIDER SMALL ENTITY IMPACT.**

16 (a) IN GENERAL.—Section 603(a) of title 5, United
 17 States Code, is amended, in the fifth sentence, by striking
 18 “but only” and all that follows through the period at the
 19 end and inserting “but only to the extent that such inter-
 20 pretative rules, or the statutes upon which such rules are
 21 based, impose on small entities a collection of information
 22 requirement or a recordkeeping requirement.”.

23 (b) DEFINITIONS.—Section 601 of title 5, United
 24 States Code, as amended by section 103 of this title, is
 25 amended—

1 (1) in paragraph (6), by striking “and” at the
2 end; and

3 (2) by striking paragraphs (7) and (8) and in-
4 serting the following:

5 “(7) the term ‘collection of information’ has the
6 meaning given that term in section 3502(3) of title
7 44;

8 “(8) the term ‘recordkeeping requirement’ has
9 the meaning given that term in section 3502(13) of
10 title 44; and”.

11 **SEC. 209. REPORTING ON ENFORCEMENT ACTIONS RELAT-**
12 **ING TO SMALL ENTITIES.**

13 Section 223 of the Small Business Regulatory En-
14 forcement Fairness Act of 1996 (5 U.S.C. 601 note) is
15 amended—

16 (1) in subsection (a)—

17 (A) by striking “Each agency” and insert-
18 ing the following:

19 “(1) ESTABLISHMENT OF POLICY OR PRO-
20 GRAM.—Each agency”; and

21 (B) by adding at the end the following:

22 “(2) REVIEW OF CIVIL PENALTIES.—Not later
23 than 2 years after the date of enactment of the Reg-
24 ulatory Flexibility Improvement Act of 2013, and
25 every 2 years thereafter, each agency regulating the

1 activities of small entities shall review the civil pen-
 2 alties imposed by the agency for violations of a stat-
 3 utory or regulatory requirement by a small entity to
 4 determine whether a reduction or waiver of the civil
 5 penalties is appropriate.”; and

6 (2) in subsection (c)—

7 (A) by striking “Agencies shall report”
 8 and all that follows through “the scope” and in-
 9 serting “Not later than 2 years after the date
 10 of enactment of the Regulatory Flexibility Im-
 11 provement Act of 2013, and every 2 years
 12 thereafter, each agency shall submit to the
 13 Committee on Small Business and Entrepre-
 14 neurship and the Committee on Homeland Se-
 15 curity and Governmental Affairs of the Senate
 16 and the Committee on Small Business and the
 17 Committee on the Judiciary of the House of
 18 Representatives a report discussing the scope”;
 19 and

20 (B) by striking “and the total amount of
 21 penalty reductions and waivers” and inserting
 22 “the total amount of penalty reductions and
 23 waivers, and the results of the most recent re-
 24 view under subsection (a)(2)”.

1 **SEC. 210. REQUIRING MORE DETAILED SMALL ENTITY**
2 **ANALYSES.**

3 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
4 Section 603 of title 5, United States Code, as amended
5 by section 1100G(b) of Public Law 111–203 (124 Stat.
6 2112), is amended—

7 (1) by striking subsection (b) and inserting the
8 following:

9 “(b) Each initial regulatory flexibility analysis re-
10 quired under this section shall contain a detailed state-
11 ment—

12 “(1) describing the reasons why action by the
13 agency is being considered;

14 “(2) describing the objectives of, and legal basis
15 for, the proposed rule;

16 “(3) estimating the number and type of small
17 entities to which the proposed rule will apply;

18 “(4) describing the projected reporting, record-
19 keeping, and other compliance requirements of the
20 proposed rule, including an estimate of the classes of
21 small entities which will be subject to the require-
22 ment and the type of professional skills necessary
23 for preparation of the report and record;

24 “(5) describing all relevant Federal rules which
25 may duplicate, overlap, or conflict with the proposed

1 rule, or the reasons why such a description could not
2 be provided; and

3 “(6) estimating the additional cumulative eco-
4 nomic impact of the proposed rule on small entities,
5 including job loss by small entities, beyond that al-
6 ready imposed on the class of small entities by the
7 agency, or the reasons why such an estimate is not
8 available.”; and

9 (2) by adding at the end the following:

10 “(e) An agency shall notify the Chief Counsel for Ad-
11 vocacy of the Small Business Administration of any draft
12 rules that may have a significant economic impact on a
13 substantial number of small entities—

14 “(1) when the agency submits a draft rule to
15 the Office of Information and Regulatory Affairs of
16 the Office of Management and Budget under Execu-
17 tive Order 12866, if that order requires the submis-
18 sion; or

19 “(2) if no submission to the Office of Informa-
20 tion and Regulatory Affairs is required—

21 “(A) a reasonable period before publication
22 of the rule by the agency; and

23 “(B) in any event, not later than 3 months
24 before the date on which the agency publishes
25 the rule.”.

(b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

(1) IN GENERAL.—Section 604(a) of title 5, United States Code, is amended—

(A) by inserting “detailed” before “description” each place it appears;

(B) in paragraph (2)—

(i) by inserting “detailed” before “statement” each place it appears; and

(ii) by inserting “(or certification of the proposed rule under section 605(b))” after “initial regulatory flexibility analysis”;

(C) in paragraph (4), by striking “an explanation” and inserting “a detailed explanation”; and

(D) in paragraph (6) (relating to a description of steps taken to minimize significant economic impact), as added by section 1601 of the Small Business Jobs Act of 2010 (Public Law 111–240; 124 Stat. 2251), by inserting “detailed” before “statement”.

(2) PUBLICATION OF ANALYSIS ON WEB SITE, ETC.—Section 604(b) of title 5, United States Code, is amended to read as follows:

“(b) The agency shall—

1 “(1) make copies of the final regulatory flexi-
2 bility analysis available to the public, including by
3 publishing the entire final regulatory flexibility anal-
4 ysis on the Web site of the agency; and

5 “(2) publish in the Federal Register the final
6 regulatory flexibility analysis, or a summary of the
7 analysis that includes the telephone number, mailing
8 address, and address of the Web site where the com-
9 plete final regulatory flexibility analysis may be ob-
10 tained.”.

11 (c) CROSS-REFERENCES TO OTHER ANALYSES.—
12 Section 605(a) of title 5, United States Code, is amended
13 to read as follows:

14 “(a) A Federal agency shall be deemed to have satis-
15 fied a requirement regarding the content of a regulatory
16 flexibility agenda or regulatory flexibility analysis under
17 section 602, 603, or 604, if the Federal agency provides
18 in the agenda or regulatory flexibility analysis a cross-ref-
19 erence to the specific portion of an agenda or analysis that
20 is required by another law and that satisfies the require-
21 ment under section 602, 603, or 604.”.

22 (d) CERTIFICATIONS.—Section 605(b) of title 5,
23 United States Code, is amended, in the second sentence,
24 by striking “statement providing the factual” and insert-
25 ing “detailed statement providing the factual and legal”.

1 (e) QUANTIFICATION REQUIREMENTS.—Section 607
 2 of title 5, United States Code, is amended to read as fol-
 3 lows:

4 **“§ 607. Quantification requirements**

5 “In complying with sections 603 and 604, an agency
 6 shall provide—

7 “(1) a quantifiable or numerical description of
 8 the effects of the proposed or final rule, including an
 9 estimate of the potential for job loss, and alter-
 10 natives to the proposed or final rule; or

11 “(2) a more general descriptive statement re-
 12 garding the potential for job loss and a detailed
 13 statement explaining why quantification under para-
 14 graph (1) is not practicable or reliable.”.

15 **SEC. 211. ENSURING THAT AGENCIES CONSIDER SMALL EN-**
 16 **TITY IMPACT DURING THE RULEMAKING**
 17 **PROCESS.**

18 Section 605(b) of title 5, United States Code, is
 19 amended—

20 (1) by inserting “(1)” after “(b)”; and

21 (2) by adding at the end the following:

22 “(2) If, after publication of the certification required
 23 under paragraph (1), the head of the agency determines
 24 that there will be a significant economic impact on a sub-
 25 stantial number of small entities, the agency shall comply

1 with the requirements of section 603 before the publica-
2 tion of the final rule, by—

3 “(A) publishing an initial regulatory flexibility
4 analysis for public comment; or

5 “(B) re-proposing the rule with an initial regu-
6 latory flexibility analysis.

7 “(3) The head of an agency may not make a certifi-
8 cation relating to a rule under this subsection, unless the
9 head of the agency has determined—

10 “(A) the average cost of the rule for small enti-
11 ties affected or reasonably presumed to be affected
12 by the rule;

13 “(B) the number of small entities affected or
14 reasonably presumed to be affected by the rule; and

15 “(C) the number of affected small entities for
16 which that cost will be significant.

17 “(4) Before publishing a certification and a state-
18 ment providing the factual basis for the certification under
19 paragraph (1), the head of an agency shall—

20 “(A) transmit a copy of the certification and
21 statement to the Chief Counsel for Advocacy of the
22 Small Business Administration; and

23 “(B) consult with the Chief Counsel for Advo-
24 cacy of the Small Business Administration on the
25 accuracy of the certification and statement.”.

1 **SEC. 212. ADDITIONAL POWERS OF THE OFFICE OF ADVO-**
2 **CACY.**

3 Section 203 of Public Law 94–305 (15 U.S.C. 634c)
4 is amended—

5 (1) in paragraph (5), by striking “and” at the
6 end;

7 (2) in paragraph (6), by striking the period at
8 the end and inserting “; and”; and

9 (3) by inserting after paragraph (6) the fol-
10 lowing:

11 “(7) at the discretion of the Chief Counsel for
12 Advocacy, comment on regulatory action by an agen-
13 cy that affects small businesses, without regard to
14 whether the agency is required to file a notice of
15 proposed rulemaking under section 553 of title 5,
16 United States Code, with respect to the action.”.

17 **SEC. 213. FUNDING AND OFFSETS.**

18 (a) **AUTHORIZATION.**—There are authorized to be ap-
19 propriated to the Small Business Administration, for any
20 costs of carrying out this title and the amendments made
21 by this title (including the costs of hiring additional em-
22 ployees)—

23 (1) \$1,000,000 for fiscal year 2013;

24 (2) \$2,000,000 for fiscal year 2014; and

25 (3) \$3,000,000 for fiscal year 2015.

1 (b) REPEALS.—In order to offset the costs of car-
 2 rying out this title and the amendments made by this title
 3 and to reduce the Federal deficit, the following provisions
 4 of law are repealed, effective on the date of enactment of
 5 this Act:

6 (1) Section 21(n) of the Small Business Act (15
 7 U.S.C. 648).

8 (2) Section 27 of the Small Business Act (15
 9 U.S.C. 654).

10 (3) Section 1203(c) of the Energy Security and
 11 Efficiency Act of 2007 (15 U.S.C. 657h(c)).

12 **SEC. 214. TECHNICAL AND CONFORMING AMENDMENTS.**

13 (a) HEADING.—Section 605 of title 5, United States
 14 Code, is amended in the section heading by striking
 15 “**Avoidance**” and all that follows and inserting the fol-
 16 lowing: “**Incorporations by reference and cer-**
 17 **tification.**”.

18 (b) TABLE OF SECTIONS.—The table of sections for
 19 chapter 6 of title 5, United States Code, is amended—

20 (1) by striking the item relating to section 605
 21 and inserting the following:

“605. Incorporations by reference and certifications.”;

22 and

- 1 (2) by striking the item relating to section 607
- 2 and inserting the following:

“607. Quantification requirements.”.

