

113TH CONGRESS
2D SESSION

S. 2153

To establish a National Regulatory Budget, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2014

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

A BILL

To establish a National Regulatory Budget, 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 “National Regulatory
5 Budget Act of 2014”.

6 **SEC. 2. ESTABLISHMENT OF THE OFFICE OF REGULATORY**
7 **ANALYSIS.**

8 (a) IN GENERAL.—Part I of title 5, United States
9 Code, is amended by inserting after chapter 6 the fol-
10 lowing:

1 **“CHAPTER 6A—NATIONAL REGULATORY**
 2 **BUDGET AND OFFICE OF REGU-**
 3 **LATORY ANALYSIS**

“Sec.

“613. Definitions.

“614. Office of Regulatory Analysis; establishment; powers.

“615. Functions of Office of Regulatory Analysis; Executive branch agency compliance.

“616. Public disclosure of estimate methodology and data; privacy.

“617. National Regulatory Budget; timeline.

“618. Executive branch agency cooperation mandatory; information sharing.

“619. Enforcement.

“620. Regulatory Analysis Advisory Board.

4 **“§ 613. Definitions**

5 “In this chapter—

6 “(1) the term ‘aggregate costs’, with respect to
 7 a covered Federal rule, means the sum of—

8 “(A) the direct costs of the covered Fed-
 9 eral rule; and

10 “(B) the regulatory costs of the covered
 11 Federal rule;

12 “(2) the term ‘covered Federal rule’ means—

13 “(A) a rule (as defined in section 551);

14 “(B) an information collection requirement
 15 given a control number by the Office of Man-
 16 agement and Budget; or

17 “(C) guidance or a directive that—

18 “(i) is not described in subparagraph

19 (A) or (B);

1 “(ii)(I) is mandatory in its application
2 to regulated entities; or

3 “(II) represents a statement of agency
4 position that regulated entities would rea-
5 sonably construe as reflecting the enforce-
6 ment or litigation position of the agency;
7 and

8 “(iii) imposes not less than
9 \$25,000,000 in annual costs on regulated
10 entities;

11 “(3) the term ‘direct costs’ means—

12 “(A) expenditures made by an Executive
13 branch agency that relate to the promulgation,
14 administration, or enforcement of a covered
15 Federal rule; or

16 “(B) costs incurred by an Executive
17 branch agency, a Government corporation, the
18 United States Postal Service, or any other in-
19 strumentality of the Federal Government be-
20 cause of a covered Federal rule;

21 “(4) the term ‘Director’ means the Director of
22 the Office of Regulatory Analysis established under
23 section 614(b);

24 “(5) the term ‘Executive branch agency’
25 means—

1 “(A) an Executive department (as defined
2 in section 101); and

3 “(B) an independent establishment (as de-
4 fined in section 104);

5 “(6) the term ‘regulated entity’ means—

6 “(A) a for-profit private sector entity (in-
7 cluding an individual who is in business as a
8 sole proprietor);

9 “(B) a not-for-profit private sector entity;
10 or

11 “(C) a State or local government; and

12 “(7) the term ‘regulatory costs’ means all costs
13 incurred by a regulated entity because of covered
14 Federal rules.

15 **“§ 614. Office of Regulatory Analysis; establishment;
16 powers**

17 “(a) ESTABLISHMENT.—There is established in the
18 executive branch an independent establishment to be
19 known as the ‘Office of Regulatory Analysis’.

20 “(b) DIRECTOR.—

21 “(1) ESTABLISHMENT OF POSITION.—There
22 shall be at the head of the Office of Regulatory
23 Analysis a Director, who shall be appointed by the
24 President, by and with the advice and consent of the
25 Senate.

1 “(2) TERM.—

2 “(A) IN GENERAL.—The term of office of
3 the Director shall—

4 “(i) be 4 years; and

5 “(ii) expire on the last day of Feb-
6 ruary following each Presidential election.

7 “(B) APPOINTMENTS PRIOR TO EXPIRA-
8 TION OF TERM.—Subject to subparagraph (C),
9 an individual appointed as Director to fill a va-
10 cancy prior to the expiration of a term shall
11 serve only for the unexpired portion of the
12 term.

13 “(C) SERVICE UNTIL APPOINTMENT OF
14 SUCCESSOR.—An individual serving as Director
15 at the expiration of a term may continue to
16 serve until a successor is appointed.

17 “(3) POWERS.—

18 “(A) APPOINTMENT OF DEPUTY DIREC-
19 TORS, OFFICERS, AND EMPLOYEES.—

20 “(i) IN GENERAL.—The Director may
21 appoint Deputy Directors, officers, and
22 employees, including attorneys, in accord-
23 ance with chapter 51 and subchapter III of
24 chapter 53.

1 “(ii) TERM OF DEPUTY DIRECTORS.—

2 A Deputy Director shall serve until the ex-
3 piration of the term of office of the Direc-
4 tor who appointed the Deputy Director
5 (and until a successor to that Director is
6 appointed), unless sooner removed by the
7 Director.

8 “(B) CONTRACTING.—

9 “(i) IN GENERAL.—The Director may
10 contract for financial and administrative
11 services (including those related to budget
12 and accounting, financial reporting, per-
13 sonnel, and procurement) with the General
14 Services Administration, or such other
15 Federal agency as the Director determines
16 appropriate, for which payment shall be
17 made in advance, or by reimbursement,
18 from funds of the Office of Regulatory
19 Analysis in such amounts as may be
20 agreed upon by the Director and the head
21 of the Federal agency providing the serv-
22 ices.

23 “(ii) SUBJECT TO APPROPRIATIONS.—

24 Contract authority under clause (i) shall be
25 effective for any fiscal year only to the ex-

1 tent that appropriations are available for
2 that purpose.

3 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Office of Regu-
5 latory Analysis for each fiscal year such sums as may be
6 necessary to enable the Office of Regulatory Analysis to
7 carry out its duties and functions.

8 **“§ 615. Functions of Office of Regulatory Analysis; Ex-**
9 **ecutive branch agency compliance**

10 “(a) ANNUAL REPORT REQUIRED.—

11 “(1) IN GENERAL.—Not later than January 30
12 of each year, the Director shall submit to the Com-
13 mittee on Homeland Security and Governmental Af-
14 fairs of the Senate, the Committee on Small Busi-
15 ness and Entrepreneurship of the Senate, the Com-
16 mittee on Oversight and Government Reform of the
17 House of Representatives, and the Committee on
18 Small Business of the House of Representatives a
19 Report on National Regulatory Costs (referred to in
20 this section as the ‘Report’) that includes the infor-
21 mation specified under paragraph (2).

22 “(2) CONTENTS.—Each Report shall include—

23 “(A) an estimate, for the fiscal year during
24 which the Report is submitted and for the pre-
25 ceding fiscal year, of—

1 “(i) the regulatory costs imposed by
2 each Executive branch agency on regulated
3 entities;

4 “(ii) the aggregate costs imposed by
5 each Executive branch agency;

6 “(iii) the aggregate costs imposed by
7 all Executive branch agencies combined;

8 “(iv) the direct costs incurred by the
9 Federal Government because of covered
10 Federal rules issued by each Executive
11 branch agency;

12 “(v) the sum of the costs described in
13 clauses (iii) and (iv);

14 “(vi) the regulatory costs imposed by
15 each Executive branch agency on small
16 businesses, small organizations, and small
17 governmental jurisdictions (as those terms
18 are defined in section 601); and

19 “(vii) the sum of the costs described
20 in clause (vi);

21 “(B) an analysis of any major changes in
22 estimation methodology used by the Office of
23 Regulatory Analysis since the previous annual
24 report;

1 “(C) an analysis of any major estimate
 2 changes caused by improved or inadequate data
 3 since the previous annual report;

4 “(D) recommendations, both general and
 5 specific, regarding—

6 “(i) how regulations may be stream-
 7 lined, simplified, and modernized;

8 “(ii) regulations that should be re-
 9 pealed; and

10 “(iii) how the Federal Government
 11 may reduce the costs of regulations with-
 12 out diminishing the effectiveness of regula-
 13 tions; and

14 “(E) any other information that the Direc-
 15 tor determines may be of assistance to Congress
 16 in determining the National Regulatory Budget
 17 required under section 617.

18 “(b) REGULATORY ANALYSIS OF NEW RULES.—

19 “(1) REQUIREMENT.—The Director shall pub-
 20 lish in the Federal Register and on the website of
 21 the Office of Regulatory Analysis a regulatory anal-
 22 ysis of each proposed covered Federal rule issued by
 23 an Executive branch agency, and each proposed
 24 withdrawal or modification of a covered Federal rule
 25 by an Executive branch agency, that—

1 “(A) imposes costs on a regulated entity;

2 or

3 “(B) reduces costs imposed on a regulated
4 entity.

5 “(2) CONTENTS.—Each regulatory analysis
6 published under paragraph (1) shall include—

7 “(A) an estimate of the change in regu-
8 latory cost of each proposed covered Federal
9 rule (or proposed withdrawal or modification of
10 a covered Federal rule); and

11 “(B) any other information or rec-
12 ommendation that the Director may choose to
13 provide.

14 “(3) TIMING OF REGULATORY ANALYSIS.—

15 “(A) INITIAL REGULATORY ANALYSIS.—
16 Not later than 60 days after the date on which
17 the Director receives a copy of a proposed cov-
18 ered Federal rule from the head of an Execu-
19 tive branch agency under paragraph (4), the
20 Director shall publish an initial regulatory anal-
21 ysis.

22 “(B) REVISED REGULATORY ANALYSIS.—
23 The Director may publish a revised regulatory
24 analysis at any time.

1 “(4) NOTICE TO DIRECTOR OF PROPOSED COV-
 2 ERED FEDERAL RULE.—The head of an Executive
 3 branch agency shall provide a copy of each proposed
 4 covered Federal rule to the Director in a manner
 5 prescribed by the Director.

6 “(c) EFFECTIVE DATES.—

7 “(1) IN GENERAL.—Except as provided in para-
 8 graph (2), a covered Federal rule may not take ef-
 9 fect earlier than 75 days after the date on which the
 10 head of the Executive branch agency proposing the
 11 covered Federal rule submits a copy of the proposed
 12 covered Federal rule to the Director in the manner
 13 prescribed by the Director under subsection (b)(4).

14 “(2) EXCEPTION.—If the head of the Executive
 15 branch agency proposing a covered Federal rule de-
 16 termines that the public health or safety or national
 17 security requires that the covered Federal rule be
 18 promulgated earlier than the date specified under
 19 paragraph (1), the head of the Executive branch
 20 agency may promulgate the covered Federal rule
 21 without regard to paragraph (1).

22 **“§ 616. Public disclosure of estimate methodology and**
 23 **data; privacy**

24 “(a) PRIVACY.—The Director shall comply with all
 25 relevant privacy laws, including—

1 “(1) the Confidential Information Protection
2 and Statistical Efficiency Act of 2002 (44 U.S.C.
3 3501 note);

4 “(2) section 9 of title 13; and

5 “(3) section 6103 of the Internal Revenue Code
6 of 1986.

7 “(b) DISCLOSURE.—

8 “(1) IN GENERAL.—To the maximum extent
9 permitted by law, the Director shall disclose, by pub-
10 lication in the Federal Register and on the website
11 of the Office of Regulatory Analysis, the method-
12 ology and data used to generate the estimates in the
13 Report on National Regulatory Costs required under
14 section 615.

15 “(2) GOAL OF DISCLOSURE.—In disclosing the
16 methodology and data under paragraph (1), the Di-
17 rector shall seek to provide sufficient information so
18 that outside researchers may replicate the results
19 contained in the Report on National Regulatory
20 Costs.

21 **“§ 617. National Regulatory Budget; timeline**

22 “(a) DEFINITION.—In this section—

23 “(1) the term ‘annual overall regulatory cost
24 cap’ means the maximum amount of regulatory costs

1 that all Executive branch agencies combined may
2 impose in a fiscal year;

3 “(2) the term ‘annual agency regulatory cost
4 cap’ means the maximum amount of regulatory costs
5 that an Executive branch agency may impose in a
6 fiscal year; and

7 “(3) the term ‘National Regulatory Budget’
8 means an Act of Congress that establishes, for a fis-
9 cal year—

10 “(A) the annual overall regulatory cost
11 cap; and

12 “(B) an annual agency regulatory cost cap
13 for each Executive branch agency.

14 “(b) COMMITTEE DEADLINES.—

15 “(1) REFERRAL.—Not later than March 31 of
16 each year—

17 “(A) the Committee on Small Business
18 and Entrepreneurship of the Senate shall refer
19 to the Committee on Homeland Security and
20 Governmental Affairs of the Senate a bill that
21 sets forth a National Regulatory Budget for the
22 fiscal year beginning on October 1 of that year;
23 and

24 “(B) the Committee on Small Business of
25 the House of Representatives shall refer to the

1 Committee on Oversight and Government Re-
2 form of the House of Representatives a bill that
3 sets forth a National Regulatory Budget for the
4 fiscal year beginning on October 1 of that year.

5 “(2) REPORTING.—Not later than May 31 of
6 each year—

7 “(A) the Committee on Homeland Security
8 and Governmental Affairs of the Senate shall
9 report a bill establishing a National Regulatory
10 Budget for the fiscal year beginning on October
11 1 of that year; and

12 “(B) the Committee on Oversight and Gov-
13 ernment Reform of the House of Representa-
14 tives shall report a bill establishing a National
15 Regulatory Budget for the fiscal year beginning
16 on October 1 of that year.

17 “(c) PASSAGE.—Not later than July 31 of each year,
18 the House of Representatives and the Senate shall each
19 pass a bill establishing a National Regulatory Budget for
20 the fiscal year beginning on October 1 of that year.

21 “(d) PRESENTMENT.—Not later than September 15
22 of each year, Congress shall pass and present to the Presi-
23 dent a National Regulatory Budget for the fiscal year be-
24 ginning on October 1 of that year.

25 “(e) DEFAULT BUDGET.—

1 “(1) IN GENERAL.—If a National Regulatory
2 Budget is not enacted with respect to a fiscal year,
3 the most recently enacted National Regulatory
4 Budget shall apply to that fiscal year.

5 “(2) DEFAULT INITIAL BUDGET.—

6 “(A) CALCULATION.—If a National Regu-
7 latory Budget is not enacted with respect to a
8 fiscal year, and no National Regulatory Budget
9 has previously been enacted—

10 “(i) the annual agency regulatory cost
11 cap for an Executive branch agency for the
12 fiscal year shall be equal to the amount of
13 regulatory costs imposed by that Executive
14 branch agency on regulated entities during
15 the preceding fiscal year, as estimated by
16 the Director in the annual report sub-
17 mitted to Congress under section 615(a);
18 and

19 “(ii) the annual overall regulatory cost
20 cap for the fiscal year shall be equal to the
21 sum of the amounts described in clause (i).

22 “(B) EFFECT.—For purposes of section
23 619, an annual agency regulatory cost cap de-
24 scribed in subparagraph (A) that applies to a
25 fiscal year shall have the same effect as if the

1 annual agency regulatory cost cap were part of
 2 a National Regulatory Budget applicable to
 3 that fiscal year.

4 “(f) INITIAL BUDGET.—The first National Regu-
 5 latory Budget shall be with respect to fiscal year 2016.

6 **“§ 618. Executive branch agency cooperation manda-**
 7 **tory; information sharing**

8 “(a) EXECUTIVE BRANCH AGENCY COOPERATION
 9 MANDATORY.—Not later than 45 days after the date on
 10 which the Director requests any information from an Ex-
 11 ecutive branch agency, the Executive branch agency shall
 12 provide the Director with the information.

13 “(b) MEMORANDA OF UNDERSTANDING REGARDING
 14 CONFIDENTIALITY.—

15 “(1) IN GENERAL.—An Executive branch agen-
 16 cy may require the Director to enter into a memo-
 17 randum of understanding regarding the confiden-
 18 tiality of information provided by the Executive
 19 branch agency to the Director under subsection (a)
 20 as a condition precedent to providing any requested
 21 information.

22 “(2) DEGREE OF CONFIDENTIALITY OR DATA
 23 PROTECTION.—An Executive branch agency may not
 24 require a greater degree of confidentiality or data
 25 protection from the Director in a memorandum of

1 understanding entered into under paragraph (1)
 2 than the Executive branch agency itself must adhere
 3 to.

4 “(3) SCOPE.—A memorandum of understanding
 5 entered into by the Director and an Executive
 6 branch agency under paragraph (1) shall—

7 “(A) be general in scope; and

8 “(B) govern all pending and future re-
 9 quests made to the Executive branch agency by
 10 the Director.

11 “(c) SANCTIONS FOR NON-COOPERATION.—

12 “(1) IN GENERAL.—The appropriations of an
 13 Executive branch agency for a fiscal year shall be re-
 14 duced by one-half of 1 percent if, during that fiscal
 15 year, the Director finds that—

16 “(A) the Executive branch agency has
 17 failed to timely provide information that the Di-
 18 rector requested under subsection (a);

19 “(B) the Director has provided notice of
 20 the failure described in subparagraph (A) to the
 21 Executive branch agency;

22 “(C) the Executive branch agency has
 23 failed to cure the failure described in subpara-
 24 graph (A) within 30 days of being notified
 25 under subparagraph (B); and

1 “(D) the information that the Director re-
2 quested under subsection (a)—

3 “(i) is in the possession of the Execu-
4 tive branch agency; or

5 “(ii) may reasonably be developed by
6 the Executive branch agency.

7 “(2) SEQUESTRATION.—The Office of Manage-
8 ment and Budget, in consultation with the Office of
9 Federal Financial Management and Financial Man-
10 agement Service, shall enforce a reduction in appro-
11 priations under paragraph (1) by sequestering the
12 appropriate amount of funds and returning the
13 funds to the Treasury.

14 “(3) APPEALS.—

15 “(A) IN GENERAL.—The Director of the
16 Office of Management and Budget may reduce
17 the amount of, or except as provided in sub-
18 paragraph (B), waive, a sanction imposed under
19 paragraph (1) if the Director of the Office of
20 Management and Budget finds that—

21 “(i) the sanction is unwarranted;

22 “(ii) the sanction is disproportionate
23 to the gravity of the failure;

24 “(iii) the failure has been cured; or

1 “(iv) providing the requested informa-
 2 tion would adversely affect national secu-
 3 rity.

4 “(B) NO WAIVER FOR HISTORICALLY NON-
 5 COMPLIANT AGENCIES.—The Director of the
 6 Office of Management and Budget may not
 7 waive a sanction imposed on an Executive
 8 branch agency under paragraph (1) if the Exec-
 9 utive branch agency has a history of non-com-
 10 pliance with requests for information by the Di-
 11 rector of the Office of Regulatory Analysis
 12 under subsection (a).

13 “(d) NATIONAL SECURITY.—The Director may not
 14 require an Executive branch agency to provide information
 15 under subsection (a) that would adversely affect national
 16 security.

17 **“§ 619. Enforcement**

18 “(a) EXCEEDING ANNUAL AGENCY REGULATORY
 19 COST CAP.—An Executive branch agency that exceeds the
 20 annual agency regulatory cost cap imposed by the Na-
 21 tional Regulatory Budget for a fiscal year may not pro-
 22 mulgate a new covered Federal rule that increases regu-
 23 latory costs until the Executive branch agency no longer
 24 exceeds the annual agency regulatory cost cap imposed by
 25 the applicable National Regulatory Budget.

1 “(b) DETERMINATION OF DIRECTOR.—

2 “(1) IN GENERAL.—An Executive branch agen-
3 cy may not promulgate a covered Federal rule unless
4 the Director determines, in conducting the regu-
5 latory analysis of the covered Federal rule under
6 section 615(b)(3)(A) that, after the Executive
7 branch agency promulgates the covered Federal rule,
8 the Executive branch agency will not exceed the an-
9 nual agency regulatory cost cap for that Executive
10 branch agency.

11 “(2) TIMING.—The Director shall make a de-
12 termination under paragraph (1) with respect to a
13 proposed covered Federal rule not later than 60
14 days after the Director receives a copy of the pro-
15 posed covered Federal rule under section 615(b)(4).

16 “(c) EFFECT OF VIOLATION OF THIS SECTION.—

17 “(1) NO FORCE OR EFFECT.—A covered Fed-
18 eral rule that is promulgated in violation of this sec-
19 tion shall have no force or effect.

20 “(2) JUDICIAL ENFORCEMENT.—Any party
21 may bring an action in a district court of the United
22 States to declare that a covered Federal rule has no
23 force or effect because the covered Federal rule was
24 promulgated in violation of this section.

1 **“§ 620. Regulatory Analysis Advisory Board**

2 “(a) ESTABLISHMENT OF BOARD.—In accordance
3 with the Federal Advisory Committee Act (5 U.S.C. App.),
4 the Director shall—

5 “(1) establish a Regulatory Analysis Advisory
6 Board; and

7 “(2) appoint not fewer than 9 and not more
8 than 15 individuals as members of the Regulatory
9 Analysis Advisory Board.

10 “(b) QUALIFICATIONS.—The Director shall appoint
11 individuals with technical and practical expertise in eco-
12 nomics, law, accounting, science, management, and other
13 areas that will aid the Director in preparing the annual
14 Report on National Regulatory Costs required under sec-
15 tion 615.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

17 (1) TABLE OF CHAPTERS.—The table of chap-
18 ters for part I of title 5, United States Code, is
19 amended by inserting after the item relating to
20 chapter 6 the following:

“6A. National Regulatory Budget and Office of Regulatory Analysis 613”.

21 (2) INTERNAL REVENUE CODE OF 1986.—Sec-
22 tion 6103(j) of the Internal Revenue Code of 1986
23 is amended by adding at the end the following:

24 “(7) OFFICE OF REGULATORY ANALYSIS.—
25 Upon written request by the Director of the Office

1 of Regulatory Analysis established under section 614
 2 of title 5, United States Code, the Secretary shall
 3 furnish to officers and employees of the Office of
 4 Regulatory Analysis return information for the pur-
 5 pose of, but only to the extent necessary for, an
 6 analysis of regulatory costs.”.

7 **SEC. 3. REPORT ON DUPLICATIVE PERSONNEL; REPORT ON**
 8 **REGULATORY ANALYSIS.**

9 (a) REPORT ON DUPLICATIVE PERSONNEL.—Not
 10 later than December 31, 2014, the Director shall submit
 11 to Congress a report determining positions in the Federal
 12 Government that are—

13 (1) duplicative of the work performed by the
 14 Office of Regulatory Analysis established under sec-
 15 tion 614 of title 5, United States Code; or

16 (2) otherwise rendered cost ineffective by the
 17 work of the Office of Regulatory Analysis.

18 (b) REPORT ON REGULATORY ANALYSIS.—

19 (1) REPORT REQUIRED.—Not later than June
 20 30, 2015, the Director shall provide to Congress a
 21 report analyzing the practice with respect to, and
 22 the effectiveness of—

23 (A) chapter 6 of this title (commonly
 24 known as the “Regulatory Flexibility Act”);

1 (B) the Small Business Regulatory En-
 2 forcement Fairness Act of 1996 (5 U.S.C. 601
 3 note);

4 (C) chapter 35 of title 44 (commonly
 5 known as the “Paperwork Reduction Act”;

6 (D) each Executive order that mandates
 7 economic analysis of Federal regulations; and

8 (E) Office of Management and Budget cir-
 9 culars, directives, and memoranda that mandate
 10 the economic analysis of Federal regulation.

11 (2) RECOMMENDATIONS.—The report under
 12 paragraph (1) shall include recommendations about
 13 how Federal regulatory analysis may be improved.

14 **SEC. 4. ADMINISTRATIVE PROCEDURE.**

15 (a) DEFINITION OF “RULE”.—Section 551(4) of title
 16 5, United States Code, is amended by inserting after “re-
 17 quirements of an agency” the following: “, whether or not
 18 the agency statement amends the Code of Federal Regula-
 19 tions and including, without limitation, a statement de-
 20 scribed by the agency as a regulation, rule, directive, or
 21 guidance,”.

22 (b) NOTICE OF PROPOSED RULEMAKING.—Section
 23 553(b) of title 5, United States Code, is amended, fol-

- 1 lowing the flush text, in subparagraph (A) by striking “in-
- 2 terpretative rules, general statements of policy, or”.

