

112TH CONGRESS  
1ST SESSION

# S. 1030

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

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## IN THE SENATE OF THE UNITED STATES

MAY 19, 2011

Ms. SNOWE (for herself, Mr. COBURN, Mr. ENZI, Ms. AYOTTE, Mr. MORAN, Mr. THUNE, Mr. BARRASSO, Mr. COATS, and Mr. ISAKSON) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To reform the regulatory process to ensure that small businesses are free to compete and to create jobs, 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 “Freedom from Restric-  
5 tive Excessive Executive Demands and Onerous Mandates  
6 Act of 2011”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

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

4           (2) Regulations designed for application to  
5 large-scale entities have been applied uniformly to  
6 small businesses and other small entities, sometimes  
7 inhibiting the ability of small entities to create new  
8 jobs.

9           (3) Uniform Federal regulatory and reporting  
10 requirements in many instances have imposed on  
11 small businesses and other small entities unneces-  
12 sary and disproportionately burdensome demands,  
13 including legal, accounting, and consulting costs,  
14 thereby threatening the viability of small entities  
15 and the ability of small entities to compete and cre-  
16 ate new jobs in a global marketplace.

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

21           (5) In 2009, there were nearly 70,000 pages in  
22 the Federal Register, and, according to research by  
23 the Office of Advocacy of the Small Business Admin-  
24 istration, the annual cost of Federal regulations to-  
25 tals \$1,750,000,000,000. Small firms bear a dis-

1 proportionate burden, paying approximately 36 per-  
2 cent more per employee than larger firms in annual  
3 regulatory compliance costs.

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

11 (7) It is the intention of Congress to amend  
12 chapter 6 of title 5, United States Code, to ensure  
13 that all impacts, including foreseeable indirect ef-  
14 fects, of proposed and final rules are considered by  
15 agencies during the rulemaking process and that the  
16 agencies assess a full range of alternatives that will  
17 limit adverse economic consequences, enhance eco-  
18 nomic benefits, and fully address potential job loss.

19 **SEC. 3. INCLUDING INDIRECT ECONOMIC IMPACT IN**  
20 **SMALL ENTITY ANALYSES.**

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

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

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

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

5                   “(i) purchase products or services  
6 from, sell products or services to, or other-  
7 wise conduct business with entities directly  
8 regulated by the rule;

9                   “(ii) are directly regulated by other  
10 governmental entities as a result of the  
11 rule; or

12                   “(iii) are not directly regulated by the  
13 agency as a result of the rule but are oth-  
14 erwise subject to other agency regulations  
15 as a result of the rule.”.

16 **SEC. 4. JUDICIAL REVIEW TO ALLOW SMALL ENTITIES TO**  
17 **CHALLENGE PROPOSED REGULATIONS.**

18       Section 611(a) of title 5, United States Code, is  
19 amended—

20           (1) in paragraph (1), by inserting “603,” after  
21 “601,”;

22           (2) in paragraph (2), by inserting “603,” after  
23 “601,”;

24           (3) by striking paragraph (3) and inserting the  
25 following:

1 “(3) A small entity may seek such review during the  
2 1-year period beginning on the date of final agency action,  
3 except that—

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

9 “(B) in the case of noncompliance with section  
10 603 or 605(b), a small entity may seek judicial re-  
11 view of agency compliance with such section before  
12 the close of the public comment period.”; and

13 (4) in paragraph (4)—

14 (A) in subparagraph (A), by striking “,  
15 and” and inserting a semicolon;

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

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

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

23 **SEC. 5. PERIODIC REVIEW.**

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

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

2 “(a)(1) Not later than 180 days after the date of en-  
3 actment of the Freedom from Restrictive Excessive Execu-  
4 tive Demands and Onerous Mandates Act of 2011, each  
5 agency shall establish a plan for the periodic review of—

6 “(A) each rule issued by the agency that the  
7 head of the agency determines has a significant eco-  
8 nomic impact on a substantial number of small enti-  
9 ties, without regard to whether the agency per-  
10 formed an analysis under section 604 with respect to  
11 the rule; and

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

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

19 “(A) be amended or rescinded, consistent with  
20 the stated objectives of applicable statutes, to mini-  
21 mize any significant adverse economic impacts on a  
22 substantial number of small entities (including an  
23 estimate of any adverse impacts on job creation and  
24 employment by small entities); or

25 “(B) continue in effect without change.

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

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

8       “(b) Each plan established under subsection (a) shall  
9 provide for—

10           “(1) the review of each rule and small entity  
11 compliance guide described in subsection (a)(1) in  
12 effect on the date of enactment of the Freedom from  
13 Restrictive Excessive Executive Demands and Oner-  
14 ous Mandates Act of 2011—

15                   “(A) not later than 9 years after the date  
16 of publication of the plan in the Federal Reg-  
17 ister; and

18                   “(B) every 9 years thereafter; and

19           “(2) the review of each rule adopted and small  
20 entity compliance guide described in subsection  
21 (a)(1) that is published after the date of enactment  
22 of the Freedom from Restrictive Excessive Executive  
23 Demands and Onerous Mandates Act of 2011—

1                   “(A) not later than 9 years after the publi-  
2                   cation of the final rule in the Federal Register;  
3                   and

4                   “(B) every 9 years thereafter.

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

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

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

10                  “(3) comments by the Regulatory Enforcement  
11 Ombudsman and the Chief Counsel for Advocacy of  
12 the Small Business Administration;

13                  “(4) the complexity of the rule;

14                  “(5) the extent to which the rule overlaps, du-  
15 plicates, or conflicts with other Federal rules and,  
16 unless the head of the agency determines it to be in-  
17 feasible, State and local rules;

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

23                  “(7) the length of time since the rule has been  
24 evaluated, or the degree to which technology, eco-



1        nomic conditions, or other factors have changed in  
2        the area affected by the rule; and

3            “(8) the economic impact of the rule, includ-  
4        ing—

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

7            “(B) the estimated number of small entity  
8        jobs that will be lost or created due to the rule;  
9        and

10          “(C) the projected reporting, record-  
11        keeping, and other compliance requirements of  
12        the proposed rule, including—

13            “(i) an estimate of the classes of small  
14        entities that will be subject to the require-  
15        ment; and

16            “(ii) the type of professional skills  
17        necessary for preparation of the report or  
18        record.

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

22            “(A) Congress; and

23            “(B) in the case of an agency that is not an  
24        independent regulatory agency (as defined in section  
25        3502(5) of title 44), the Administrator of the Office

1 of Information and Regulatory Affairs of the Office  
2 of Management and Budget.

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

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

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

14 “(2) for each rule, the reason why the head of  
15 the agency determined that the rule has a significant  
16 economic impact on a substantial number of small  
17 entities (without regard to whether the agency had  
18 prepared a final regulatory flexibility analysis for the  
19 rule); and

20 “(3) a request for comments from the public,  
21 the Chief Counsel for Advocacy of the Small Busi-  
22 ness Administration, and the Regulatory Enforce-  
23 ment Ombudsman concerning the enforcement of the  
24 rules or publication of the guides.

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

4           “(A) determine whether the agency has con-  
5 ducted the review required under subsection (b) ap-  
6 propriately; and

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

8               “(i) the results of the determination under  
9 subparagraph (A); and

10               “(ii) any issues preventing the Inspector  
11 General from determining that the agency has  
12 conducted the review under subsection (b) ap-  
13 propriately.

14       “(2)(A) Not later than 6 months after the date on  
15 which the head of an agency receives a notice under para-  
16 graph (1)(B) that the agency has not conducted the review  
17 under subsection (b) appropriately, the agency shall ad-  
18 dress the issues identified in the notice.

19       “(B) Not later than 30 days after the last day of the  
20 6-month period described in subparagraph (A), the In-  
21 spector General for an agency that receives a notice de-  
22 scribed in subparagraph (A) shall—

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

1           “(ii) notify Congress if the Inspector General  
2           determines that the agency has not addressed the  
3           issues identified in the notice; and

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

10          “(D) Nothing in this paragraph may be construed to  
11          prevent Congress from acting to prevent a rescission  
12          under subparagraph (C).”.

13       **SEC. 6. REQUIRING SMALL BUSINESS REVIEW PANELS FOR**  
14                               **ADDITIONAL AGENCIES.**

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

17               (1) in subsection (b)—

18                       (A) by striking “a covered agency” the  
19                       first place it appears and inserting “an agency  
20                       designated under subsection (d)”; and

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

23               (2) by striking subsection (d), as amended by  
24               section 1100G(a) of Public Law 111–203 (124 Stat.  
25               2112), and inserting the following:

1 “(d)(1)(A) On and after the date of enactment of the  
2 Freedom from Restrictive Excessive Executive Demands  
3 and Onerous Mandates Act of 2011, the Environmental  
4 Protection Agency and the Occupational Safety and  
5 Health Administration of the Department of Labor shall  
6 be—

7 “(i) agencies designated under this subsection;  
8 and

9 “(ii) subject to the requirements of subsection  
10 (b).

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

15 “(i) an agency designated under this subsection;  
16 and

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

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

22 “(A) 3 agencies for the first year after the date  
23 of enactment of the Freedom from Restrictive Ex-  
24 cessive Executive Demands and Onerous Mandates  
25 Act of 2011;

1           “(B) in addition to the agencies designated  
2           under subparagraph (A), 3 agencies for the second  
3           year after the date of enactment of the Freedom  
4           from Restrictive Excessive Executive Demands and  
5           Onerous Mandates Act of 2011; and

6           “(C) in addition to the agencies designated  
7           under subparagraphs (A) and (B), 3 agencies for the  
8           third year after the date of enactment of the Free-  
9           dom from Restrictive Excessive Executive Demands  
10          and Onerous Mandates Act of 2011.

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

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

18          (b) TECHNICAL AND CONFORMING AMENDMENTS.—

19                 (1) SECTION 603.—Section 603(d) of title 5,  
20                 United States Code, as added by section 1100G(b)  
21                 of Public Law 111–203 (124 Stat. 2112), is amend-  
22                 ed—

23                         (A) in paragraph (1), by striking “a cov-  
24                         ered agency, as defined in section 609(d)(2)”

1 and inserting “the Bureau of Consumer Finan-  
2 cial Protection”; and

3 (B) in paragraph (2), 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”.

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

9 (A) by redesignating the second paragraph  
10 designated as paragraph (6) (relating to cov-  
11 ered agencies), as added by section 1100G(e)(3)  
12 of Public Law 111–203 (124 Stat. 2113), as  
13 paragraph (7); and

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

15 (i) by striking “a covered agency, as  
16 defined in section 609(d)(2)” and inserting  
17 “the Bureau of Consumer Financial Pro-  
18 tection”; and

19 (ii) by striking “the agency” and in-  
20 serting “the Bureau”.

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

1 **SEC. 7. EXPANDING THE REGULATORY FLEXIBILITY ACT TO**  
2 **AGENCY GUIDANCE DOCUMENTS.**

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

9 **SEC. 8. REQUIRING THE INTERNAL REVENUE SERVICE TO**  
10 **CONSIDER SMALL ENTITY IMPACT.**

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

18 (b) **DEFINITIONS.**—Section 601 of title 5, United  
19 States Code, as amended by section 3 of this Act, is  
20 amended—

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

23 (2) by striking paragraphs (7) and (8) and in-  
24 serting the following:



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

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

7 **SEC. 9. REPORTING ON ENFORCEMENT ACTIONS RELATING**  
8 **TO SMALL ENTITIES.**

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

12           (1) in subsection (a)—

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

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

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

18           “(2) REVIEW OF CIVIL PENALTIES.—Not later  
19 than 2 years after the date of enactment of the  
20 Freedom from Restrictive Excessive Executive De-  
21 mands and Onerous Mandates Act of 2011, and  
22 every 2 years thereafter, each agency regulating the  
23 activities of small entities shall review the civil pen-  
24 alties imposed by the agency for violations of a stat-  
25 utory or regulatory requirement by a small entity to

1 determine whether a reduction or waiver of the civil  
2 penalties is appropriate.”; and

3 (2) in subsection (c)—

4 (A) by striking “Agencies shall report”  
5 and all that follows through “the scope” and in-  
6 serting “Not later than 2 years after the date  
7 of enactment of the Freedom from Restrictive  
8 Excessive Executive Demands and Onerous  
9 Mandates Act of 2011, and every 2 years there-  
10 after, each agency shall submit to the Com-  
11 mittee on Small Business and Entrepreneurship  
12 and the Committee on Homeland Security and  
13 Governmental Affairs of the Senate and the  
14 Committee on Small Business and the Com-  
15 mittee on the Judiciary of the House of Rep-  
16 resentatives a report discussing the scope”; and

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

22 **SEC. 10. REQUIRING MORE DETAILED SMALL ENTITY ANAL-**  
23 **YSES.**

24 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

25 Section 603 of title 5, United States Code, as amended

1 by section 1100G(b) of Public Law 111–203 (124 Stat.  
2 2112), is amended—

3 (1) by striking subsection (b) and inserting the  
4 following:

5 “(b) Each initial regulatory flexibility analysis re-  
6 quired under this section shall contain a detailed state-  
7 ment—

8 “(1) describing the reasons why action by the  
9 agency is being considered;

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

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

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

20 “(5) describing all relevant Federal rules which  
21 may duplicate, overlap, or conflict with the proposed  
22 rule, or the reasons why such a description could not  
23 be provided; and

24 “(6) estimating the additional cumulative eco-  
25 nomic impact of the proposed rule on small entities,

1 including job loss by small entities, beyond that al-  
2 ready imposed on the class of small entities by the  
3 agency, or the reasons why such an estimate is not  
4 available.”; and

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

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

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

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

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

19 “(B) in any event, not later than 3 months  
20 before the date on which the agency publishes  
21 the rule.”.

22 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

1 (A) by inserting “detailed” before “de-  
2 scription” each place it appears;

3 (B) in paragraph (2)—

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

6 (ii) by inserting “(or certification of  
7 the proposed rule under section 605(b))”  
8 after “initial regulatory flexibility anal-  
9 ysis”;

10 (C) in paragraph (4), by striking “an ex-  
11 planation” and inserting “a detailed expla-  
12 nation”; and

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

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

22 “(b) The agency shall—

23 “(1) make copies of the final regulatory flexi-  
24 bility analysis available to the public, including by

1 publishing the entire final regulatory flexibility anal-  
2 ysis on the Web site of the agency; and

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

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

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

20 (d) CERTIFICATIONS.—Section 605(b) of title 5,  
21 United States Code, is amended, in the second sentence,  
22 by striking “statement providing the factual” and insert-  
23 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. 11. 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. 12. 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. 13. 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 Act and the amendments made  
21 by this Act (including the costs of hiring additional em-  
22 ployees)—

23 (1) \$1,000,000 for fiscal year 2012;

24 (2) \$2,000,000 for fiscal year 2013; and

25 (3) \$3,000,000 for fiscal year 2014.

1 (b) REPEALS.—In order to offset the costs of car-  
2 rying out this Act and the amendments made by this Act  
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. 14. 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 inserting the following:

“607. Quantification requirements.”.

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