

112TH CONGRESS  
1ST SESSION

# S. 1338

To amend chapter 5 of title 31, United States Code, to establish the Office of Regulatory Integrity within the Office of Management and Budget.

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IN THE SENATE OF THE UNITED STATES

JULY 7, 2011

Mr. WHITEHOUSE 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 amend chapter 5 of title 31, United States Code, to establish the Office of Regulatory Integrity within the Office of Management and Budget.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Regulatory Capture  
5       Prevention Act of 2011”.

6       **SEC. 2. OFFICE OF REGULATORY INTEGRITY.**

7       (a) IN GENERAL.—Chapter 5 of title 31, United  
8       States Code, is amended by inserting after section 507 the  
9       following:

1 **“§ 508. Office of Regulatory Integrity**

2 “(a) DEFINITIONS.—In this section—

3 “(1) the term ‘Administrator’ means the Ad-  
4 ministrator of the Office of Regulatory Integrity;

5 “(2) the term ‘agency’—

6 “(A) means each authority of the Govern-  
7 ment of the United States, whether or not it is  
8 within or subject to review by another agency;  
9 and

10 “(B) does not include—

11 “(i) the Government Accountability  
12 Office; or

13 “(ii) the Congressional Budget Office;  
14 and

15 “(3) the term ‘relevant committees of Congress’  
16 means—

17 “(A) the Committee on Homeland Security  
18 and Governmental Affairs of the Senate;

19 “(B) the Committee on Appropriations of  
20 the Senate;

21 “(C) the Committee on the Judiciary of  
22 the Senate;

23 “(D) the Committee on Oversight and  
24 Government Reform of the House of Represent-  
25 atives;

1           “(E) the Committee on Appropriations of  
2 the House of Representatives;

3           “(F) the Committee on the Judiciary of  
4 the House of Representatives; and

5           “(G) with respect to a report other than  
6 the annual report, any committee in the Senate  
7 or House of Representatives that exercises over-  
8 sight authority over an agency discussed in the  
9 report.

10       “(b) OFFICE OF REGULATORY INTEGRITY.—

11           “(1) ESTABLISHMENT.—There is established in  
12 the Office of Management and Budget an office to  
13 be known as the Office of Regulatory Integrity.

14           “(2) ADMINISTRATOR.—There shall be at the  
15 head of the Office of Regulatory Integrity an Admin-  
16 istrator who shall be appointed by the President, by  
17 and with the advice and consent of the Senate.

18       “(c) FUNCTIONS OF ADMINISTRATOR.—

19           “(1) IN GENERAL.—In order to defeat regu-  
20 latory capture and related threats to the integrity of  
21 Federal agencies, the Administrator shall investigate  
22 and report on the influence of concentrated economic  
23 interests on Federal agencies, and components  
24 thereof, that results in—

1           “(A) agency action or inaction that fails to  
2           advance the congressionally assigned mission of  
3           the agency or is otherwise inimical to the public  
4           interest;

5           “(B) regulation, licensing, adjudication,  
6           grants, or other agency action that—

7                   “(i) favors a limited number of eco-  
8                   nomic interests at the expense of the agen-  
9                   cy’s congressionally assigned mission; or

10                   “(ii) is otherwise inimical to the public  
11           interest;

12           “(C) enforcement priorities that are not  
13           reasonably calculated to accomplish the goals of  
14           the regulatory program in question; or

15           “(D) a loss of confidence in the integrity  
16           of the regulatory process.

17           “(2) RECOMMENDATIONS BY THE ADMINIS-  
18           TRATOR.—When reporting on the influence of con-  
19           centrated economic interests on an agency, the Ad-  
20           ministrator shall include recommendations that, if  
21           implemented, would restore integrity to the regu-  
22           latory process by enhancing the capacity of the  
23           agency to resist such influence.

24           “(3) COMMENTS BY FEDERAL AGENCIES.—Un-  
25           less the Administrator determines that the public in-

1       terest requires immediate release, the Administrator  
2       shall—

3               “(A) provide a copy of a report to the rel-  
4               evant Federal agencies not less than 30 days  
5               before the completion of a report by the Admin-  
6               istrator; and

7               “(B) include the comments of the relevant  
8               Federal agencies as addenda to the report upon  
9               release.

10              “(4) COORDINATION WITH INSPECTORS GEN-  
11              ERAL.—The Administrator shall inform the inspec-  
12              tors general of the relevant Federal agencies upon  
13              initiation of an investigation and may coordinate  
14              with the inspectors general as the Administrator  
15              concludes is appropriate to fulfill the responsibilities  
16              established by this section.

17              “(d) AUTHORITY OF ADMINISTRATOR.—

18                      “(1) IN GENERAL.—In addition to the authority  
19                      otherwise provided by this section, the Adminis-  
20                      trator, in carrying out the provisions of this section,  
21                      is authorized to—

22                              “(A) have access to all records, reports,  
23                              audits, reviews, documents, papers, rec-  
24                              ommendations, or other material available to  
25                              the applicable agency which relate to regulatory

1 activities with respect to which the Adminis-  
2 trator has responsibilities under this section;

3 “(B) make such investigations and reports  
4 relating to the administration of the programs  
5 and operations of the applicable agency as are,  
6 in the judgment of the Administrator, necessary  
7 or desirable;

8 “(C) request such information or assist-  
9 ance as may be necessary to carry out the du-  
10 ties and responsibilities provided by this section  
11 from any Federal, State, or local governmental  
12 agency or unit thereof;

13 “(D) require by subpoena the production  
14 of all information, documents, reports, answers,  
15 records, accounts, papers, and other data in  
16 any medium (including electronically stored in-  
17 formation, as well as any tangible thing) and  
18 documentary evidence necessary in the perform-  
19 ance of the functions assigned by this section,  
20 which subpoena, in the case of contumacy or re-  
21 fusal to obey, shall be enforceable by order of  
22 any appropriate United States District Court,  
23 except that procedures other than subpoenas  
24 shall be used by the Administrator to obtain

1 documents and information from Federal agen-  
2 cies;

3 “(E) administer to or take from any per-  
4 son an oath, affirmation, or affidavit, whenever  
5 necessary in the performance of the functions  
6 assigned by this section, which oath, affirma-  
7 tion, or affidavit when administered or taken by  
8 or before an employee of the Office of Regu-  
9 latory Integrity designated by the Adminis-  
10 trator shall have the same force and effect as  
11 if administered or taken by or before an officer  
12 having a seal;

13 “(F) have direct and prompt access to the  
14 head of the agency involved when necessary for  
15 any purpose pertaining to the performance of  
16 functions and responsibilities under this section;

17 “(G) select, appoint, and employ such offi-  
18 cers and employees as may be necessary to  
19 carry out the functions, powers, and duties of  
20 the Office of Regulatory Integrity subject to the  
21 provisions of title 5, governing appointments in  
22 the competitive service, and the provisions of  
23 chapter 51 and subchapter III of chapter 53 of  
24 such title relating to classification and General  
25 Schedule pay rates;

1           “(H) obtain services as authorized by sec-  
2           tion 3109 of title 5 at daily rates not to exceed  
3           the equivalent rate prescribed for a position at  
4           level IV of the Executive Schedule; and

5           “(I) the extent and in such amounts as  
6           may be provided in advance by appropriations  
7           Acts, enter into contracts and other arrange-  
8           ments for audits, studies, analyses, and other  
9           services with public agencies and with private  
10          persons, and to make such payments as may be  
11          necessary to carry out the provisions of this  
12          section.

13          “(2) INFORMATION AND ASSISTANCE.—

14                 “(A) INFORMATION AND ASSISTANCE BY  
15                 HEAD OF AGENCY.—Upon request of the Ad-  
16                 ministrators for information or assistance under  
17                 paragraph (1), the head of any agency involved  
18                 shall, insofar as is practicable and not in con-  
19                 travention of any statutory restriction or regu-  
20                 lation of the agency from which the information  
21                 is requested, furnish to the Administrator, or to  
22                 an authorized designee, such information or as-  
23                 sistance.

24                 “(B) INFORMATION AND ASSISTANCE BY  
25                 INSPECTORS GENERAL.—Upon request of the



1 Administrator for information or assistance  
2 under paragraph (1), the Inspector General of  
3 any agency involved shall, insofar as is prac-  
4 ticable and not in contravention of any statu-  
5 tory restriction or regulation of the agency from  
6 which the information is requested, furnish to  
7 the Administrator, or to an authorized designee,  
8 such information or assistance.

9 “(C) REPORTS OF INSPECTORS GEN-  
10 ERAL.—The inspector general of each agency  
11 shall provide copies of all reports issued by that  
12 inspector general to the Administrator in a  
13 timely manner, and may provide the Adminis-  
14 trator at any time with information the inspec-  
15 tor general believes relevant to the performance  
16 of the Administrator’s duties.

17 “(D) DETAILS OF EMPLOYEES.—Upon re-  
18 quest of the Administrator, the head of any  
19 agency shall, to the extent reasonably prac-  
20 ticable, and on a reimbursable basis, detail per-  
21 sonnel of that agency to the Office of Regu-  
22 latory Integrity to assist it in carrying out its  
23 duties under this section.

24 “(E) REPORTS TO HEADS OF AGENCIES.—  
25 Whenever information or assistance requested

1 under paragraph (1) is, in the judgment of the  
2 Administrator, unreasonably refused or not pro-  
3 vided, the Administrator shall report the cir-  
4 cumstances to the head of the agency involved  
5 without delay.

6 “(3) LIMITATION ON AUTHORITY.—Except as  
7 provided in paragraphs (1) (A) and (F) and (2) (A),  
8 (B), and (D), the Administrator may not control or  
9 direct any law enforcement agency, including the  
10 Department of Justice, in the exercise of the Admin-  
11 istrator’s investigative authority.

12 “(e) CONSULTATION WITH GOVERNMENT ACCOUNT-  
13 ABILITY OFFICE.—

14 “(1) IN GENERAL.—The Administrator may  
15 consult with the Government Accountability Office  
16 as to the scope and focus of an investigation.

17 “(2) COMMENTS BY THE GOVERNMENT AC-  
18 COUNTABILITY OFFICE.—Unless the Administrator  
19 determines that the public interest requires imme-  
20 diate release, the Administrator shall—

21 “(A) provide a copy of a report to the Gov-  
22 ernment Accountability Office not less than 30  
23 days before the completion of a report by the  
24 Administrator; and

1           “(B) include the comments of the Govern-  
2           ment Accountability Office as addenda to the  
3           report upon release.

4           “(3) AVAILABILITY OF REPORTS.—Subject to  
5           the restrictions under subsection (g), the Adminis-  
6           trator shall make all reports available to the Govern-  
7           ment Accountability Office.

8           “(4) COMMENTS BY GOVERNMENT ACCOUNT-  
9           ABILITY OFFICE.—Not later than 60 days after re-  
10          ceipt of a report from the Administrator, the Gov-  
11          ernment Accountability Office shall publish written  
12          comments on the methodology and conclusions of the  
13          report.

14          “(5) FURTHER INVESTIGATIONS BY ADMINIS-  
15          TRATOR.—Upon request for further investigation by  
16          the Government Accountability Office, the Adminis-  
17          trator shall—

18                 “(A) perform the requested investigation  
19                 as promptly as reasonably feasible; or

20                 “(B) provide the Government Account-  
21                 ability Office with a written explanation why  
22                 the Administrator has chosen not to pursue fur-  
23                 ther investigation.

24          “(6) FURTHER INVESTIGATIONS BY THE GOV-  
25          ERNMENT ACCOUNTABILITY OFFICE.—Except as

1 otherwise proscribed by law, the Government Ac-  
2 countability Office may perform any further inves-  
3 tigation it determines appropriate.

4 “(f) CONSULTATION WITH ADMINISTRATIVE CON-  
5 FERENCE OF THE UNITED STATES.—

6 “(1) IN GENERAL.—Not later than 180 days  
7 after the date of enactment of the Regulatory Cap-  
8 ture Prevention Act of 2011, the Administrative  
9 Conference of the United States shall provide the  
10 Administrator with written guidance on—

11 “(A) the principal means by which con-  
12 centrated economic interests wield influence  
13 across the Federal agencies;

14 “(B) the most salient threats to regulatory  
15 integrity arising from that influence; and

16 “(C) effective measures to minimize regu-  
17 latory capture.

18 “(2) GUIDANCE.—On a continuing basis, the  
19 Administrator shall develop, in consultation with the  
20 Administrative Conference of the United States,  
21 written guidance describing the most pervasive  
22 threats to regulatory integrity and the factors that  
23 primarily inform the exercise of the Administrator’s  
24 investigatory discretion.

1           “(3) COMMENTS.—The Administrative Con-  
2           ference of the United States shall, to the extent it  
3           determines appropriate, comment upon reports  
4           issued by the Administrator.

5           “(g) REPORTS TO CONGRESS; PUBLIC RELEASE.—

6           “(1) IN GENERAL.—Not later than 30 days  
7           after completion of each report, the Administrator  
8           shall submit that report to the relevant committees  
9           of Congress. The relevant committees of Congress  
10          shall hold hearings on the report as the committees  
11          determine appropriate.

12          “(2) ANNUAL REPORTS.—

13          “(A) IN GENERAL.—Not later than April  
14          30 of each year, the Administrator shall pre-  
15          pare and provide to the relevant committees of  
16          Congress an annual report summarizing the ac-  
17          tivities of the Office of Regulatory Integrity  
18          during the immediately preceding 12-month pe-  
19          riod ending March 31.

20          “(B) CONTENTS.—Reports under this  
21          paragraph shall include—

22                  “(i) a description of significant prob-  
23                  lems, abuses, and deficiencies relating to  
24                  the undue influence in agencies of con-

1           centrated economic interests during the re-  
2           porting period;

3           “(ii) a description of the recommenda-  
4           tions for corrective action made by the Of-  
5           fice of Regulatory Integrity during the re-  
6           porting period with respect to significant  
7           problems, abuses, or deficiencies identified  
8           under clause (i);

9           “(iii) an identification of each signifi-  
10          cant recommendation described in previous  
11          semiannual reports on which corrective ac-  
12          tion has not been completed;

13          “(iv) a summary of each report issued  
14          by the Office of Regulatory Integrity; and

15          “(v) a financial report for the Office  
16          of Regulatory Integrity.

17          “(3) PUBLIC DISCLOSURE.—

18                 “(A) IN GENERAL.—Not later than 30  
19                 days after the transmission of the annual report  
20                 to the Congress, the Administrator shall make  
21                 copies of such report available on a publicly  
22                 available Internet website.

23                 “(B) LIMITATIONS ON DISCLOSURES.—

24                 Nothing in this paragraph shall be construed to

1 authorize the public disclosure of information  
2 which is—

3 “(i) specifically prohibited from disclo-  
4 sure by any other provision of law;

5 “(ii) specifically required by Executive  
6 order to be protected from disclosure in  
7 the interest of national defense or national  
8 security or in the conduct of foreign af-  
9 fairs; or

10 “(iii) a part of an ongoing criminal in-  
11 vestigation.

12 “(C) INFORMATION IN PUBLIC RECORD.—  
13 Notwithstanding subparagraph (B), any report  
14 under this subsection may be disclosed to the  
15 public in a form which includes information  
16 with respect to a part of an ongoing criminal  
17 investigation if such information has been in-  
18 cluded in a public record.

19 “(D) NO WITHHOLDING OF INFORMATION  
20 FROM CONGRESS.—Nothing in this section shall  
21 be construed to authorize or permit the with-  
22 holding of information from the Congress, or  
23 from any committee or subcommittee thereof,  
24 except as otherwise authorized by law.

1       “(h) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated for each fiscal year such  
3 sums as may be necessary to carry out this section.”.

4       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
5 The table of sections for chapter 5 of title 31, United  
6 States Code, is amended by inserting after the item relat-  
7 ing to section 507 the following:

“Sec. 508. Office of Regulatory Integrity.”.

8 **SEC. 3. EFFECTIVE DATE.**

9       The amendments made by section 2 shall take effect  
10 90 days after the date of enactment of this Act.

○