

112TH CONGRESS
1ST SESSION

S. 1615

To require enhanced economic analysis and justification of regulations proposed by certain Federal banking, housing, securities, and commodity regulators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2011

Mr. SHELBY (for himself, Mr. CRAPO, Mr. CORKER, Mr. DEMINT, Mr. VITTER, Mr. JOHANNES, Mr. TOOMEY, Mr. KIRK, Mr. MORAN, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To require enhanced economic analysis and justification of regulations proposed by certain Federal banking, housing, securities, and commodity regulators, 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 “Financial Regulatory
5 Responsibility Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act—

1 (1) the term “agency” means the Board of Gov-
2 ernors of the Federal Reserve System, the Bureau of
3 Consumer Financial Protection, the Commodity Fu-
4 tures Trading Commission, the Federal Deposit In-
5 surance Corporation, the Federal Housing Finance
6 Agency, the Financial Stability Oversight Council,
7 the Office of the Comptroller of the Currency, the
8 Office of Financial Research, the National Credit
9 Union Administration, and the Securities and Ex-
10 change Commission;

11 (2) the term “chief economist” means—

12 (A) with respect to the Board of Governors
13 of the Federal Reserve System, the Director of
14 the Division of Research and Statistics, or an
15 employee of the agency with comparable author-
16 ity;

17 (B) with respect to the Bureau of Con-
18 sumer Financial Protection, the Assistant Di-
19 rector for Research, or an employee of the
20 agency with comparable authority;

21 (C) with respect to the Commodity Fu-
22 tures Trading Commission, the Chief Econo-
23 mist, or an employee of the agency with com-
24 parable authority;

1 (D) with respect to the Federal Deposit
2 Insurance Corporation, the Director of the Divi-
3 sion of Insurance and Research, or an employee
4 of the agency with comparable authority;

5 (E) with respect to the Federal Housing
6 Finance Agency, the Chief Economist, or an
7 employee of the agency with comparable author-
8 ity;

9 (F) with respect to the Financial Stability
10 Oversight Council, the Chief Economist, or an
11 employee of the agency with comparable author-
12 ity;

13 (G) with respect to the Office of the Comp-
14 troller of the Currency, the Director for Policy
15 Analysis, or an employee of the agency with
16 comparable authority;

17 (H) with respect to the Office of Financial
18 Research, the Director, or an employee of the
19 agency with comparable authority;

20 (I) with respect to the National Credit
21 Union Administration, the Chief Economist, or
22 an employee of the agency with comparable au-
23 thority; and

24 (J) with respect to the Securities and Ex-
25 change Commission, the Director of the Divi-

1 sion of Risk, Strategy, and Financial Innova-
2 tion, or an employee of the agency with com-
3 parable authority;

4 (3) the term “Council” means the Chief Econo-
5 mists Council established under section 9; and

6 (4) the term “regulation”—

7 (A) means an agency statement of general
8 applicability and future effect that is designed
9 to implement, interpret, or prescribe law or pol-
10 icy or to describe the procedure or practice re-
11 quirements of an agency, including rules, orders
12 of general applicability, interpretive releases,
13 and other statements of general applicability
14 that the agency intends to have the force and
15 effect of law;

16 (B) does not include—

17 (i) a regulation issued in accordance
18 with the formal rulemaking provisions of
19 section 556 or 557 of title 5, United States
20 Code;

21 (ii) a regulation that is limited to
22 agency organization, management, or per-
23 sonnel matters;

1 (iii) a regulation promulgated pursu-
2 ant to statutory authority that expressly
3 prohibits compliance with this provision;

4 (iv) a regulation that is certified by
5 the agency to be an emergency action, if
6 such certification is published in the Fed-
7 eral Register; or

8 (v) a regulation that is promulgated
9 by the Board of Governors of the Federal
10 Reserve System or the Federal Open Mar-
11 ket Committee under section 10A, 10B,
12 13, 13A, or 19 of the Federal Reserve Act,
13 or any of subsections (a) through (f) of
14 section 14 of that Act.

15 **SEC. 3. REQUIRED REGULATORY ANALYSIS.**

16 (a) REQUIREMENTS FOR NOTICES OF PROPOSED
17 RULEMAKING.—An agency may not issue a notice of pro-
18 posed rulemaking unless the agency includes in the notice
19 of proposed rulemaking an analysis that contains, at a
20 minimum, with respect to each regulation that is being
21 proposed—

22 (1) an identification of the need for the regula-
23 tion and the regulatory objective, including identi-
24 fication of the nature and significance of the market

1 failure, regulatory failure, or other problem that ne-
2 cessitates the regulation;

3 (2) an explanation of why the private market or
4 State, local, or tribal authorities cannot adequately
5 address the identified market failure or other prob-
6 lem;

7 (3) an analysis of the adverse impacts to regu-
8 lated entities, other market participants, economic
9 activity, or agency effectiveness that are engendered
10 by the regulation and the magnitude of such adverse
11 impacts;

12 (4) a quantitative and qualitative assessment of
13 all anticipated direct and indirect costs and benefits
14 of the regulation (as compared to a benchmark that
15 assumes the absence of the regulation), including—

16 (A) compliance costs;

17 (B) effects on economic activity, net job
18 creation (excluding jobs related to ensuring
19 compliance with the regulation), efficiency, com-
20 petition, and capital formation;

21 (C) regulatory administrative costs; and

22 (D) costs imposed by the regulation on
23 State, local, or tribal governments or other reg-
24 ulatory authorities;

1 (5) if quantified benefits do not outweigh quan-
2 titative costs, a justification for the regulation;

3 (6) identification and assessment of all available
4 alternatives to the regulation, including modification
5 of an existing regulation or statute, together with—

6 (A) an explanation of why the regulation
7 meets the objectives of the regulation more ef-
8 fectively than the alternatives, and if the agency
9 is proposing multiple alternatives, an expla-
10 nation of why a notice of proposed rulemaking,
11 rather than an advanced notice of proposed
12 rulemaking, is appropriate; and

13 (B) if the regulation is not a pilot pro-
14 gram, an explanation of why a pilot program is
15 not appropriate;

16 (7) if the regulation specifies the behavior or
17 manner of compliance, an explanation of why the
18 agency did not instead specify performance objec-
19 tives;

20 (8) an assessment of how the burden imposed
21 by the regulation will be distributed among market
22 participants, including whether consumers, investors,
23 or small businesses will be disproportionately bur-
24 dened;

1 (9) an assessment of the extent to which the
2 regulation is inconsistent, incompatible, or duplica-
3 tive with the existing regulations of the agency or
4 those of other domestic and international regulatory
5 authorities with overlapping jurisdiction;

6 (10) a description of any studies, surveys, or
7 other data relied upon in preparing the analysis;

8 (11) an assessment of the degree to which the
9 key assumptions underlying the analysis are subject
10 to uncertainty; and

11 (12) an explanation of predicted changes in
12 market structure and infrastructure and in behavior
13 by market participants, including consumers and in-
14 vestors, assuming that they will pursue their eco-
15 nomic interests.

16 (b) REQUIREMENTS FOR NOTICES OF FINAL RULE-
17 MAKING.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law, an agency may not issue a notice
20 of final rulemaking with respect to a regulation un-
21 less the agency—

22 (A) has issued a notice of proposed rule-
23 making for the relevant regulation;

24 (B) has conducted and includes in the no-
25 tice of final rulemaking an analysis that con-

1 tains, at a minimum, the elements required
2 under subsection (a); and

3 (C) includes in the notice of final rule-
4 making regulatory impact metrics selected by
5 the chief economist to be used in preparing the
6 report required pursuant to section 6.

7 (2) CONSIDERATION OF COMMENTS.—The
8 agency shall incorporate in the elements described in
9 paragraph (1)(B) the data and analyses provided to
10 the agency by commenters during the comment pe-
11 riod, or explain why the data or analyses are not
12 being incorporated.

13 (3) COMMENT PERIOD.—An agency shall not
14 publish a notice of final rulemaking with respect to
15 a regulation, unless the agency—

16 (A) has allowed at least 90 days from the
17 date of publication in the Federal Register of
18 the notice of proposed rulemaking for the sub-
19 mission of public comments; or

20 (B) includes in the notice of final rule-
21 making an explanation of why the agency was
22 not able to provide a 90-day comment period.

23 (4) PROHIBITED RULES.—

24 (A) IN GENERAL.—An agency may not
25 publish a notice of final rulemaking if the agen-

1 cy, in its analysis under paragraph (1)(B), de-
2 termines that the quantified costs are greater
3 than the quantified benefits under subsection
4 (a)(5).

5 (B) PUBLICATION OF ANALYSIS.—If the
6 agency is precluded by subparagraph (A) from
7 publishing a notice of final rulemaking, the
8 agency shall publish in the Federal Register
9 and on the public website of the agency its
10 analysis under paragraph (1)(B), and provide
11 the analysis to each House of Congress.

12 (C) CONGRESSIONAL WAIVER.—If the
13 agency is precluded by subparagraph (A) from
14 publishing a notice of final rulemaking, Con-
15 gress, by joint resolution pursuant to the proce-
16 dures set forth for joint resolutions in section
17 802 of title 5, United States Code, may direct
18 the agency to publish a notice of final rule-
19 making notwithstanding the prohibition con-
20 tained in subparagraph (A). In applying section
21 802 of title 5, United States Code, for purposes
22 of this paragraph, section 802(e)(2) shall not
23 apply and the term—

24 (i) “joint resolution” or “joint resolu-
25 tion described in subsection (a)” means

1 only a joint resolution introduced during
2 the period beginning on the submission or
3 publication date and ending 60 days there-
4 after (excluding days either House of Con-
5 gress is adjourned for more than 3 days
6 during a session of Congress), the matter
7 after the resolving clause of which is as fol-
8 lows: “That Congress directs, notwith-
9 standing the prohibition contained in
10 (3)(b)(4)(A) of the Financial Regulatory
11 Responsibility Act of 2011, the ____ to
12 publish the notice of final rulemaking for
13 the regulation or regulations that were the
14 subject of the analysis submitted by the
15 ____ to Congress on ____.” (The blank
16 spaces being appropriately filled in.); and

17 (ii) “submission or publication date”
18 means—

19 (I) the date on which the analysis
20 under paragraph (1)(B) is submitted
21 to Congress under paragraph (4)(B);
22 or

23 (II) if the analysis is submitted
24 to Congress less than 60 session days
25 or 60 legislative days before the date

1 on which the Congress adjourns a ses-
2 sion of Congress, the date on which
3 the same or succeeding Congress first
4 convenes its next session.

5 **SEC. 4. RULE OF CONSTRUCTION.**

6 For purposes of the Paperwork Reduction Act (44
7 U.S.C. 3501 et seq.), obtaining, causing to be obtained,
8 or soliciting information for purposes of complying with
9 section 3 with respect to a proposed rulemaking shall not
10 be construed to be a collection of information, provided
11 that the agency has first issued an advanced notice of pro-
12 posed rulemaking in connection with the regulation, iden-
13 tifies that advanced notice of proposed rulemaking in its
14 solicitation of information, and informs the person from
15 whom the information is obtained or solicited that the pro-
16 vision of information is voluntary.

17 **SEC. 5. PUBLIC AVAILABILITY OF DATA AND REGULATORY**
18 **ANALYSIS.**

19 (a) IN GENERAL.—At or before the commencement
20 of the public comment period with respect to a regulation,
21 the agency shall make available on its public website suffi-
22 cient information about the data, methodologies, and as-
23 sumptions underlying the analyses performed pursuant to
24 section 3 so that the analytical results of the agency are

1 capable of being substantially reproduced, subject to an
2 acceptable degree of imprecision or error.

3 (b) CONFIDENTIALITY.—The agency shall comply
4 with subsection (a) in a manner that preserves the con-
5 fidentiality of nonpublic information, including confiden-
6 tial trade secrets, confidential commercial or financial in-
7 formation, and confidential information about positions,
8 transactions, or business practices.

9 **SEC. 6. FIVE-YEAR REGULATORY IMPACT ANALYSIS.**

10 (a) IN GENERAL.—Not later than 5 years after the
11 date of publication in the Federal Register of a notice of
12 final rulemaking, the chief economist of the agency shall
13 issue a report that examines the economic impact of the
14 subject regulation, including the direct and indirect costs
15 and benefits of the regulation.

16 (b) REGULATORY IMPACT METRICS.—In preparing
17 the report required by subsection (a), the chief economist
18 shall employ the regulatory impact metrics included in the
19 notice of final rulemaking pursuant to section 3(b)(1)(C).

20 (c) REPRODUCIBILITY.—The report shall include the
21 data, methodologies, and assumptions underlying the eval-
22 uation so that the agency’s analytical results are capable
23 of being substantially reproduced, subject to an acceptable
24 degree of imprecision or error.

1 (d) CONFIDENTIALITY.—The agency shall comply
2 with subsection (c) in a manner that preserves the con-
3 fidentiality of nonpublic information, including confiden-
4 tial trade secrets, confidential commercial or financial in-
5 formation, and confidential information about positions,
6 transactions, or business practices.

7 (e) REPORT.—The agency shall submit the report re-
8 quired by subsection (a) to the Committee on Banking,
9 Housing, and Urban Affairs of the Senate and the Com-
10 mittee on Financial Services of the House of Representa-
11 tives and post it on the public website of the agency. The
12 Commodity Futures Trading Commission shall also sub-
13 mit its report to the Committee on Agriculture, Nutrition,
14 and Forestry of the Senate and the Committee on Agri-
15 culture of the House of Representatives.

16 **SEC. 7. RETROSPECTIVE REVIEW OF EXISTING RULES.**

17 (a) REGULATORY IMPROVEMENT PLAN.—Not later
18 than 1 year after the date of enactment of this Act and
19 every 5 years thereafter, each agency shall develop, submit
20 to the Committee on Banking, Housing, and Urban Af-
21 fairs of the Senate and the Committee on Financial Serv-
22 ices of the House of Representatives, and post on the pub-
23 lic website of the agency a plan, consistent with law and
24 its resources and regulatory priorities, under which the
25 agency will modify, streamline, expand, or repeal existing

1 regulations so as to make the regulatory program of the
2 agency more effective or less burdensome in achieving the
3 regulatory objectives. The Commodity Futures Trading
4 Commission shall also submit its plan to the Committee
5 on Agriculture, Nutrition, and Forestry of the Senate and
6 the Committee on Agriculture of the House of Representa-
7 tives.

8 (b) IMPLEMENTATION PROGRESS REPORT.—Two
9 years after the date of submission of each plan required
10 under subsection (a), each agency shall develop, submit
11 to the Committee on Banking, Housing, and Urban Af-
12 fairs of the Senate and the Committee on Financial Serv-
13 ices of the House of Representatives, and post on the pub-
14 lic website of the agency a report of the steps that it has
15 taken to implement the plan, steps that remain to be taken
16 to implement the plan, and, if any parts of the plan will
17 not be implemented, reasons for not implementing those
18 parts of the plan. The Commodity Futures Trading Com-
19 mission shall also submit its plan to the Committee on
20 Agriculture, Nutrition, and Forestry of the Senate and the
21 Committee on Agriculture of the House of Representa-
22 tives.

23 **SEC. 8. JUDICIAL REVIEW.**

24 (a) IN GENERAL.—Notwithstanding any other provi-
25 sion of law, during the period beginning on the date on

1 which a notice of final rulemaking for a regulation is pub-
2 lished in the Federal Register and ending 1 year later,
3 a person that is adversely affected or aggrieved by the reg-
4 ulation is entitled to bring an action in the United States
5 Court of Appeals for the District of Columbia Circuit for
6 judicial review of agency compliance with the requirements
7 of section 3.

8 (b) STAY.—The court may stay the effective date of
9 the regulation or any provision thereof.

10 (c) RELIEF.—If the court finds that an agency has
11 not complied with the requirements of section 3, the court
12 shall vacate the subject regulation, unless the agency
13 shows by clear and convincing evidence that vacating the
14 regulation would result in irreparable harm. Nothing in
15 this section affects other limitations on judicial review or
16 the power or duty of the court to dismiss any action or
17 deny relief on any other appropriate legal or equitable
18 ground.

19 **SEC. 9. CHIEF ECONOMISTS COUNCIL.**

20 (a) ESTABLISHMENT.—There is established the Chief
21 Economists Council.

22 (b) MEMBERSHIP.—The Council shall consist of the
23 chief economist of each agency. The members of the Coun-
24 cil shall select the first chairperson of the Council. There-

1 after the position of Chairperson shall rotate annually
2 among the members of the Council.

3 (c) MEETINGS.—The Council shall meet at the call
4 of the Chairperson, but not less frequently than quarterly.

5 (d) REPORT.—One year after the effective date of
6 this Act and annually thereafter, the Council shall prepare
7 and submit to the Committee on Banking, Housing, and
8 Urban Affairs and the Committee on Agriculture, Nutri-
9 tion, and Forestry of the Senate and the Committee on
10 Financial Services and the Committee on Agriculture of
11 the House of Representatives a report on—

12 (1) the benefits and costs of regulations adopt-
13 ed by the agencies during the past 12 months;

14 (2) the regulatory actions planned by the agen-
15 cies for the upcoming 12 months;

16 (3) the cumulative effect of the existing regula-
17 tions of the agencies on economic activity, innova-
18 tion, international competitiveness of entities regu-
19 lated by the agencies, and net job creation (exclud-
20 ing jobs related to ensuring compliance with the reg-
21 ulation);

22 (4) the training and qualifications of the per-
23 sons who prepared the cost-benefit analyses of each
24 agency during the past 12 months;

1 (5) the sufficiency of the resources available to
2 the chief economists during the past 12 months for
3 the conduct of the activities required by this Act;
4 and

5 (6) recommendations for legislative or regu-
6 latory action to enhance the efficiency and effective-
7 ness of financial regulation in the United States.

8 **SEC. 10. CONFORMING AMENDMENTS.**

9 Section 15(a) of the Commodity Exchange Act (7
10 U.S.C. 19(a)) is amended—

11 (1) by striking paragraph (1);

12 (2) in paragraph (2), by striking (2) and all
13 that follows through “light of—” and inserting the
14 following:

15 “(1) CONSIDERATIONS.—Before promulgating a
16 regulation under this chapter or issuing an order
17 (except as provided in paragraph (2)), the Commis-
18 sion shall take into consideration—”;

19 (3) in paragraph (1), as so redesignated—

20 (A) in subparagraph (B), by striking “fu-
21 tures” and inserting “the relevant”;

22 (B) in subparagraph (C), by adding “and”
23 at the end;

24 (C) in subparagraph (D), by striking
25 “and” at the end; and

1 (D) by striking subparagraph (E); and
2 (4) by redesignating paragraph (3) as para-
3 graph (2).

4 **SEC. 11. OTHER REGULATORY ENTITIES.**

5 (a) SECURITIES AND EXCHANGE COMMISSION.—Not
6 later than 1 year after the date of enactment of this Act,
7 the Securities and Exchange Commission shall provide to
8 the Committee on Banking, Housing, and Urban Affairs
9 of the Senate and the Committee on Financial Services
10 of the House of Representatives a report setting forth a
11 plan for subjecting the Public Company Accounting Over-
12 sight Board, the Municipal Securities Rulemaking Board,
13 and any national securities association registered under
14 section 15A of the Securities Exchange Act of 1934 (15
15 U.S.C. 78o–4(a)) to the requirements of this Act, other
16 than direct representation on the Council.

17 (b) COMMODITY FUTURES TRADING COMMISSION.—
18 Not later than 1 year after the date of enactment of this
19 Act, the Commodity Futures Trading Commission shall
20 provide to the Committee on Banking, Housing, and
21 Urban Affairs of the Senate, the Committee on Financial
22 Services of the House of Representatives, the Committee
23 on Agriculture, Nutrition, and Forestry of the Senate, and
24 the Committee on Agriculture of the House of Representa-
25 tives a report setting forth a plan for subjecting any fu-

1 tures association registered under section 17 of the Com-
2 modity Exchange Act (7 U.S.C. 21) to the requirements
3 of this Act, other than direct representation on the Coun-
4 cil.

5 **SEC. 12. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY**
6 **ANALYSES.**

7 An agency may perform the analyses required by this
8 Act in conjunction with, or as a part of, any other agenda
9 or analysis required by any other provision of law, if such
10 other analysis satisfies the provisions this Act.

11 **SEC. 13. SEVERABILITY.**

12 If any provision of this Act or the application of any
13 provision of this Act to any person or circumstance, is held
14 invalid, the application of such provision to other persons
15 or circumstances, and the remainder of this Act, shall not
16 be affected thereby.

○