

112TH CONGRESS
1ST SESSION

S. 602

To require regulatory reform.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2011

Ms. COLLINS (for herself, Mr. ROBERTS, and Mr. BARRASSO) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To require regulatory reform.

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 “Clearing Unnecessary
5 Regulatory Burdens Act” or the “CURB Act”.

6 **SEC. 2. REGULATORY REFORM.**

7 (a) DEFINITIONS.—In this section—

8 (1) the term “Administrator” means the Ad-
9 ministrator of the Office of Information and Regu-
10 latory Affairs in the Office of Management and
11 Budget;

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

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

12 (4) the term “disseminated”—

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

15 (B) does not include—

16 (i) distribution limited to Federal
17 Government employees;

18 (ii) intra- or interagency use or shar-
19 ing of Federal Government information;
20 and

21 (iii) responses to requests for agency
22 records under section 552 of title 5,
23 United States Code (commonly referred to
24 as the “Freedom of Information Act”),
25 section 552a of title 5, United States Code,

1 (commonly referred to as the “Privacy
2 Act”), the Federal Advisory Committee
3 Act (5 U.S.C. App.), or other similar laws;

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

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

16 (7) the term “regulatory action” means any
17 substantive action by an agency (normally published
18 in the Federal Register) that promulgates or is ex-
19 pected to lead to the promulgation of a final regula-
20 tion, including notices of inquiry, advance notices of
21 proposed rulemaking, and notices of proposed rule-
22 making;

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

1 (A) means a guidance document dissemi-
2 nated to regulated entities or the general public
3 that may reasonably be anticipated to—

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

11 (ii) create a serious inconsistency or
12 otherwise interfere with an action taken or
13 planned by another agency;

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

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

22 (B) does not include—

23 (i) legal advisory opinions for internal
24 Executive Branch use and not for release

- 1 (such as Department of Justice Office of
2 Legal Counsel opinions);
- 3 (ii) briefs and other positions taken by
4 agencies in investigations, pre-litigation,
5 litigation, or other enforcement pro-
6 ceedings;
- 7 (iii) speeches;
- 8 (iv) editorials;
- 9 (v) media interviews;
- 10 (vi) press materials;
- 11 (vii) congressional correspondence;
- 12 (viii) guidance documents that pertain
13 to a military or foreign affairs function of
14 the United States (other than guidance on
15 procurement or the import or export of
16 non-defense articles and services);
- 17 (ix) grant solicitations;
- 18 (x) warning letters;
- 19 (xi) case or investigatory letters re-
20 sponding to complaints involving fact-spe-
21 cific determinations;
- 22 (xii) purely internal agency policies;
- 23 (xiii) guidance documents that pertain
24 to the use, operation or control of a gov-
25 ernment facility;

1 (xiv) internal guidance documents di-
2 rected solely to other agencies; and

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

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

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

16 (B) create a serious inconsistency or other-
17 wise interfere with an action taken or planned
18 by another agency;

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

23 (D) raise novel legal or policy issues aris-
24 ing out of legal mandates and the priorities,
25 principles, and provisions of this section.

1 (b) AGENCY ASSESSMENT OF SIGNIFICANT REGU-
2 LATORY ACTIONS.—For each significant regulatory ac-
3 tion, each agency shall submit, at such times specified by
4 the Administrator, a report to the Office of Information
5 and Regulatory Affairs that includes—

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

9 (A) the promotion of the efficient func-
10 tioning of the economy and private markets;

11 (B) the enhancement of health and safety;

12 (C) the protection of the natural environ-
13 ment; and

14 (D) the elimination or reduction of dis-
15 crimination or bias;

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

18 (3) an assessment, including the underlying
19 analysis, of costs anticipated from the regulatory ac-
20 tion, such as—

21 (A) the direct cost both to the Federal
22 Government in administering the significant
23 regulatory action and to businesses, consumers,
24 and others (including State, local, and tribal of-
25 ficials) in complying with the regulation; and

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

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

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

18 (c) AGENCY GOOD GUIDANCE PRACTICES.—

19 (1) AGENCY STANDARDS FOR SIGNIFICANT
20 GUIDANCE DOCUMENTS.—

21 (A) APPROVAL PROCEDURES.—

22 (i) IN GENERAL.—Each agency shall
23 develop or have written procedures for the
24 approval of significant guidance docu-
25 ments, which shall ensure that the issuance

1 of significant guidance documents is ap-
2 proved by appropriate senior agency offi-
3 cials.

4 (ii) REQUIREMENT.—Employees of an
5 agency may not depart from significant
6 guidance documents without appropriate
7 justification and supervisory concurrence.

8 (B) STANDARD ELEMENTS.—Each signifi-
9 cant guidance document—

10 (i) shall—

11 (I) include the term “guidance”
12 or its functional equivalent;

13 (II) identify the agency or office
14 issuing the document;

15 (III) identify the activity to
16 which and the persons to whom the
17 significant guidance document applies;

18 (IV) include the date of issuance;

19 (V) note if the significant guid-
20 ance document is a revision to a pre-
21 viously issued guidance document and,
22 if so, identify the document that the
23 significant guidance document re-
24 places;

1 (VI) provide the title of the docu-
2 ment and a document identification
3 number; and

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

9 (ii) shall not include mandatory terms
10 such as “shall”, “must”, “required”, or
11 “requirement” unless—

12 (I) the agency is using those
13 terms to describe a statutory or regu-
14 latory requirement; or

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

19 (2) PUBLIC ACCESS AND FEEDBACK FOR SIG-
20 NIFICANT GUIDANCE DOCUMENTS.—

21 (A) INTERNET ACCESS.—

22 (i) IN GENERAL.—Each agency
23 shall—

24 (I) maintain on the Web site for
25 the agency, or as a link on the Web

1 site of the agency to the electronic list
2 posted on a Web site of a component
3 of the agency a list of the significant
4 guidance documents in effect of the
5 agency, including a link to the text of
6 each significant guidance document
7 that is in effect; and

8 (II) not later than 30 days after
9 the date on which a significant guid-
10 ance document is issued, update the
11 list described in clause (i).

12 (ii) LIST REQUIREMENTS.—The list
13 described in subparagraph (A)(i) shall—

14 (I) include the name of each—

15 (aa) significant guidance
16 document;

17 (bb) document identification
18 number; and

19 (cc) issuance and revision
20 dates; and

21 (II) identify significant guidance
22 documents that have been added, re-
23 vised, or withdrawn in the preceding
24 year.

25 (B) PUBLIC FEEDBACK.—

1 (i) IN GENERAL.—Each agency shall
2 establish and clearly advertise on the Web
3 site for the agency a means for the public
4 to electronically submit—

5 (I) comments on significant guid-
6 ance documents; and

7 (II) a request for issuance, recon-
8 sideration, modification, or rescission
9 of significant guidance documents.

10 (ii) AGENCY RESPONSE.—Any com-
11 ments or requests submitted under sub-
12 paragraph (A)—

13 (I) are for the benefit of the
14 agency; and

15 (II) shall not require a formal re-
16 sponse from the agency.

17 (iii) OFFICE FOR PUBLIC COM-
18 MENTS.—

19 (I) IN GENERAL.—Each agency
20 shall designate an office to receive and
21 address complaints from the public re-
22 lating to—

23 (aa) the failure of the agen-
24 cy to follow the procedures de-
25 scribed in this section; or

1 (bb) the failure to treat a
2 significant guidance document as
3 a binding requirement.

4 (II) WEB SITE.—The agency
5 shall provide, on the Web site of the
6 agency, the name and contact infor-
7 mation for the office designated under
8 clause (i).

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

11 (A) IN GENERAL.—Except as provided in
12 paragraph (2), in preparing a draft of an eco-
13 nomically significant guidance document, and
14 before issuance of the final significant guidance
15 document, each agency shall—

16 (i) publish a notice in the Federal
17 Register announcing that the draft docu-
18 ment is available;

19 (ii) post the draft document on the
20 Internet and make a tangible copy of that
21 document publicly available (or notify the
22 public how the public can review the guid-
23 ance document if the document is not in a
24 format that permits such electronic posting
25 with reasonable efforts);

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

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

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

12 (4) EMERGENCIES.—

13 (A) IN GENERAL.—In emergency situa-
14 tions or when an agency is obligated by law to
15 act more quickly than normal review procedures
16 allow, the agency shall notify the Administrator
17 as soon as possible and, to the extent prac-
18 ticable, comply with this subsection.

19 (B) SIGNIFICANT GUIDANCE DOCUMENTS
20 SUBJECT TO STATUTORY OR COURT-IMPOSED
21 DEADLINE.—For a significant guidance docu-
22 ment that is governed by a statutory or court-
23 imposed deadline, the agency shall, to the ex-
24 tent practicable, schedule the proceedings of the

1 agency to permit sufficient time to comply with
2 this subsection.

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

6 **SEC. 3. REDUCTION OR WAIVER OF CIVIL PENALTIES IM-**
7 **POSED ON SMALL ENTITIES.**

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

11 **“§ 613. Reduction or waiver of civil penalties imposed**
12 **on small entities**

13 “(a) Upon the request of a small entity, a Regional
14 Advocate of the Office of Advocacy of the Small Business
15 Administration (referred to in this section as a ‘Regional
16 Advocate’) shall submit to an agency a request that the
17 agency reduce or waive a civil penalty imposed on the
18 small entity, if the Regional Advocate determines that—

19 “(1) the civil penalty was the result of a first-
20 time violation by the small entity of a requirement
21 to report information to the agency; and

22 “(2) the reduction or waiver is consistent with
23 the conditions and exclusions described in para-
24 graphs (1), (3), (4), (5), and (6) of section 223(b)
25 of the Small Business Regulatory Enforcement Fair-

1 ness Act of 1996 (Public Law 104–121; 110 Stat.
2 862).

3 “(b) Not later than 60 days after the receipt of a
4 request from a Regional Advocate under subsection (a),
5 an agency shall send written notice of the decision of the
6 agency with respect to the request, together with the rea-
7 sons for the decision, to the Regional Advocate that made
8 the request and the relevant small entity.

9 “(c) The Chief Counsel for Advocacy shall submit to
10 Congress an annual report summarizing—

11 “(1) the requests received by the Regional Ad-
12 vocates from small entities under subsection (a); and

13 “(2) the requests submitted by the Regional
14 Advocates to agencies under subsection (a) and the
15 results of the requests.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENT.—

17 The table of sections for chapter 6 of title 5, United States
18 Code, is amended by adding at the end the following:

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

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