

118TH CONGRESS  
1ST SESSION

# H. R. 358

To amend chapter 6 of title 5, United States Code (commonly known as the “Regulatory Flexibility Act”), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2023

Mr. CLINE (for himself and Mrs. MILLER of Illinois) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Small Business, and Oversight and Accountability, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend chapter 6 of title 5, United States Code (commonly known as the “Regulatory Flexibility Act”), to ensure complete analysis of potential impacts on small entities of rules, 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 “Small Business Regu-  
5 latory Flexibility Improvements Act”.

1 **SEC. 2. CLARIFICATION AND EXPANSION OF RULES COV-**  
2 **ERED BY THE REGULATORY FLEXIBILITY**  
3 **ACT.**

4 (a) **IN GENERAL.**—Section 601(2) of title 5, United  
5 States Code, is amended to read as follows:

6 “(2) **RULE.**—The term ‘rule’—

7 “(A) has the meaning given the term in  
8 section 551(4); and

9 “(B) does not include—

10 “(i) a rule pertaining to the protection  
11 of the rights of and benefits for veterans  
12 or part 232 of title 32, Code of Federal  
13 Regulations (as in effect on July 1, 2014),  
14 or any successor provisions thereto; or

15 “(ii) a rule of particular (and not gen-  
16 eral) applicability relating to rates, wages,  
17 corporate or financial structures or reorga-  
18 nizations thereof, prices, facilities, appli-  
19 ances, services, or allowances therefor or to  
20 valuations, costs or accounting, or prac-  
21 tices relating to such rates, wages, struc-  
22 tures, prices, appliances, services, or allow-  
23 ances.”.

24 (b) **INCLUSION OF RULES WITH INDIRECT EF-**  
25 **FECTS.**—Section 601 of title 5, United States Code, is  
26 amended by adding at the end the following:

1           “(9) ECONOMIC IMPACT.—The term ‘economic  
2 impact’ means, with respect to a proposed or final  
3 rule—

4                   “(A) any direct economic effect on small  
5 entities of such rule; and

6                   “(B) any indirect economic effect (includ-  
7 ing compliance costs and effects on revenue) on  
8 small entities which is reasonably foreseeable  
9 and results from such rule (without regard to  
10 whether small entities will be directly regulated  
11 by the rule).”.

12       (c) INCLUSION OF RULES WITH BENEFICIAL EF-  
13 FECTS.—

14           (1) INITIAL REGULATORY FLEXIBILITY ANAL-  
15 YSIS.—Section 603(c) of title 5, United States Code,  
16 is amended by striking the first sentence and insert-  
17 ing “Each initial regulatory flexibility analysis shall  
18 also contain a detailed description of alternatives to  
19 the proposed rule which minimize any adverse sig-  
20 nificant economic impact or maximize any beneficial  
21 significant economic impact on small entities.”.

22           (2) FINAL REGULATORY FLEXIBILITY ANAL-  
23 YSIS.—Section 604(a) of title 5, United States Code,  
24 is amended—

1 (A) by redesignating the second paragraph  
2 designated as paragraph (6) (relating to cov-  
3 ered agencies) as paragraph (7); and

4 (B) in paragraph (6), by striking “mini-  
5 mize the significant economic impact” and in-  
6 serting “minimize the adverse significant eco-  
7 nomic impact or maximize the beneficial signifi-  
8 cant economic impact”.

9 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-  
10 NIZATIONS.—Section 601(5) of title 5, United States  
11 Code, is amended by inserting “and tribal organizations  
12 (as defined in section 4(l) of the Indian Self-Determina-  
13 tion and Education Assistance Act (25 U.S.C. 5304(l))),”  
14 after “special districts,”.

15 (e) INCLUSION OF LAND MANAGEMENT PLANS AND  
16 FORMAL RULE MAKING.—

17 (1) INITIAL REGULATORY FLEXIBILITY ANAL-  
18 YSIS.—Section 603(a) of title 5, United States Code,  
19 is amended in the first sentence—

20 (A) by striking “or” after “proposed  
21 rule,”; and

22 (B) by inserting “or publishes a revision or  
23 amendment to a land management plan,” after  
24 “United States,”.

1           (2) FINAL REGULATORY FLEXIBILITY ANAL-  
2           YSIS.—Section 604(a) of title 5, United States Code,  
3           is amended in the first sentence—

4                   (A) by striking “or” after “proposed rule-  
5                   making,”; and

6                   (B) by inserting “or adopts a revision or  
7                   amendment to a land management plan,” after  
8                   “section 603(a),”.

9           (3) LAND MANAGEMENT PLAN DEFINED.—Sec-  
10          tion 601 of title 5, United States Code, as amended  
11          by subsection (b), is amended by adding at the end  
12          the following:

13                   “(10) LAND MANAGEMENT PLAN.—

14                           “(A) IN GENERAL.—The term ‘land man-  
15                           agement plan’ means—

16                                   “(i) any plan developed by the Sec-  
17                                   retary of Agriculture under section 6 of  
18                                   the Forest and Rangeland Renewable Re-  
19                                   sources Planning Act of 1974 (16 U.S.C.  
20                                   1604); and

21                                   “(ii) any plan developed by the Sec-  
22                                   retary of the Interior under section 202 of  
23                                   the Federal Land Policy and Management  
24                                   Act of 1976 (43 U.S.C. 1712).

1           “(B) REVISION.—The term ‘revision’  
2 means any change to a land management plan  
3 which—

4           “(i) in the case of a plan described in  
5 subparagraph (A)(i), is made under section  
6 6(f)(5) of the Forest and Rangeland Re-  
7 newable Resources Planning Act of 1974  
8 (16 U.S.C. 1604(f)(5)); or

9           “(ii) in the case of a plan described in  
10 subparagraph (A)(ii), is made under sec-  
11 tion 1610.5–6 of title 43, Code of Federal  
12 Regulations (or any successor regulation).

13           “(C) AMENDMENT.—The term ‘amend-  
14 ment’ means any change to a land management  
15 plan which—

16           “(i) in the case of a plan described in  
17 subparagraph (A)(i), is made under section  
18 6(f)(4) of the Forest and Rangeland Re-  
19 newable Resources Planning Act of 1974  
20 (16 U.S.C. 1604(f)(4)) and with respect to  
21 which the Secretary of Agriculture pre-  
22 pares a statement described in section  
23 102(2)(C) of the National Environmental  
24 Policy Act of 1969 (42 U.S.C.  
25 4332(2)(C)); or

1           “(ii) in the case of a plan described in  
2           subparagraph (A)(ii), is made under sec-  
3           tion 1610.5–5 of title 43, Code of Federal  
4           Regulations (or any successor regulation),  
5           and with respect to which the Secretary of  
6           the Interior prepares a statement described  
7           in section 102(2)(C) of the National Envi-  
8           ronmental Policy Act of 1969 (42 U.S.C.  
9           4332(2)(C)).”.

10           (f) INCLUSION OF CERTAIN INTERPRETIVE RULES  
11 INVOLVING THE INTERNAL REVENUE LAWS.—

12           (1) IN GENERAL.—Section 603(a) of title 5,  
13           United States Code, is amended by striking the pe-  
14           riod at the end and inserting “or a recordkeeping re-  
15           quirement, and without regard to whether such rec-  
16           ordkeeping requirement is imposed by statute or reg-  
17           ulation.”.

18           (2) COLLECTION OF INFORMATION.—Section  
19           601(7) of title 5, United States Code, is amended to  
20           read as follows:

21           “(7) COLLECTION OF INFORMATION.—The term  
22           ‘collection of information’ has the meaning given the  
23           term in section 3502 of title 44.”.

1           (3) RECORDKEEPING REQUIREMENT.—Section  
2           601(8) of title 5, United States Code, is amended to  
3           read as follows:

4           “(8) RECORDKEEPING REQUIREMENT.—The  
5           term ‘recordkeeping requirement’ has the meaning  
6           given the term in section 3502 of title 44.”.

7           (g) DEFINITION OF SMALL ORGANIZATION.—Section  
8           601(4) of title 5, United States Code, is amended to read  
9           as follows:

10           “(4) SMALL ORGANIZATION.—

11           “(A) IN GENERAL.—The term ‘small orga-  
12           nization’ means any nonprofit enterprise which,  
13           as of the issuance of a notice of proposed rule-  
14           making—

15           “(i) in the case of an enterprise which  
16           is described by a classification code of the  
17           North American Industrial Classification  
18           System, does not exceed the size standard  
19           established by the Administrator of the  
20           Small Business Administration pursuant to  
21           section 3 of the Small Business Act (15  
22           U.S.C. 632) for small business concerns  
23           described by such classification code; and

24           “(ii) in the case of any other enter-  
25           prise, has a net worth that does not exceed



1           \$7,000,000 and has not more than 500  
2           employees.

3           “(B) LOCAL LABOR ORGANIZATIONS.—In  
4           the case of any local labor organization, sub-  
5           paragraph (A) shall be applied without regard  
6           to any national or international organization of  
7           which such local labor organization is a part.

8           “(C) AGENCY DEFINITIONS.—Subpara-  
9           graphs (A) and (B) shall not apply to the ex-  
10          tent that an agency, after consultation with the  
11          Office of Advocacy of the Small Business Ad-  
12          ministration and after opportunity for public  
13          comment, establishes one or more definitions  
14          for such term which are appropriate to the ac-  
15          tivities of the agency and publishes such defini-  
16          tions in the Federal Register.”.

17 **SEC. 3. EXPANSION OF REPORT OF REGULATORY AGENDA.**

18          Section 602 of title 5, United States Code, is amend-  
19          ed—

20                 (1) in subsection (a)—

21                         (A) in paragraph (2), by striking “, and”  
22                         at the end and inserting a semicolon;

23                         (B) by redesignating paragraph (3) as  
24                         paragraph (4); and

1 (C) by inserting after paragraph (2) the  
2 following:

3 “(3) a brief description of the sector of the  
4 North American Industrial Classification System  
5 that is primarily affected by any rule which the  
6 agency expects to propose or promulgate which is  
7 likely to have a significant economic impact on a  
8 substantial number of small entities; and”;

9 (2) in subsection (c), to read as follows:

10 “(c)(1) Not later than 3 days after the date on which  
11 an agency publishes a regulatory flexibility agenda in the  
12 Federal Register under subsection (a), the agency shall  
13 prominently display on the website of the agency a plain  
14 language summary of the information contained in the  
15 regulatory flexibility agenda.

16 “(2) The Office of Advocacy of the Small Business  
17 Administration shall compile, by agency, and prominently  
18 display on the website of the Small Business Administra-  
19 tion a plain language summary of each regulatory flexi-  
20 bility agenda published under subsection (a) not later than  
21 3 days after the date of publication in the Federal Reg-  
22 ister.”.

1 **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**  
2 **ANALYSES.**

3 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—  
4 Section 603(b) of title 5, United States Code, is amended  
5 to read as follows:

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

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

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

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

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

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

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

1 beyond that already imposed on the class of small  
2 entities by the agency or why such an estimate is  
3 not available;

4 “(7) describing any disproportionate economic  
5 impact on small entities or a specific class of small  
6 entities; and

7 “(8) describing any impairment of the ability of  
8 small entities to have access to credit.”.

9 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

12 (A) in paragraph (4)—

13 (i) by inserting “detailed” before “de-  
14 scription”; and

15 (ii) by striking “an explanation” and  
16 inserting “a detailed explanation”;

17 (B) in paragraph (5), by inserting “de-  
18 tailed” before “description”;

19 (C) in paragraph (6)—

20 (i) by inserting “detailed” before “de-  
21 scription”; and

22 (ii) by striking “and” at the end;

23 (D) in paragraph (7), as so redesignated,  
24 by striking the period at the end and inserting  
25 “; and”; and

1 (E) by adding at the end the following:

2 “(8) a detailed description of any dispropor-  
3 tionate economic impact on small entities or a spe-  
4 cific class of small entities.”.

5 (2) INCLUSION OF RESPONSE TO COMMENTS ON  
6 CERTIFICATION OF PROPOSED RULE.—Section  
7 604(a)(2) of title 5, United States Code, is amended  
8 by inserting “(or certification of the proposed rule  
9 under section 605(b))” after “initial regulatory flexi-  
10 bility analysis”.

11 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—  
12 Section 604(b) of title 5, United States Code, is  
13 amended to read as follows:

14 “(b) The agency shall make copies of the final regu-  
15 latory flexibility analysis available to the public, including  
16 placement of the entire analysis on the website of the  
17 agency, and shall publish in the Federal Register the final  
18 regulatory flexibility analysis, or a summary thereof which  
19 includes the telephone number, mailing address, and link  
20 to the website where the complete analysis may be ob-  
21 tained.”.

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

1       “(a) A Federal agency shall be treated as satisfying  
2 any requirement regarding the content of a regulatory  
3 flexibility agenda or regulatory flexibility analysis under  
4 section 602, 603, or 604 if the Federal agency provides  
5 in the agenda or analysis a cross-reference to the specific  
6 portion of another agenda or analysis which is required  
7 by any other law and which satisfies the requirement.”.

8       (d) CERTIFICATIONS.—Section 605(b) of title 5,  
9 United States Code, is amended by striking “statement  
10 providing the factual basis for such certification.” and in-  
11 serting “detailed statement providing the factual and legal  
12 basis for such certification. The detailed statement shall  
13 include an economic assessment or a summary thereof  
14 that is sufficiently detailed to support the certification of  
15 the agency.”.

16       (e) QUANTIFICATION REQUIREMENTS.—Section 607  
17 of title 5, United States Code, is amended to read as fol-  
18 lows:

19       **“§ 607. Quantification requirements**

20       “**In complying with sections 603 and 604, an agency**  
21 **shall provide—**

22               “(1) a quantifiable or numerical description of  
23 the effects of the proposed or final rule and alter-  
24 natives to the proposed or final rule; or

1           “(2) a more general descriptive statement and  
2           a detailed statement explaining why quantification is  
3           not practicable or reliable.”.

4 **SEC. 5. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDI-**  
5 **TIONAL POWERS OF THE CHIEF COUNSEL**  
6 **FOR ADVOCACY.**

7           (a) IN GENERAL.—Section 608 of title 5, United  
8 States Code, is amended to read as follows:

9 **“§ 608. Additional powers of Chief Counsel for Advo-**  
10 **cacy**

11           “(a)(1) Not later than 270 days after the date of en-  
12 actment of the Small Business Regulatory Flexibility Im-  
13 provements Act, the Chief Counsel for Advocacy of the  
14 Small Business Administration shall, after opportunity for  
15 notice and comment under section 553, issue rules gov-  
16 erning agency compliance with this chapter. The Chief  
17 Counsel may modify or amend such rules after notice and  
18 comment under section 553. This chapter (other than this  
19 subsection) shall not apply with respect to the issuance,  
20 modification, and amendment of rules under this para-  
21 graph.

22           “(2) An agency shall not issue rules which supple-  
23 ment the rules issued under paragraph (1) unless such  
24 agency has first consulted with the Chief Counsel for Ad-

1 vocacy to ensure that the supplemental rules comply with  
2 this chapter and the rules issued under paragraph (1).

3 “(b) Notwithstanding any other law, the Chief Coun-  
4 sel for Advocacy of the Small Business Administration  
5 may intervene in any agency adjudication (unless such  
6 agency is authorized to impose a fine or penalty under  
7 such adjudication) and may inform the agency of the im-  
8 pact that any decision on the record may have on small  
9 entities. The Chief Counsel shall not initiate an appeal  
10 with respect to any adjudication in which the Chief Coun-  
11 sel intervenes under this subsection.

12 “(c) The Chief Counsel for Advocacy may file com-  
13 ments in response to any agency notice requesting com-  
14 ment, regardless of whether the agency is required to file  
15 a general notice of proposed rule making under section  
16 553.”.

17 (b) CONFORMING AMENDMENTS.—Section 611(a) of  
18 title 5, United States Code, is amended—

19 (1) in paragraph (1), by striking “608(b),”;

20 (2) in paragraph (2), by striking “608(b),”;

21 and

22 (3) in paragraph (3)—

23 (A) by striking subparagraph (B); and

24 (B) by striking “(3)(A) A small entity”

25 and inserting the following:



1 “(3) A small entity”.

2 **SEC. 6. PROCEDURES FOR GATHERING COMMENTS.**

3 Section 609 of title 5, United States Code, is amend-  
4 ed by striking subsections (b) through (e) and inserting  
5 the following:

6 “(b)(1) Prior to publication of any proposed rule de-  
7 scribed in subsection (e), an agency making the rule shall  
8 notify the Chief Counsel for Advocacy of the Small Busi-  
9 ness Administration and provide the Chief Counsel with—

10 “(A) all materials prepared or utilized by the  
11 agency in making the proposed rule, including the  
12 draft of the proposed rule; and

13 “(B) information on the potential adverse and  
14 beneficial economic impacts of the proposed rule on  
15 small entities and the type of small entities that  
16 might be affected.

17 “(2) An agency shall not be required under para-  
18 graph (1) to provide the exact language of any draft if  
19 the rule—

20 “(A) relates to the internal revenue laws of the  
21 United States; or

22 “(B) is proposed by an independent regulatory  
23 agency.

24 “(c) Not later than 15 days after the receipt of the  
25 materials and information under subsection (b), the Chief

1 Counsel for Advocacy of the Small Business Administra-  
2 tion shall—

3 “(1) identify small entities or representatives of  
4 small entities or a combination of both for the pur-  
5 pose of obtaining advice, input, and recommenda-  
6 tions from those persons about the potential eco-  
7 nomic impacts of the proposed rule and the compli-  
8 ance of the agency with section 603; and

9 “(2) convene a review panel consisting of an  
10 employee from the Office of Advocacy of the Small  
11 Business Administration, an employee from the  
12 agency making the rule, and, in the case of an agen-  
13 cy other than an independent regulatory agency, an  
14 employee from the Office of Information and Regu-  
15 latory Affairs of the Office of Management and  
16 Budget to review the materials and information pro-  
17 vided to the Chief Counsel under subsection (b).

18 “(d)(1) Not later than 60 days after the review panel  
19 described in subsection (c)(2) is convened, the Chief Coun-  
20 sel for Advocacy of the Small Business Administration  
21 shall, after consultation with the members of the panel,  
22 submit a report to the agency and, in the case of an agen-  
23 cy other than an independent regulatory agency, the Office  
24 of Information and Regulatory Affairs of the Office of  
25 Management and Budget.

1       “(2) Each report described in paragraph (1) shall in-  
2 clude an assessment of the economic impact of the pro-  
3 posed rule on small entities, including—

4               “(A) an assessment of the impact of the pro-  
5 posed rule on the cost that small entities pay for en-  
6 ergy;

7               “(B) an assessment of the impact of the pro-  
8 posed rule on startup costs for small entities; and

9               “(C) a discussion of any alternatives that will  
10 minimize adverse significant economic impacts or  
11 maximize beneficial significant economic impacts on  
12 small entities.

13       “(3) Each report described in paragraph (1) shall be-  
14 come part of the rulemaking record. In the publication of  
15 the proposed rule, the agency shall explain what actions,  
16 if any, the agency took in response to the report.

17       “(e) A proposed rule is described by this subsection  
18 if the Administrator of the Office of Information and Reg-  
19 ulatory Affairs of the Office of Management and Budget,  
20 the head of the agency (or the delegatee of the head of  
21 the agency), or an independent regulatory agency deter-  
22 mines that the proposed rule is likely to result in—

23               “(1) an annual effect on the economy of  
24       \$100,000,000 or more;

1           “(2) a major increase in costs or prices for con-  
2           sumers, individual industries, the Federal Govern-  
3           ment, State or local governments, tribal organiza-  
4           tions, or geographic regions;

5           “(3) significant adverse effects on competition,  
6           employment, investment, productivity, innovation, or  
7           the ability of United States-based enterprises to  
8           compete with foreign-based enterprises in domestic  
9           and export markets; or

10           “(4) a significant economic impact on a sub-  
11           stantial number of small entities.

12           “(f) Upon application by the agency, the Chief Coun-  
13           sel for Advocacy of the Small Business Administration  
14           may waive the requirements of subsections (b) through (e)  
15           if the Chief Counsel determines that compliance with the  
16           requirements of such subsections is impracticable, unnec-  
17           essary, or contrary to the public interest.

18           “(g) A small entity or a representative of a small enti-  
19           ty may submit a request that the agency provide a copy  
20           of the report prepared under subsection (d) and all mate-  
21           rials and information provided to the Chief Counsel for  
22           Advocacy of the Small Business Administration under  
23           subsection (b). The agency receiving such request shall  
24           provide the report, materials, and information to the re-  
25           questing small entity or representative of a small entity

1 not later than 10 business days after receiving such re-  
2 quest, except that the agency shall not disclose any infor-  
3 mation that is prohibited from disclosure to the public  
4 pursuant to section 552(b) of this title.

5 “(h) In this section, the term ‘independent regulatory  
6 agency’ has the meaning given the term in section 3502  
7 of title 44.”.

8 **SEC. 7. PERIODIC REVIEW OF RULES.**

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

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

12 “(a) Not later than 180 days after the date of enact-  
13 ment of the Small Business Regulatory Flexibility Im-  
14 provements Act, each agency shall publish in the Federal  
15 Register and place on the website of the agency a plan  
16 for the periodic review of rules issued by the agency which  
17 the head of the agency determines have a significant eco-  
18 nomic impact on a substantial number of small entities.  
19 Such determination shall be made without regard to  
20 whether the agency performed an analysis under section  
21 604. The purpose of the review shall be to determine  
22 whether such rules should be continued without change,  
23 or should be amended or rescinded, consistent with the  
24 stated objectives of applicable statutes, to minimize any  
25 adverse significant economic impacts or maximize any

1 beneficial significant economic impacts on a substantial  
2 number of small entities. Such plan may be amended by  
3 the agency at any time by publishing the revision in the  
4 Federal Register and subsequently placing the amended  
5 plan on the website of the agency.

6       “(b) The plan shall provide for the review of all such  
7 agency rules existing on the date of enactment of the  
8 Small Business Regulatory Flexibility Improvements Act  
9 within 10 years of the date of publication of the plan in  
10 the Federal Register and for review of rules adopted after  
11 the date of enactment of the Small Business Regulatory  
12 Flexibility Improvements Act within 10 years after the  
13 publication of the final rule in the Federal Register. If  
14 the head of the agency determines that completion of the  
15 review of existing rules is not feasible by the established  
16 date, the head of the agency shall so certify in a statement  
17 published in the Federal Register and may extend the re-  
18 view for not longer than 2 years after publication of notice  
19 of extension in the Federal Register. Such certification  
20 and notice shall be sent to the Chief Counsel for Advocacy  
21 of the Small Business Administration and Congress.

22       “(c) The plan shall include a section that details how  
23 an agency will conduct outreach to and meaningfully in-  
24 clude small businesses (including small business concerns  
25 owned and controlled by women, small business concerns

1 owned and controlled by veterans, and small business con-  
2 cerns owned and controlled by socially and economically  
3 disadvantaged individuals (as such terms are defined in  
4 section 3 and section 8(d)(3)(C) of the Small Business Act  
5 (15 U.S.C. 632, 637(d)(3)(C))) for the purposes of car-  
6 rying out this section. The agency shall include in this sec-  
7 tion a plan for how the agency will contact small busi-  
8 nesses and gather their input on existing agency rules.

9       “(d) Each agency shall annually submit a report re-  
10 garding the results of its review pursuant to such plan  
11 to Congress, the Chief Counsel for Advocacy of the Small  
12 Business Administration, and, in the case of agencies  
13 other than independent regulatory agencies (as defined in  
14 section 3502 of title 44), to the Administrator of the Of-  
15 fice of Information and Regulatory Affairs of the Office  
16 of Management and Budget. Such report shall include the  
17 identification of any rule with respect to which the head  
18 of the agency made a determination described in para-  
19 graph (5) or (6) of subsection (e) and a detailed expla-  
20 nation of the reasons for such determination.

21       “(e) In reviewing a rule pursuant to subsections (a)  
22 through (d), the agency shall amend or rescind the rule  
23 to minimize any adverse significant economic impact on  
24 a substantial number of small entities or disproportionate  
25 economic impact on a specific class of small entities, or

1 maximize any beneficial significant economic impact of the  
2 rule on a substantial number of small entities to the great-  
3 est extent possible, consistent with the stated objectives  
4 of applicable statutes. In amending or rescinding the rule,  
5 the agency shall consider the following factors:

6           “(1) The continued need for the rule.

7           “(2) The nature of complaints received by the  
8 agency from small entities concerning the rule.

9           “(3) Comments by the Regulatory Enforcement  
10 Ombudsman and the Chief Counsel for Advocacy of  
11 the Small Business Administration.

12           “(4) The complexity of the rule.

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

17           “(6) The contribution of the rule to the cumu-  
18 lative economic impact of all Federal rules on the  
19 class of small entities affected by the rule, unless the  
20 head of the agency determines that such calculations  
21 cannot be made and reports that determination in  
22 the annual report required under subsection (d).

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







1           (3) by inserting after paragraph (7) the fol-  
2           lowing:

3           “(8) all final rules under section 608(a) of title  
4           5.”.

5           (b) CONFORMING AMENDMENTS.—Section 2341(3)  
6 of title 28, United States Code, is amended—

7           (1) in subparagraph (D), by striking “and” at  
8           the end;

9           (2) in subparagraph (E), by striking the period  
10          at the end and inserting “; and”; and

11          (3) by adding at the end the following:

12                       “(F) the Office of Advocacy of the Small  
13                       Business Administration, when the final rule is  
14                       under section 608(a) of title 5.”.

15          (c) AUTHORIZATION TO INTERVENE AND COMMENT  
16 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-  
17 DURE.—Section 612(b) of title 5, United States Code, is  
18 amended by inserting “chapter 5, and chapter 7,” after  
19 “this chapter.”.

20 **SEC. 10. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**  
21 **NESS CONCERN SIZE STANDARDS BY CHIEF**  
22 **COUNSEL FOR ADVOCACY.**

23          (a) IN GENERAL.—Section 3(a)(2)(A) of the Small  
24 Business Act (15 U.S.C. 632(a)(2)(A)) is amended to read  
25 as follows:

1           “(A) IN GENERAL.—In addition to the cri-  
2           teria specified in paragraph (1)—

3                   “(i) the Administrator may specify de-  
4                   tailed definitions or standards by which a  
5                   business concern may be determined to be  
6                   a small business concern for purposes of  
7                   this Act or the Small Business Investment  
8                   Act of 1958 (15 U.S.C. 661 et seq.); and

9                   “(ii) the Chief Counsel for Advocacy  
10                  may specify such definitions or standards  
11                  for purposes of any other Act.”.

12          (b) APPROVAL BY CHIEF COUNSEL.—Section  
13          3(a)(2)(C)(iii) of the Small Business Act (15 U.S.C.  
14          632(a)(2)(C)(iii)) is amended to read as follows:

15                   “(iii) except in the case of a size  
16                   standard prescribed by the Administrator,  
17                   is approved by the Chief Counsel for Advo-  
18                   cacy.”.

19          (c) INDUSTRY VARIATION.—Section 3(a)(3) of the  
20          Small Business Act (15 U.S.C. 632(a)(3)) is amended—

21                  (1) by inserting “or Chief Counsel for Advo-  
22                  cacy, as appropriate,” before “shall ensure”; and

23                  (2) by inserting “or Chief Counsel for Advo-  
24                  cacy” before the period at the end.

1 (d) JUDICIAL REVIEW OF SIZE STANDARDS AP-  
2 PROVED BY CHIEF COUNSEL.—Section 3(a) of the Small  
3 Business Act (15 U.S.C. 632(a)) is amended by adding  
4 at the end the following:

5 “(10) JUDICIAL REVIEW OF STANDARDS AP-  
6 PROVED BY CHIEF COUNSEL.—In the case of an ac-  
7 tion for judicial review of a rule which includes a  
8 definition or standard approved by the Chief Counsel  
9 for Advocacy under this subsection, the party seek-  
10 ing such review shall be entitled to join the Chief  
11 Counsel as a party in such action.”.

12 **SEC. 11. CLERICAL AMENDMENTS.**

13 (a) DEFINITIONS.—Section 601 of title 5, United  
14 States Code, is amended—

15 (1) in paragraph (1)—

16 (A) by striking the semicolon at the end  
17 and inserting a period; and

18 (B) by striking “(1) the term” and insert-  
19 ing the following:

20 “(1) AGENCY.—The term”;

21 (2) in paragraph (3)—

22 (A) by striking the semicolon at the end  
23 and inserting a period; and

24 (B) by striking “(3) the term” and insert-  
25 ing the following:

1 “(3) SMALL BUSINESS.—The term”;

2 (3) in paragraph (5)—

3 (A) by striking the semicolon at the end  
4 and inserting a period; and

5 (B) by striking “(5) the term” and insert-  
6 ing the following:

7 “(5) SMALL GOVERNMENTAL JURISDICTION.—  
8 The term”; and

9 (4) in paragraph (6)—

10 (A) by striking “; and” and inserting a pe-  
11 riod; and

12 (B) by striking “(6) the term” and insert-  
13 ing the following:

14 “(6) SMALL ENTITY.—The term”.

15 (b) INCORPORATIONS BY REFERENCE AND CERTIFI-  
16 CATIONS.—The heading of section 605 of title 5, United  
17 States Code, is amended to read as follows:

18 “§ 605. **Incorporations by reference and certifi-**  
19 **cations”.**

20 (c) TABLE OF SECTIONS.—The table of sections for  
21 chapter 6 of title 5, United States Code, is amended as  
22 follows:

23 (1) By striking the item relating to section 605  
24 and inserting the following new item:

“605. Incorporations by reference and certifications.”.

1           (2) By striking the item relating to section 607  
2           and inserting the following new item:

“607. Quantification requirements.”.

3           (3) By striking the item relating to section 608  
4           and inserting the following:

“608. Additional powers of Chief Counsel for Advocacy.”.

5           (d) OTHER CLERICAL AMENDMENTS TO CHAPTER  
6 6.—Chapter 6 of title 5, United States Code, is amend-  
7 ed—

8           (1) in section 603(d)—

9           (A) by striking paragraph (2);

10           (B) by striking “(1) For a covered agency,  
11 as defined in section 609(d)(2), each initial reg-  
12 ulatory flexibility analysis” and inserting “Each  
13 initial regulatory flexibility analysis by an agen-  
14 cy”;

15           (C) by striking “(A) any” and inserting  
16 “(1) any”;

17           (D) by striking “(B) any significant” and  
18 inserting “(2) any significant”; and

19           (E) by striking “(C) advice” and inserting  
20 “(3) advice”; and

21           (2) in paragraph (7) of section 604(a), as so re-  
22 designated by section 2(e)(2)(A) of this Act, by  
23 striking “for a covered agency, as defined in section  
24 609(d)(2),”.

1 **SEC. 12. AGENCY PREPARATION OF GUIDES.**

2 Section 212(a)(5) the Small Business Regulatory En-  
3 forcement Fairness Act of 1996 (5 U.S.C. 601 note) is  
4 amended to read as follows:

5 “(5) AGENCY PREPARATION OF GUIDES.—The  
6 agency shall, in its sole discretion, taking into ac-  
7 count the subject matter of the rule and the lan-  
8 guage of relevant statutes, ensure that the guide is  
9 written using sufficiently plain language likely to be  
10 understood by affected small entities. Agencies may  
11 prepare separate guides covering groups or classes of  
12 similarly affected small entities and may cooperate  
13 with associations of small entities to distribute such  
14 guides. In developing guides, agencies shall solicit  
15 input from affected small entities or associations of  
16 affected small entities. An agency may prepare  
17 guides and apply this section with respect to a rule  
18 or a group of related rules.”.

19 **SEC. 13. COMPTROLLER GENERAL REPORT.**

20 Not later than 90 days after the date of enactment  
21 of this Act, the Comptroller General of the United States  
22 shall complete and publish a study that examines whether  
23 the Chief Counsel for Advocacy of the Small Business Ad-  
24 ministration has the capacity and resources to carry out  
25 the duties of the Chief Counsel under this Act and the  
26 amendments made by this Act.



1 **SEC. 14. WAIVER OF FINES FOR FIRST-TIME PAPERWORK**  
2 **VIOLATIONS BY SMALL BUSINESSES.**

3 Section 3506 of title 44, United States Code (com-  
4 monly referred to as the “Paperwork Reduction Act”), is  
5 amended by adding at the end the following:

6 “(j) **SMALL BUSINESSES.**—

7 “(1) **DEFINITIONS.**—In this subsection:

8 “(A) **FIRST-TIME VIOLATION.**—The term  
9 ‘first-time violation’ means a violation by a  
10 small business concern of a requirement regard-  
11 ing collection of information by an agency,  
12 where the small business concern has not pre-  
13 viously violated any similar requirement regard-  
14 ing collection of information by that same agen-  
15 cy during the 5-year period preceding the viola-  
16 tion.

17 “(B) **SMALL BUSINESS CONCERN.**—The  
18 term ‘small business concern’ has the meaning  
19 given the term in section 3 of the Small Busi-  
20 ness Act (15 U.S.C. 632).

21 “(2) **FIRST-TIME VIOLATION.**—

22 “(A) **IN GENERAL.**—Except as provided in  
23 subparagraph (C), in the case of a first-time  
24 violation by a small business concern of a re-  
25 quirement regarding the collection of informa-  
26 tion by an agency, the head of the agency shall

1 not impose a civil fine on the small business  
2 concern.

3 “(B) DETERMINATION.—For purposes of  
4 determining whether to impose a civil fine on a  
5 small business concern under subparagraph (A),  
6 the head of an agency shall not take into ac-  
7 count any violation by the small business con-  
8 cern of a requirement regarding collection of in-  
9 formation by another agency.

10 “(C) EXCEPTION.—An agency may impose  
11 a civil fine on a small business concern for a  
12 first-time violation if the head of the agency de-  
13 termines that—

14 “(i) the violation has the potential to  
15 cause serious harm to the public interest;

16 “(ii) failure to impose a civil fine  
17 would impede or interfere with the detec-  
18 tion of criminal activity;

19 “(iii) the violation is a violation of an  
20 internal revenue law or a law concerning  
21 the assessment or collection of any tax,  
22 debt, revenue, or receipt;

23 “(iv) the violation was not corrected  
24 on or before the date that is 6 months  
25 after the date on which the small business

1 concern receives notification of the viola-  
2 tion in writing from the agency; or

3 “(v) except as provided in paragraph  
4 (3), the violation presents a danger to the  
5 public health or safety.

6 “(3) DANGER TO PUBLIC HEALTH OR SAFE-  
7 TY.—

8 “(A) IN GENERAL.—In any case in which  
9 the head of an agency determines under para-  
10 graph (2)(C)(v) that a violation presents a dan-  
11 ger to the public health or safety, the head of  
12 the agency may determine not to impose a civil  
13 fine on the small business concern if the viola-  
14 tion is corrected not later than 24 hours after  
15 receipt by the owner of the small business con-  
16 cern of notification of the violation in writing.

17 “(B) CONSIDERATIONS.—In determining  
18 whether to allow a small business concern 24  
19 hours to correct a violation under subparagraph  
20 (A), the head of an agency shall take into ac-  
21 count all of the facts and circumstances regard-  
22 ing the violation, including—

23 “(i) the nature and seriousness of the  
24 violation, including whether the violation is

1 technical or inadvertent or involves willful  
2 or criminal conduct;

3 “(ii) whether the small business con-  
4 cern had made a good faith effort to com-  
5 ply with applicable laws and to remedy the  
6 violation within the shortest practicable pe-  
7 riod of time; and

8 “(iii) whether the small business con-  
9 cern has obtained a significant economic  
10 benefit from the violation.

11 “(C) NOTICE TO CONGRESS.—In any case  
12 in which the head of an agency imposes a civil  
13 fine on a small business concern for a violation  
14 that presents a danger to the public health or  
15 safety and does not allow the small business  
16 concern 24 hours to correct the violation under  
17 subparagraph (A), the head of the agency shall  
18 notify Congress regarding the determination  
19 not later than 60 days after the date on which  
20 the civil fine is imposed by the agency.”.

○