

112TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freedom from Restrictive Excessive Executive Demands and Onerous Mandates Act of 2011”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (4) in paragraph (4)—

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

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

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

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

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

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

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

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

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

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

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

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

25 “(B) continue in effect without change.

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

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

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

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

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

17 “(B) every 9 years thereafter; and

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

23 “(A) not later than 9 years after the publica-
24 tion of the final rule in the Federal Register; and

25 “(B) every 9 years thereafter.

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

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

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

6 “(3) comments by the Regulatory Enforcement
7 Ombudsman and the Chief Counsel for Advocacy of
8 the Small Business Administration;

9 “(4) the complexity of the rule;

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

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

19 “(7) the length of time since the rule has been
20 evaluated, or the degree to which technology, eco-
21 nomic conditions, or other factors have changed in
22 the area affected by the rule; and

23 “(8) the economic impact of the rule, includ-
24 ing—

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

3 “(B) the estimated number of small entity
4 jobs that will be lost or created due to the rule;
5 and

6 “(C) the projected reporting, record-
7 keeping, and other compliance requirements of
8 the proposed rule, including—

9 “(i) an estimate of the classes of small
10 entities that will be subject to the require-
11 ment; and

12 “(ii) the type of professional skills
13 necessary for preparation of the report or
14 record.

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

18 “(A) Congress; and

19 “(B) in the case of an agency that is not an
20 independent regulatory agency (as defined in section
21 3502(5) of title 44), the Administrator of the Office
22 of Information and Regulatory Affairs of the Office
23 of Management and Budget.

24 “(2) Each report required under paragraph (1) shall
25 include a description of any rule or guide with respect to

1 which the agency made a determination of infeasibility
2 under paragraph (5) or (6) of subsection (c), together with
3 a detailed explanation of the reasons for the determina-
4 tion.

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

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

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

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

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

1 “(A) determine whether the agency has con-
2 ducted the review required under subsection (b) ap-
3 propriately; and

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

5 “(i) the results of the determination under
6 subparagraph (A); and

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

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

16 “(B) Not later than 30 days after the last day of the
17 6-month period described in subparagraph (A), the In-
18 specter General for an agency that receives a notice de-
19 scribed in subparagraph (A) shall—

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

22 “(ii) notify Congress if the Inspector General
23 determines that the agency has not addressed the
24 issues identified in the notice; and

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

7 “(D) Nothing in this paragraph may be construed to
8 prevent Congress from acting to prevent a rescission
9 under subparagraph (C).”.

10 **SEC. 6. REQUIRING SMALL BUSINESS REVIEW PANELS FOR**
11 **ADDITIONAL AGENCIES.**

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

14 (1) in subsection (b)—

15 (A) by striking “a covered agency” the
16 first place it appears and inserting “an agency
17 designated under subsection (d)”; and

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

20 (2) by striking subsection (d), as amended by
21 section 1100G(a) of Public Law 111–203 (124 Stat.
22 2112), and inserting the following:

23 “(d)(1)(A) On and after the date of enactment of the
24 Freedom from Restrictive Excessive Executive Demands
25 and Onerous Mandates Act of 2011, the Environmental

1 Protection Agency and the Occupational Safety and
2 Health Administration of the Department of Labor shall
3 be—

4 “(i) agencies designated under this subsection;
5 and

6 “(ii) subject to the requirements of subsection
7 (b).

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

12 “(i) an agency designated under this subsection;
13 and

14 “(ii) subject to the requirements of subsection
15 (b).

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

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

23 “(B) in addition to the agencies designated
24 under subparagraph (A), 3 agencies for the second
25 year after the date of enactment of the Freedom

1 from Restrictive Excessive Executive Demands and
2 Onerous Mandates Act of 2011; and

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

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

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

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

20 (A) in paragraph (1), by striking “a cov-
21 ered agency, as defined in section 609(d)(2)”
22 and inserting “the Bureau of Consumer Finan-
23 cial Protection”; and

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

1 and inserting “The Bureau of Consumer Finan-
2 cial Protection”.

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

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

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

11 (i) by striking “a covered agency, as
12 defined in section 609(d)(2)” and inserting
13 “the Bureau of Consumer Financial Pro-
14 tection”; and

15 (ii) by striking “the agency” and in-
16 serting “the Bureau”.

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

22 **SEC. 7. EXPANDING THE REGULATORY FLEXIBILITY ACT TO**
23 **AGENCY GUIDANCE DOCUMENTS.**

24 Section 601(2) of title 5, United States Code, is
25 amended by inserting after “public comment” the fol-

1 lowing: “and any significant guidance document, as de-
2 fined in the Office of Management and Budget Final Bul-
3 letin for Agency Good Guidance Procedures (72 Fed. Reg.
4 3432; January 25, 2007)”.

5 **SEC. 8. REQUIRING THE INTERNAL REVENUE SERVICE TO**
6 **CONSIDER SMALL ENTITY IMPACT.**

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

14 (b) DEFINITIONS.—Section 601 of title 5, United
15 States Code, as amended by section 3 of this Act, is
16 amended—

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

19 (2) by striking paragraphs (7) and (8) and in-
20 serting the following:

21 “(7) the term ‘collection of information’ has the
22 meaning given that term in section 3502(3) of title
23 44;

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

4 **SEC. 9. REPORTING ON ENFORCEMENT ACTIONS RELATING**
5 **TO SMALL ENTITIES.**

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

9 (1) in subsection (a)—

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

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

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

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

25 (2) in subsection (c)—

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

19 **SEC. 10. REQUIRING MORE DETAILED SMALL ENTITY ANAL-**
20 **YSES.**

21 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
22 Section 603 of title 5, United States Code, as amended
23 by section 1100G(b) of Public Law 111–203 (124 Stat.
24 2112), is amended—

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

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

6 “(1) describing the reasons why action by the
7 agency is being considered;

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

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

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

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

22 “(6) estimating the additional cumulative eco-
23 nomic impact of the proposed rule on small entities,
24 including job loss by small entities, beyond that al-
25 ready imposed on the class of small entities by the

1 agency, or the reasons why such an estimate is not
2 available.”; and

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

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

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

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

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

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

20 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

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

25 (B) in paragraph (2)—

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

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

7 (C) in paragraph (4), by striking “an ex-
8 planation” and inserting “a detailed expla-
9 nation”; and

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

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

19 “(b) The agency shall—

20 “(1) make copies of the final regulatory flexi-
21 bility analysis available to the public, including by
22 publishing the entire final regulatory flexibility anal-
23 ysis on the Web site of the agency; and

24 “(2) publish in the Federal Register the final
25 regulatory flexibility analysis, or a summary of the

1 analysis that includes the telephone number, mailing
2 address, and address of the Web site where the com-
3 plete final regulatory flexibility analysis may be ob-
4 tained.”.

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

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

16 (d) CERTIFICATIONS.—Section 605(b) of title 5,
17 United States Code, is amended, in the second sentence,
18 by striking “statement providing the factual” and insert-
19 ing “detailed statement providing the factual and legal”.

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

23 **“§ 607. Quantification requirements**

24 “In complying with sections 603 and 604, an agency
25 shall provide—

1 “(1) a quantifiable or numerical description of
2 the effects of the proposed or final rule, including an
3 estimate of the potential for job loss, and alter-
4 natives to the proposed or final rule; or

5 “(2) a more general descriptive statement re-
6 garding the potential for job loss and a detailed
7 statement explaining why quantification under para-
8 graph (1) is not practicable or reliable.”.

9 **SEC. 11. ENSURING THAT AGENCIES CONSIDER SMALL EN-**
10 **TITY IMPACT DURING THE RULEMAKING**
11 **PROCESS.**

12 Section 605(b) of title 5, United States Code, is
13 amended—

14 (1) by inserting “(1)” after “(b)”; and

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

16 “(2) If, after publication of the certification required
17 under paragraph (1), the head of the agency determines
18 that there will be a significant economic impact on a sub-
19 stantial number of small entities, the agency shall comply
20 with the requirements of section 603 before the publica-
21 tion of the final rule, by—

22 “(A) publishing an initial regulatory flexibility
23 analysis for public comment; or

24 “(B) re-proposing the rule with an initial regu-
25 latory flexibility analysis.

1 “(3) The head of an agency may not make a certifi-
2 cation relating to a rule under this subsection, unless the
3 head of the agency has determined—

4 “(A) the average cost of the rule for small enti-
5 ties affected or reasonably presumed to be affected
6 by the rule;

7 “(B) the number of small entities affected or
8 reasonably presumed to be affected by the rule; and

9 “(C) the number of affected small entities for
10 which that cost will be significant.

11 “(4) Before publishing a certification and a state-
12 ment providing the factual basis for the certification under
13 paragraph (1), the head of an agency shall—

14 “(A) transmit a copy of the certification and
15 statement to the Chief Counsel for Advocacy of the
16 Small Business Administration; and

17 “(B) consult with the Chief Counsel for Advo-
18 cacy of the Small Business Administration on the
19 accuracy of the certification and statement.”.

20 **SEC. 12. ADDITIONAL POWERS OF THE OFFICE OF ADVO-**
21 **CACY.**

22 Section 203 of Public Law 94–305 (15 U.S.C. 634c)
23 is amended—

24 (1) in paragraph (5), by striking “and” at the
25 end;

1 (2) in paragraph (6), by striking the period at
2 the end and inserting “; and”; and

3 (3) by inserting after paragraph (6) the fol-
4 lowing:

5 “(7) at the discretion of the Chief Counsel for
6 Advocacy, comment on regulatory action by an agen-
7 cy that affects small businesses, without regard to
8 whether the agency is required to file a notice of
9 proposed rulemaking under section 553 of title 5,
10 United States Code, with respect to the action.”.

11 **SEC. 13. FUNDING AND OFFSETS.**

12 (a) **AUTHORIZATION.**—There are authorized to be ap-
13 propriated to the Small Business Administration, for any
14 costs of carrying out this Act and the amendments made
15 by this Act (including the costs of hiring additional em-
16 ployees)—

17 (1) \$1,000,000 for fiscal year 2012;

18 (2) \$2,000,000 for fiscal year 2013; and

19 (3) \$3,000,000 for fiscal year 2014.

20 (b) **REPEALS.**—In order to offset the costs of car-
21 rying out this Act and the amendments made by this Act
22 and to reduce the Federal deficit, the following provisions
23 of law are repealed, effective on the date of enactment of
24 this Act:

1 (1) Section 21(n) of the Small Business Act (15
2 U.S.C. 648).

3 (2) Section 27 of the Small Business Act (15
4 U.S.C. 654).

5 (3) Section 1203(c) of the Energy Security and
6 Efficiency Act of 2007 (15 U.S.C. 657h(c)).

7 **SEC. 14. TECHNICAL AND CONFORMING AMENDMENTS.**

8 (a) **HEADING.**—Section 605 of title 5, United States
9 Code, is amended in the section heading by striking
10 “**Avoidance**” and all that follows and inserting the fol-
11 lowing: “**Incorporations by reference and cer-**
12 **tification.**”.

13 (b) **TABLE OF SECTIONS.**—The table of sections for
14 chapter 6 of title 5, United States Code, is amended—

15 (1) by striking the item relating to section 605
16 and inserting the following:

 “605. Incorporations by reference and certifications.”;

17 and

18 (2) by striking the item relating to section 607
19 inserting the following:

 “607. Quantification requirements.”.