

114TH CONGRESS  
1ST SESSION

# H. R. 527

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Regu-  
3 latory Flexibility Improvements Act of 2015”.

4 **SEC. 2. CLARIFICATION AND EXPANSION OF RULES COV-  
5 ERED BY THE REGULATORY FLEXIBILITY  
6 ACT.**

7 (a) IN GENERAL.—Paragraph (2) of section 601 of  
8 title 5, United States Code, is amended to read as follows:

9 “(2) RULE.—The term ‘rule’ has the meaning  
10 given such term in section 551(4) of this title, ex-  
11 cept that such term does not include—

12 “(A) a rule pertaining to the protection of  
13 the rights of and benefits for veterans or part  
14 232 of title 32 of the Code of Federal Regula-  
15 tions (as in effect on July 1, 2014) or any suc-  
16 cessor provisions thereto; or

17 “(B) a rule of particular (and not general)  
18 applicability relating to rates, wages, corporate  
19 or financial structures or reorganizations there-  
20 of, prices, facilities, appliances, services, or al-  
21 lowances therefor or to valuations, costs or ac-  
22 counting, or practices relating to such rates,  
23 wages, structures, prices, appliances, services,  
24 or allowances.”.

25 (b) INCLUSION OF RULES WITH INDIRECT EF-  
26 FECTS.—Section 601 of title 5, United States Code, is

1 amended by adding at the end the following new para-  
2 graph:

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

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

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

14       (c) INCLUSION OF RULES WITH BENEFICIAL EF-  
15 FECTS.—

16           (1) INITIAL REGULATORY FLEXIBILITY ANAL-  
17 YSIS.—Subsection (c) of section 603 of title 5,  
18 United States Code, is amended by striking the first  
19 sentence and inserting “Each initial regulatory flexi-  
20 bility analysis shall also contain a detailed descrip-  
21 tion of alternatives to the proposed rule which mini-  
22 mize any adverse significant economic impact or  
23 maximize any beneficial significant economic impact  
24 on small entities.”.

1           (2) FINAL REGULATORY FLEXIBILITY ANAL-  
2           YSIS.—The first paragraph (6) of section 604(a) of  
3           title 5, United States Code, is amended by striking  
4           “minimize the significant economic impact” and in-  
5           serting “minimize the adverse significant economic  
6           impact or maximize the beneficial significant eco-  
7           nomic impact”.

8           (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-  
9           NIZATIONS.—Paragraph (5) of section 601 of title 5,  
10          United States Code, is amended by inserting “and tribal  
11          organizations (as defined in section 4(l) of the Indian Self-  
12          Determination and Education Assistance Act (25 U.S.C.  
13          450b(l))),” after “special districts,”.

14          (e) INCLUSION OF LAND MANAGEMENT PLANS AND  
15          FORMAL RULEMAKING.—

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

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.—Subsection (a) of section 604 of title 5,  
3           United States Code, is amended in the first sen-  
4           tence—

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

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

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

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.—Subsection (a) of section  
13                   603 of title 5, United States Code, is amended by  
14                   striking the period at the end and inserting “or a  
15                   recordkeeping requirement, and without regard to  
16                   whether such requirement is imposed by statute or  
17                   regulation.”.

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

21                   “(7) COLLECTION OF INFORMATION.—The term  
22                   ‘collection of information’ has the meaning given  
23                   such term in section 3502(3) of title 44.”.

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

4           “(8) RECORDKEEPING REQUIREMENT.—The  
5 term ‘recordkeeping requirement’ has the meaning  
6 given such term in section 3502(13) of title 44.”.

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

10           “(4) SMALL ORGANIZATION.—

11           “(A) IN GENERAL.—The term ‘small orga-  
12 nization’ means any not-for-profit enterprise  
13 which, as of the issuance of the notice of pro-  
14 posed rulemaking—

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 million and has not more than 500 em-  
2           ployees.

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 “;”;

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) Each agency shall prominently display a plain  
11 language summary of the information contained in the  
12 regulatory flexibility agenda published under subsection  
13 (a) on its website within 3 days of its publication in the  
14 Federal Register. The Office of Advocacy of the Small  
15 Business Administration shall compile and prominently  
16 display a plain language summary of the regulatory agen-  
17 das referenced in subsection (a) for each agency on its  
18 website within 3 days of their publication in the Federal  
19 Register.”.

20 **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**  
21 **ANALYSES.**

22 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—  
23 Subsection (b) of section 603 of title 5, United States  
24 Code, is amended to read as follows:

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

4               “(1) describing the reasons why action by the  
5       agency is being considered;

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

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

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

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

20              “(6) estimating the additional cumulative eco-  
21       nomic impact of the proposed rule on small entities  
22       beyond that already imposed on the class of small  
23       entities by the agency or why such an estimate is  
24       not available;

1           “(7) describing any disproportionate economic  
2 impact on small entities or a specific class of small  
3 entities; and

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

6       (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

9           (A) in paragraph (4), by striking “an ex-  
10 planation” and inserting “a detailed expla-  
11 nation”;

12           (B) in each of paragraphs (4), (5), and the  
13 first paragraph (6), by inserting “detailed” be-  
14 fore “description”;

15           (C) in the first paragraph (6), by striking  
16 “; and” at the end;

17           (D) in the second paragraph (6), by strik-  
18 ing the period and inserting “; and”;

19           (E) by redesignating the second paragraph  
20 (6) as paragraph (7); and

21           (F) by adding at the end the following:

22           “(8) a detailed description of any dispro-  
23 portionate economic impact on small entities or a spe-  
24 cific class of small entities.”.

1           (2) INCLUSION OF RESPONSE TO COMMENTS ON  
2           CERTIFICATION OF PROPOSED RULE.—Paragraph  
3           (2) of section 604(a) of title 5, United States Code,  
4           is amended by inserting “(or certification of the pro-  
5           posed rule under section 605(b))” after “initial reg-  
6           ulatory flexibility analysis”.

7           (3) PUBLICATION OF ANALYSIS ON WEBSITE.—  
8           Subsection (b) of section 604 of title 5, United  
9           States Code, is amended to read as follows:

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

18          (c) CROSS-REFERENCES TO OTHER ANALYSES.—  
19          Subsection (a) of section 605 of title 5, United States  
20          Code, is amended to read as follows:

21          “(a) A Federal agency shall be treated as satisfying  
22          any requirement regarding the content of an agenda or  
23          regulatory flexibility analysis under section 602, 603, or  
24          604, if such agency provides in such agenda or analysis  
25          a cross-reference to the specific portion of another agenda

1 or analysis which is required by any other law and which  
2 satisfies such requirement.”.

3 (d) CERTIFICATIONS.—Subsection (b) of section 605  
4 of title 5, United States Code, is amended—

5 (1) by inserting “detailed” before “statement”  
6 the first place it appears; and

7 (2) by inserting “and legal” after “factual”.

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

11 **“§ 607. Quantification requirements**

12 “In complying with sections 603 and 604, an agency  
13 shall provide—

14 “(1) a quantifiable or numerical description of  
15 the effects of the proposed or final rule and alter-  
16 natives to the proposed or final rule; or

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

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

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

1 **“§ 608. Additional powers of Chief Counsel for Advoca-**  
2 **cacy**

3 “(a)(1) Not later than 270 days after the date of the  
4 enactment of this section, the Chief Counsel for Advocacy  
5 of the Small Business Administration shall, after oppor-  
6 tunity for notice and comment under section 553, issue  
7 rules governing agency compliance with this chapter. The  
8 Chief Counsel may modify or amend such rules after no-  
9 tice and comment under section 553. This chapter (other  
10 than this subsection) shall not apply with respect to the  
11 issuance, modification, and amendment of rules under this  
12 paragraph.

13 “(2) An agency shall not issue rules which supple-  
14 ment the rules issued under subsection (a) unless such  
15 agency has first consulted with the Chief Counsel for Ad-  
16 vocacy to ensure that such supplemental rules comply with  
17 this chapter and the rules issued under paragraph (1).

18 “(b) Notwithstanding any other law, the Chief Coun-  
19 sel for Advocacy of the Small Business Administration  
20 may intervene in any agency adjudication (unless such  
21 agency is authorized to impose a fine or penalty under  
22 such adjudication), and may inform the agency of the im-  
23 pact that any decision on the record may have on small  
24 entities. The Chief Counsel shall not initiate an appeal  
25 with respect to any adjudication in which the Chief Coun-  
26 sel intervenes under this subsection.

1       “(c) The Chief Counsel for Advocacy may file com-  
2 ments in response to any agency notice requesting com-  
3 ment, regardless of whether the agency is required to file  
4 a general notice of proposed rulemaking under section  
5 553.”.

6       (b) CONFORMING AMENDMENTS.—

7           (1) Section 611(a)(1) of such title is amended  
8 by striking “608(b),”.

9           (2) Section 611(a)(2) of such title is amended  
10 by striking “608(b),”.

11           (3) Section 611(a)(3) of such title is amend-  
12 ed—

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

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

15                   and inserting the following:

16                   “(3) A small entity”.

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

18       Section 609 of title 5, United States Code, is amend-  
19 ed by striking subsection (b) and all that follows through  
20 the end of the section and inserting the following:

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

1           “(A) all materials prepared or utilized by the  
2           agency in making the proposed rule, including the  
3           draft of the proposed rule; and

4           “(B) information on the potential adverse and  
5           beneficial economic impacts of the proposed rule on  
6           small entities and the type of small entities that  
7           might be affected.

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

11           “(A) relates to the internal revenue laws of the  
12          United States; or

13           “(B) is proposed by an independent regulatory  
14          agency (as defined in section 3502(5) of title 44).

15           “(c) Not later than 15 days after the receipt of such  
16          materials and information under subsection (b), the Chief  
17          Counsel for Advocacy of the Small Business Administra-  
18          tion shall—

19           “(1) identify small entities or representatives of  
20          small entities or a combination of both for the pur-  
21          pose of obtaining advice, input, and recommenda-  
22          tions from those persons about the potential eco-  
23          nomic impacts of the proposed rule and the compli-  
24          ance of the agency with section 603; and

1           “(2) convene a review panel consisting of an  
2           employee from the Office of Advocacy of the Small  
3           Business Administration, an employee from the  
4           agency making the rule, and in the case of an agen-  
5           cy other than an independent regulatory agency (as  
6           defined in section 3502(5) of title 44), an employee  
7           from the Office of Information and Regulatory Af-  
8           fairs of the Office of Management and Budget to re-  
9           view the materials and information provided to the  
10          Chief Counsel under subsection (b).

11          “(d)(1) Not later than 60 days after the review panel  
12         described in subsection (c)(2) is convened, the Chief Coun-  
13         sel for Advocacy of the Small Business Administration  
14         shall, after consultation with the members of such panel,  
15         submit a report to the agency and, in the case of an agen-  
16         cy other than an independent regulatory agency (as de-  
17         fined in section 3502(5) of title 44), the Office of Informa-  
18         tion and Regulatory Affairs of the Office of Management  
19         and Budget.

20          “(2) Such report shall include an assessment of the  
21         economic impact of the proposed rule on small entities,  
22         including an assessment of the proposed rule’s impact on  
23         the cost that small entities pay for energy, an assessment  
24         of the proposed rule’s impact on startup costs for small  
25         entities, and a discussion of any alternatives that will min-

1 imize adverse significant economic impacts or maximize  
2 beneficial significant economic impacts on small entities.

3 “(3) Such report shall become part of the rulemaking  
4 record. In the publication of the proposed rule, the agency  
5 shall explain what actions, if any, the agency took in re-  
6 sponse to such report.

7 “(e) A proposed rule is described by this subsection  
8 if the Administrator of the Office of Information and Reg-  
9 ulatory Affairs of the Office of Management and Budget,  
10 the head of the agency (or the delegatee of the head of  
11 the agency), or an independent regulatory agency deter-  
12 mines that the proposed rule is likely to result in—

13 “(1) an annual effect on the economy of \$100  
14 million or more;

15 “(2) a major increase in costs or prices for con-  
16 sumers, individual industries, Federal, State, or local  
17 governments, tribal organizations, or geographic re-  
18 gions;

19 “(3) significant adverse effects on competition,  
20 employment, investment, productivity, innovation, or  
21 on the ability of United States-based enterprises to  
22 compete with foreign-based enterprises in domestic  
23 and export markets; or

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

1       “(f) Upon application by the agency, the Chief Coun-  
2 sel for Advocacy of the Small Business Administration  
3 may waive the requirements of subsections (b) through (e)  
4 if the Chief Counsel determines that compliance with the  
5 requirements of such subsections are impracticable, un-  
6 necessary, or contrary to the public interest.

7       “(g) A small entity or a representative of a small enti-  
8 ty may submit a request that the agency provide a copy  
9 of the report prepared under subsection (d) and all mate-  
10 rials and information provided to the Chief Counsel for  
11 Advocacy of the Small Business Administration under  
12 subsection (b). The agency receiving such request shall  
13 provide the report, materials and information to the re-  
14 questing small entity or representative of a small entity  
15 not later than 10 business days after receiving such re-  
16 quest, except that the agency shall not disclose any infor-  
17 mation that is prohibited from disclosure to the public  
18 pursuant to section 552(b) of this title.”.

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

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

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

23       “(a) Not later than 180 days after the enactment of  
24 this section, each agency shall publish in the Federal Reg-  
25 ister and place on its website a plan for the periodic review

1 of rules issued by the agency which the head of the agency  
2 determines have a significant economic impact on a sub-  
3 stantial number of small entities. Such determination shall  
4 be made without regard to whether the agency performed  
5 an analysis under section 604. The purpose of the review  
6 shall be to determine whether such rules should be contin-  
7 ued without change, or should be amended or rescinded,  
8 consistent with the stated objectives of applicable statutes,  
9 to minimize any adverse significant economic impacts or  
10 maximize any beneficial significant economic impacts on  
11 a substantial number of small entities. Such plan may be  
12 amended by the agency at any time by publishing the revi-  
13 sion in the Federal Register and subsequently placing the  
14 amended plan on the agency's website.

15       “(b) The plan shall provide for the review of all such  
16 agency rules existing on the date of the enactment of this  
17 section within 10 years of the date of publication of the  
18 plan in the Federal Register and for review of rules adopt-  
19 ed after the date of enactment of this section within 10  
20 years after the publication of the final rule in the Federal  
21 Register. If the head of the agency determines that com-  
22 pletion of the review of existing rules is not feasible by  
23 the established date, the head of the agency shall so certify  
24 in a statement published in the Federal Register and may  
25 extend the review for not longer than 2 years after publi-

1 cation of notice of extension in the Federal Register. Such  
2 certification and notice shall be sent to the Chief Counsel  
3 for Advocacy of the Small Business Administration and  
4 the Congress.

5       “(c) The plan shall include a section that details how  
6 an agency will conduct outreach to and meaningfully in-  
7 clude small businesses (including small business concerns  
8 owned and controlled by women, small business concerns  
9 owned and controlled by veterans, and small business con-  
10 cerns owned and controlled by socially and economically  
11 disadvantaged individuals (as such terms are defined in  
12 the Small Business Act)) for the purposes of carrying out  
13 this section. The agency shall include in this section a plan  
14 for how the agency will contact small businesses and gath-  
15 er their input on existing agency rules.

16       “(d) Each agency shall annually submit a report re-  
17 garding the results of its review pursuant to such plan  
18 to the Congress, the Chief Counsel for Advocacy of the  
19 Small Business Administration, and, in the case of agen-  
20 cies other than independent regulatory agencies (as de-  
21 fined in section 3502(5) of title 44) to the Administrator  
22 of the Office of Information and Regulatory Affairs of the  
23 Office of Management and Budget. Such report shall in-  
24 clude the identification of any rule with respect to which  
25 the head of the agency made a determination described

1 in paragraph (5) or (6) of subsection (e) and a detailed  
2 explanation of the reasons for such determination.

3 “(e) In reviewing a rule pursuant to subsections (a)  
4 through (d), the agency shall amend or rescind the rule  
5 to minimize any adverse significant economic impact on  
6 a substantial number of small entities or disproportionate  
7 economic impact on a specific class of small entities, or  
8 maximize any beneficial significant economic impact of the  
9 rule on a substantial number of small entities to the great-  
10 est extent possible, consistent with the stated objectives  
11 of applicable statutes. In amending or rescinding the rule,  
12 the agency shall consider the following factors:

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

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

16 “(3) Comments by the Regulatory Enforcement  
17 Ombudsman and the Chief Counsel for Advocacy of  
18 the Small Business Administration.

19 “(4) The complexity of the rule.

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

24 “(6) The contribution of the rule to the cumu-  
25 lative economic impact of all Federal rules on the

1 class of small entities affected by the rule, unless the  
2 head of the agency determines that such calculations  
3 cannot be made and reports that determination in  
4 the annual report required under subsection (d).

5 “(7) The length of time since the rule has been  
6 evaluated or the degree to which technology, eco-  
7 nomic conditions, or other factors have changed in  
8 the area affected by the rule.

9 “(f) Each year, each agency shall publish in the Fed-  
10 eral Register and on its website a list of rules to be re-  
11 viewed pursuant to such plan. The agency shall include  
12 in the publication a solicitation of public comments on any  
13 further inclusions or exclusions of rules from the list, and  
14 shall respond to such comments. Such publication shall  
15 include a brief description of the rule, the reason why the  
16 agency determined that it has a significant economic im-  
17 pact on a substantial number of small entities (without  
18 regard to whether it had prepared a final regulatory flexi-  
19 bility analysis for the rule), and request comments from  
20 the public, the Chief Counsel for Advocacy of the Small  
21 Business Administration, and the Regulatory Enforce-  
22 ment Ombudsman concerning the enforcement of the  
23 rule.”.

1 **SEC. 8. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**  
2 **QUIREMENTS OF THE REGULATORY FLEXI-**  
3 **BILITY ACT AVAILABLE AFTER PUBLICATION**  
4 **OF THE FINAL RULE.**

5 (a) **IN GENERAL.**—Paragraph (1) of section 611(a)  
6 of title 5, United States Code, is amended by striking  
7 “final agency action” and inserting “such rule”.

8 (b) **JURISDICTION.**—Paragraph (2) of such section is  
9 amended by inserting “(or which would have such jurisdic-  
10 tion if publication of the final rule constituted final agency  
11 action)” after “provision of law,”.

12 (c) **TIME FOR BRINGING ACTION.**—Paragraph (3) of  
13 such section is amended—

14 (1) by striking “final agency action” and insert-  
15 ing “publication of the final rule”; and

16 (2) by inserting “, in the case of a rule for  
17 which the date of final agency action is the same  
18 date as the publication of the final rule,” after “ex-  
19 cept that”.

20 (d) **INTERVENTION BY CHIEF COUNSEL FOR ADVO-**  
21 **CACY.**—Subsection (b) of section 612 of title 5, United  
22 States Code, is amended by inserting before the first pe-  
23 riod “or agency compliance with section 601, 603, 604,  
24 605(b), 609, or 610”.

1 **SEC. 9. JURISDICTION OF COURT OF APPEALS OVER RULES**  
2 **IMPLEMENTING THE REGULATORY FLEXI-**  
3 **BILITY ACT.**

4 (a) IN GENERAL.—Section 2342 of title 28, United  
5 States Code, is amended—

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

8 (2) in paragraph (7), by striking the period at  
9 the end and inserting “; and”; and

10 (3) by inserting after paragraph (7) the fol-  
11 lowing new paragraph:

12 “(8) all final rules under section 608(a) of title  
13 5.”.

14 (b) CONFORMING AMENDMENTS.—Paragraph (3) of  
15 section 2341 of title 28, United States Code, is amended—

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

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

20 (3) by adding at the end the following new sub-  
21 paragraph:

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

25 (c) AUTHORIZATION TO INTERVENE AND COMMENT  
26 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-

1 DURE.—Subsection (b) of section 612 of title 5, United  
2 States Code, is amended by inserting “chapter 5, and  
3 chapter 7,” after “this chapter,”.

4 **SEC. 10. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**  
5 **NESS CONCERN SIZE STANDARDS BY CHIEF**  
6 **COUNSEL FOR ADVOCACY.**

7 (a) IN GENERAL.—Subparagraph (A) of section  
8 3(a)(2) of the Small Business Act (15 U.S.C.  
9 632(a)(2)(A)) is amended to read as follows:

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

12 “(i) the Administrator may specify de-  
13 tailed definitions or standards by which a  
14 business concern may be determined to be  
15 a small business concern for purposes of  
16 this Act or the Small Business Investment  
17 Act of 1958; and

18 “(ii) the Chief Counsel for Advocacy  
19 may specify such definitions or standards  
20 for purposes of any other Act.”.

21 (b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of  
22 section 3(a)(2)(C) of the Small Business Act (15 U.S.C.  
23 632(a)(2)(C)(iii)) is amended to read as follows:

24 “(iii) except in the case of a size  
25 standard prescribed by the Administrator,

1 is approved by the Chief Counsel for Advo-  
2 cacy.”.

3 (c) INDUSTRY VARIATION.—Paragraph (3) of section  
4 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is  
5 amended—

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

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

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

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

21 **SEC. 11. CLERICAL AMENDMENTS.**

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

24 (1) in paragraph (1)—

1 (A) by striking the semicolon at the end  
2 and inserting a period; and

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

5 “(1) AGENCY.—The term”;

6 (2) in paragraph (3)—

7 (A) by striking the semicolon at the end  
8 and inserting a period; and

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

11 “(3) SMALL BUSINESS.—The term”;

12 (3) in paragraph (5)—

13 (A) by striking the semicolon at the end  
14 and inserting a period; and

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

17 “(5) SMALL GOVERNMENTAL JURISDICTION.—  
18 The term”; and

19 (4) in paragraph (6)—

20 (A) by striking “; and” and inserting a pe-  
21 riod; and

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

24 “(6) SMALL ENTITY.—The term”.

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

4 **“§ 605. Incorporations by reference and certifi-**  
5 **cations”.**

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

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

“605. Incorporations by reference and certifications.”.

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

“607. Quantification requirements.”.

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

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

15 (d) OTHER CLERICAL AMENDMENTS TO CHAPTER  
16 6.—Chapter 6 of title 5, United States Code, is amended  
17 in section 603(d)—

18 (1) by striking paragraph (2);

19 (2) by striking “(1) For a covered agency,” and  
20 inserting “For a covered agency,”;

21 (3) by striking “(A) any” and inserting “(1)  
22 any”;

1           (4) by striking “(B) any” and inserting “(2)  
2           any”; and

3           (5) by striking “(C) advice” and inserting “(3)  
4           advice”.

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

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

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

23 **SEC. 13. COMPTROLLER GENERAL REPORT.**

24          Not later than 90 days after the date of enactment  
25          of this Act, the Comptroller General of the United States

1 shall complete and publish a study that examines whether  
2 the Chief Counsel for Advocacy of the Small Business Ad-  
3 ministration has the capacity and resources to carry out  
4 the duties of the Chief Counsel under this Act and the  
5 amendments made by this Act.

Passed the House of Representatives February 5,  
2015.

Attest:

*Clerk.*



114<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 527

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## AN ACT

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.