

Union Calendar No. 338

112TH CONGRESS
2^D SESSION

H. R. 373

[Report No. 112–483, Part I]

To amend the Unfunded Mandates Reform Act of 1995 to ensure that actions taken by regulatory agencies are subject to that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 2011

Ms. FOXX (for herself, Mr. CUELLAR, and Mr. KISSELL) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committees on Rules, the Budget, and the Judiciary, 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

MAY 16, 2012

Additional sponsors: Mr. FORBES, Mr. SCHOCK, Mr. GOODLATTE, and Mr. YODER

MAY 16, 2012

Reported from the Committee on Oversight and Government Reform with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

MAY 16, 2012

The Committees on Rules, the Budget, and the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 20, 2011]

A BILL

To amend the Unfunded Mandates Reform Act of 1995 to ensure that actions taken by regulatory agencies are subject to that Act, 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; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Un-*
 5 *funded Mandates Information and Transparency Act of*
 6 *2011”.*

7 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 8 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Purpose.

Sec. 3. Providing for Congressional Budget Office studies on policies involving changes in conditions of grant aid.

Sec. 4. Clarifying the definition of direct costs to reflect Congressional Budget Office practice.

Sec. 5. Expanding the scope of reporting requirements to include regulations imposed by independent regulatory agencies.

Sec. 6. Amendments to replace Office of Management and Budget with Office of Information and Regulatory Affairs.

Sec. 7. Applying substantive point of order to private sector mandates.

Sec. 8. Regulatory process and principles.

Sec. 9. Expanding the scope of statements to accompany significant regulatory actions.

Sec. 10. Enhanced stakeholder consultation.

Sec. 11. New authorities and responsibilities for Office of Information and Regulatory Affairs.

Sec. 12. Retrospective analysis of existing Federal regulations.

Sec. 13. Expansion of judicial review.

9 **SEC. 2. PURPOSE.**

10 *The purpose of this Act is—*

11 (1) *to improve the quality of the deliberations of*
 12 *Congress with respect to proposed Federal mandates*
 13 *by—*

14 (A) *providing Congress and the public with*
 15 *more complete information about the effects of*
 16 *such mandates; and*

1 *(B) ensuring that Congress acts on such*
2 *mandates only after focused deliberation on their*
3 *effects; and*

4 *(2) to enhance the ability of Congress and the*
5 *public to identify Federal mandates that may impose*
6 *undue harm on consumers, workers, employers, small*
7 *businesses, and State, local, and tribal governments.*

8 **SEC. 3. PROVIDING FOR CONGRESSIONAL BUDGET OFFICE**
9 **STUDIES ON POLICIES INVOLVING CHANGES**
10 **IN CONDITIONS OF GRANT AID.**

11 *Section 202(g) of the Congressional Budget Act of 1974*
12 *(2 U.S.C. 602(g)) is amended by adding at the end the fol-*
13 *lowing new paragraph:*

14 *“(3) ADDITIONAL STUDIES.—At the request of*
15 *any Chairman or ranking member of the minority of*
16 *a Committee of the Senate or the House of Represent-*
17 *atives, the Director shall conduct an assessment com-*
18 *paring the authorized level of funding in a bill or res-*
19 *olution to the prospective costs of carrying out any*
20 *changes to a condition of Federal assistance being im-*
21 *posed on State, local, or tribal governments partici-*
22 *pating in the Federal assistance program concerned*
23 *or, in the case of a bill or joint resolution that au-*
24 *thorizes such sums as are necessary, an assessment of*

1 (1) in section 103(c) (2 U.S.C. 1511(c))—

2 (A) in the subsection heading, by striking
3 “OFFICE OF MANAGEMENT AND BUDGET” and
4 inserting “OFFICE OF INFORMATION AND REGU-
5 LATORY AFFAIRS”; and

6 (B) by striking “Director of the Office of
7 Management and Budget” and inserting “Ad-
8 ministrator of the Office of Information and
9 Regulatory Affairs”;

10 (2) in section 205(c) (2 U.S.C. 1535(c))—

11 (A) in the subsection heading, by striking
12 “OMB”; and

13 (B) by striking “Director of the Office of
14 Management and Budget” and inserting “Ad-
15 ministrator of the Office of Information and
16 Regulatory Affairs”; and

17 (3) in section 206 (2 U.S.C. 1536), by striking
18 “Director of the Office of Management and Budget”
19 and inserting “Administrator of the Office of Infor-
20 mation and Regulatory Affairs”.

21 **SEC. 7. APPLYING SUBSTANTIVE POINT OF ORDER TO PRI-**
22 **VATE SECTOR MANDATES.**

23 Section 425(a)(2) of the Congressional Budget Act of
24 1974 (2 U.S.C. 658d(a)(2)) is amended—

1 (1) by striking “Federal intergovernmental man-
2 dates” and inserting “Federal mandates”; and

3 (2) by inserting “or 424(b)(1)” after “section
4 424(a)(1)”.

5 **SEC. 8. REGULATORY PROCESS AND PRINCIPLES.**

6 Section 201 of the Unfunded Mandates Reform Act of
7 1995 (2 U.S.C. 1531) is amended to read as follows:

8 **“SEC. 201. REGULATORY PROCESS AND PRINCIPLES.**

9 “(a) *IN GENERAL.*—Each agency shall, unless other-
10 wise expressly prohibited by law, assess the effects of Federal
11 regulatory actions on State, local, and tribal governments
12 and the private sector (other than to the extent that such
13 regulatory actions incorporate requirements specifically set
14 forth in law) in accordance with the following principles:

15 “(1) Each agency shall identify the problem that
16 it intends to address (including, if applicable, the
17 failures of private markets or public institutions that
18 warrant new agency action) as well as assess the sig-
19 nificance of that problem.

20 “(2) Each agency shall examine whether existing
21 regulations (or other law) have created, or contributed
22 to, the problem that a new regulation is intended to
23 correct and whether those regulations (or other law)
24 should be modified to achieve the intended goal of reg-
25 ulation more effectively.

1 “(3) *Each agency shall identify and assess avail-*
2 *able alternatives to direct regulation, including pro-*
3 *viding economic incentives to encourage the desired*
4 *behavior, such as user fees or marketable permits, or*
5 *providing information upon which choices can be*
6 *made by the public.*

7 “(4) *If an agency determines that a regulation*
8 *is the best available method of achieving the regu-*
9 *latory objective, it shall design its regulations in the*
10 *most cost-effective manner to achieve the regulatory*
11 *objective. In doing so, each agency shall consider in-*
12 *centives for innovation, consistency, predictability,*
13 *the costs of enforcement and compliance (to the gov-*
14 *ernment, regulated entities, and the public), flexi-*
15 *bility, distributive impacts, and equity.*

16 “(5) *Each agency shall assess both the costs and*
17 *the benefits of the intended regulation and, recog-*
18 *nizing that some costs and benefits are difficult to*
19 *quantify, propose or adopt a regulation, unless ex-*
20 *pressly prohibited by law, only upon a reasoned de-*
21 *termination that the benefits of the intended regula-*
22 *tion justify its costs.*

23 “(6) *Each agency shall base its decisions on the*
24 *best reasonably obtainable scientific, technical, eco-*

1 *nomie, and other information concerning the need for,*
2 *and consequences of, the intended regulation.*

3 *“(7) Each agency shall identify and assess alter-*
4 *native forms of regulation and shall, to the extent fea-*
5 *sible, specify performance objectives, rather than*
6 *specifying the behavior or manner of compliance that*
7 *regulated entities must adopt.*

8 *“(8) Each agency shall avoid regulations that*
9 *are inconsistent, incompatible, or duplicative with its*
10 *other regulations or those of other Federal agencies.*

11 *“(9) Each agency shall tailor its regulations to*
12 *minimize the costs of the cumulative impact of regu-*
13 *lations.*

14 *“(10) Each agency shall draft its regulations to*
15 *be simple and easy to understand, with the goal of*
16 *minimizing the potential for uncertainty and litiga-*
17 *tion arising from such uncertainty.*

18 *“(b) REGULATORY ACTION DEFINED.—In this section,*
19 *the term ‘regulatory action’ means any substantive action*
20 *by an agency (normally published in the Federal Register)*
21 *that promulgates or is expected to lead to the promulgation*
22 *of a final rule or regulation, including advance notices of*
23 *proposed rulemaking and notices of proposed rulemaking.”.*

1 **SEC. 9. EXPANDING THE SCOPE OF STATEMENTS TO AC-**
2 **COMPANY SIGNIFICANT REGULATORY AC-**
3 **TIONS.**

4 *(a) IN GENERAL.—Subsection (a) of section 202 of the*
5 *Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532)*
6 *is amended to read as follows:*

7 *“(a) IN GENERAL.—Unless otherwise expressly prohib-*
8 *ited by law, before promulgating any general notice of pro-*
9 *posed rulemaking or any final rule, or within six months*
10 *after promulgating any final rule that was not preceded*
11 *by a general notice of proposed rulemaking, if the proposed*
12 *rulemaking or final rule includes a Federal mandate that*
13 *may result in an annual effect on State, local, or tribal*
14 *governments, or to the private sector, in the aggregate of*
15 *\$100,000,000 or more in any 1 year, the agency shall pre-*
16 *pare a written statement containing the following:*

17 *“(1) The text of the draft proposed rulemaking or*
18 *final rule, together with a reasonably detailed descrip-*
19 *tion of the need for the proposed rulemaking or final*
20 *rule and an explanation of how the proposed rule-*
21 *making or final rule will meet that need.*

22 *“(2) An assessment of the potential costs and*
23 *benefits of the proposed rulemaking or final rule, in-*
24 *cluding an explanation of the manner in which the*
25 *proposed rulemaking or final rule is consistent with*
26 *a statutory requirement and avoids undue inter-*

1 ference with State, local, and tribal governments in
2 the exercise of their governmental functions.

3 “(3) A qualitative and quantitative assessment,
4 including the underlying analysis, of benefits antici-
5 pated from the proposed rulemaking or final rule
6 (such as the promotion of the efficient functioning of
7 the economy and private markets, the enhancement of
8 health and safety, the protection of the natural envi-
9 ronment, and the elimination or reduction of dis-
10 crimination or bias).

11 “(4) A qualitative and quantitative assessment,
12 including the underlying analysis, of costs antici-
13 pated from the proposed rulemaking or final rule
14 (such as the direct costs both to the Government in
15 administering the final rule and to businesses and
16 others in complying with the final rule, and any ad-
17 verse effects on the efficient functioning of the econ-
18 omy, private markets (including productivity, em-
19 ployment, and international competitiveness), health,
20 safety, and the natural environment);

21 “(5) Estimates by the agency, if and to the ex-
22 tent that the agency determines that accurate esti-
23 mates are reasonably feasible, of—

24 “(A) the future compliance costs of the Fed-
25 eral mandate; and

1 “(B) any disproportionate budgetary effects
2 of the Federal mandate upon any particular re-
3 gions of the nation or particular State, local, or
4 tribal governments, urban or rural or other types
5 of communities, or particular segments of the
6 private sector.

7 “(6)(A) A detailed description of the extent of the
8 agency’s prior consultation with the private sector
9 and elected representatives (under section 204) of the
10 affected State, local, and tribal governments.

11 “(B) A detailed summary of the comments and
12 concerns that were presented by the private sector and
13 State, local, or tribal governments either orally or in
14 writing to the agency.

15 “(C) A detailed summary of the agency’s evalua-
16 tion of those comments and concerns.

17 “(7) A detailed summary of how the agency com-
18 plied with each of the regulatory principles described
19 in section 201.”.

20 (b) *REQUIREMENT FOR DETAILED SUMMARY.*—Sub-
21 section (b) of section 202 of such Act is amended by insert-
22 ing “detailed” before “summary”.

23 **SEC. 10. ENHANCED STAKEHOLDER CONSULTATION.**

24 Section 204 of the Unfunded Mandates Reform Act of
25 1995 (2 U.S.C. 1534) is amended—

1 (1) *in the section heading, by inserting “**AND***
2 ***PRIVATE SECTOR**” before “**INPUT**”;*

3 (2) *in subsection (a)—*

4 (A) *by inserting “, and impacted parties*
5 *within the private sector (including small busi-*
6 *ness),” after “on their behalf)”;*

7 (B) *by striking “Federal intergovernmental*
8 *mandates” and inserting “Federal mandates”;*
9 *and*

10 (3) *by amending subsection (c) to read as fol-*
11 *lows:*

12 “*(c) GUIDELINES.—For appropriate implementation*
13 *of subsections (a) and (b) consistent with applicable laws*
14 *and regulations, the following guidelines shall be followed:*

15 “*(1) Consultations shall take place as early as*
16 *possible, before issuance of a notice of proposed rule-*
17 *making, continue through the final rule stage, and be*
18 *integrated explicitly into the rulemaking process.*

19 “*(2) Agencies shall consult with a wide variety*
20 *of State, local, and tribal officials and impacted par-*
21 *ties within the private sector (including small busi-*
22 *nesses). Geographic, political, and other factors that*
23 *may differentiate varying points of view should be*
24 *considered.*

1 “(3) Agencies should estimate benefits and costs
2 to assist with these consultations. The scope of the
3 consultation should reflect the cost and significance of
4 the Federal mandate being considered.

5 “(4) Agencies shall, to the extent practicable—

6 “(A) seek out the views of State, local, and
7 tribal governments, and impacted parties within
8 the private sector (including small business), on
9 costs, benefits, and risks; and

10 “(B) solicit ideas about alternative methods
11 of compliance and potential flexibilities, and
12 input on whether the Federal regulation will
13 harmonize with and not duplicate similar laws
14 in other levels of government.

15 “(5) Consultations shall address the cumulative
16 impact of regulations on the affected entities.

17 “(6) Agencies may accept electronic submissions
18 of comments by relevant parties but may not use
19 those comments as the sole method of satisfying the
20 guidelines in this subsection.”.

21 **SEC. 11. NEW AUTHORITIES AND RESPONSIBILITIES FOR**
22 **OFFICE OF INFORMATION AND REGULATORY**
23 **AFFAIRS.**

24 Section 208 of the Unfunded Mandates Reform Act of
25 1995 (2 U.S.C. 1538) is amended to read as follows:

1 **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**
2 **FAIRS RESPONSIBILITIES.**

3 “(a) *IN GENERAL.*—*The Administrator of the Office*
4 *of Information and Regulatory Affairs shall provide mean-*
5 *ingful guidance and oversight so that each agency’s regula-*
6 *tions for which a written statement is required under sec-*
7 *tion 202 are consistent with the principles and require-*
8 *ments of this title, as well as other applicable laws, and*
9 *do not conflict with the policies or actions of another agen-*
10 *cy. If the Administrator determines that an agency’s regula-*
11 *tions for which a written statement is required under sec-*
12 *tion 202 do not comply with such principles and require-*
13 *ments, are not consistent with other applicable laws, or con-*
14 *flict with the policies or actions of another agency, the Ad-*
15 *ministrator shall identify areas of non-compliance, notify*
16 *the agency, and request that the agency comply before the*
17 *agency finalizes the regulation concerned.*

18 “(b) *ANNUAL STATEMENTS TO CONGRESS ON AGENCY*
19 *COMPLIANCE.*—*The Director of the Office of Information*
20 *and Regulatory Affairs annually shall submit to Congress,*
21 *including the Committee on Homeland Security and Gov-*
22 *ernmental Affairs of the Senate and the Committee on Over-*
23 *sight and Government Reform of the House of Representa-*
24 *tives, a written report detailing compliance by each agency*
25 *with the requirements of this title that relate to regulations*
26 *for which a written statement is required by section 202,*

1 *including activities undertaken at the request of the Direc-*
2 *tor to improve compliance, during the preceding reporting*
3 *period. The report shall also contain an appendix detailing*
4 *compliance by each agency with section 204.”*

5 **SEC. 12. RETROSPECTIVE ANALYSIS OF EXISTING FEDERAL**
6 **REGULATIONS.**

7 *The Unfunded Mandates Reform Act of 1995 (Public*
8 *Law 104–4; 2 U.S.C. 1511 et seq.) is amended—*

9 *(1) by redesignating section 209 as section 210;*
10 *and*

11 *(2) by inserting after section 208 the following*
12 *new section 209:*

13 **“SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FED-**
14 **ERAL REGULATIONS.**

15 *“(a) REQUIREMENT.—At the request of the chairman*
16 *or ranking minority member of a standing or select com-*
17 *mittee of the House of Representatives or the Senate, an*
18 *agency shall conduct a retrospective analysis of an existing*
19 *Federal regulation promulgated by an agency.*

20 *“(b) REPORT.—Each agency conducting a retrospec-*
21 *tive analysis of existing Federal regulations pursuant to*
22 *subsection (a) shall submit to the chairman of the relevant*
23 *committee, Congress, and the Comptroller General a report*
24 *containing, with respect to each Federal regulation covered*
25 *by the analysis—*

1 “(1) a copy of the Federal regulation;

2 “(2) the continued need for the Federal regula-
3 tion;

4 “(3) the nature of comments or complaints re-
5 ceived concerning the Federal regulation from the
6 public since the Federal regulation was promulgated;

7 “(4) the extent to which the Federal regulation
8 overlaps, duplicates, or conflicts with other Federal
9 regulations, and, to the extent feasible, with State and
10 local governmental rules;

11 “(5) the degree to which technology, economic
12 conditions, or other factors have changed in the area
13 affected by the Federal regulation;

14 “(6) a complete analysis of the retrospective di-
15 rect costs and benefits of the Federal regulation that
16 considers studies done outside the Federal Government
17 (if any) estimating such costs or benefits; and

18 “(7) any litigation history challenging the Fed-
19 eral regulation.”.

20 **SEC. 13. EXPANSION OF JUDICIAL REVIEW.**

21 Section 401(a) of the Unfunded Mandates Reform Act
22 of 1995 (2 U.S.C. 1571(a)) is amended—

23 (1) in paragraphs (1) and (2)(A)—

24 (A) by striking “sections 202 and 203(a)(1)
25 and (2)” each place it appears and inserting

1 *“sections 201, 202, 203(a)(1) and (2), and*
2 *205(a) and (b)”*; and

3 *(B) by striking “only” each place it ap-*
4 *pears;*

5 *(2) in paragraph (2)(B), by striking “section*
6 *202” and all that follows through the period at the*
7 *end and inserting the following: “section 202, prepare*
8 *the written plan under section 203(a)(1) and (2), or*
9 *comply with section 205(a) and (b), a court may*
10 *compel the agency to prepare such written statement,*
11 *prepare such written plan, or comply with such sec-*
12 *tion.”*; and

13 *(3) in paragraph (3), by striking “written state-*
14 *ment or plan is required” and all that follows*
15 *through “shall not” and inserting the following:*
16 *“written statement under section 202, a written plan*
17 *under section 203(a)(1) and (2), or compliance with*
18 *sections 201 and 205(a) and (b) is required, the inad-*
19 *equacy or failure to prepare such statement (includ-*
20 *ing the inadequacy or failure to prepare any esti-*
21 *mate, analysis, statement, or description), to prepare*
22 *such written plan, or to comply with such section*
23 *may”.*

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