

116TH CONGRESS
2D SESSION

S. 3860

To provide for a method by which the economic costs of significant regulatory actions may be offset by the repeal of other regulatory actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 1, 2020

Mrs. LOEFFLER introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To provide for a method by which the economic costs of significant regulatory actions may be offset by the repeal of other regulatory actions, 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
5 “Lessening Regulatory Costs and Establishing a Federal
6 Regulatory Budget Act of 2020”.

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. Sense of Congress; purpose.

Sec. 3. Definitions.

Sec. 4. Establishing regulatory reform capacity.

Sec. 5. Accountability.

Sec. 6. Regulatory planning and budget.

Sec. 7. Waiver.

1 **SEC. 2. SENSE OF CONGRESS; PURPOSE.**

2 (a) SENSE OF CONGRESS.—It is the sense of Con-
3 gress that—

4 (1) the Federal Government should be prudent
5 and financially responsible in the expenditure of
6 funds, from both public and private sources; and

7 (2) in addition to the management of the direct
8 expenditure of taxpayer dollars through the budg-
9 eting process, it is essential to manage the costs as-
10 sociated with the governmental imposition of private
11 expenditures required to comply with Federal regula-
12 tions.

13 (b) PURPOSE.—The purpose of this Act is—

14 (1) to remove unnecessary or outdated regula-
15 tions when a new significant regulation is issued;
16 and

17 (2) to prudently manage and control the cost of
18 planned regulations through an annual budgeting
19 process.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

1 (1) AGENCY.—The term “agency” has the
2 meaning given the term in section 551 of title 5,
3 United States Code.

4 (2) AGENCY RRO.—The term “agency RRO”
5 means the employee or officer of an agency des-
6 ignated as the Regulatory Reform Officer under sec-
7 tion 4(a)(1).

8 (3) COSTS.—The term “costs” means oppor-
9 tunity cost to society.

10 (4) COST SAVINGS.—The term “cost savings”
11 means the cost imposed by a regulatory action that
12 is eliminated by the repeal, replacement, or modifica-
13 tion of such regulatory action.

14 (5) DEREGULATORY ACTION.—The term “de-
15 regulatory action” means the repeal, replacement, or
16 modification of an existing regulatory action.

17 (6) DIRECTOR.—The term “Director” means
18 the Director of the Office of Management and Budg-
19 et.

20 (7) INCREMENTAL REGULATORY COST.—The
21 term “incremental regulatory cost” means the dif-
22 ference between the estimated cost of issuing a sig-
23 nificant regulatory action and the estimated cost
24 saved by issuing any deregulatory action.

1 (8) REGULATION; RULE.—The term “regula-
2 tion” or “rule” has the meaning given the term
3 “rule” in section 551 of title 5, United States Code.

4 (9) REGULATORY ACTION.—The term “regu-
5 latory action” means—

6 (A) any regulation; and

7 (B) any other regulatory guidance, state-
8 ment of policy, information collection request,
9 form, or reporting, recordkeeping, or disclosure
10 requirement that imposes a burden on the pub-
11 lic or governs agency operations.

12 (10) SIGNIFICANT REGULATORY ACTION.—The
13 term “significant regulatory action” means any reg-
14 ulatory action, other than monetary policy proposed
15 or implemented by the Board of Governors of the
16 Federal Reserve System or the Federal Open Market
17 Committee, that is likely to—

18 (A) have an annual effect on the economy
19 of \$100,000,000 or more or adversely affect in
20 a material way the economy, a sector of the
21 economy, productivity, competition, jobs, the
22 environment, public health or safety, or State,
23 local, or Tribal governments or communities;

1 (B) create a serious inconsistency or other-
2 wise interfere with an action taken or planned
3 by another agency;

4 (C) materially alter the budgetary impact
5 of entitlements, grants, user fees, or loan pro-
6 grams or the rights and obligations of recipi-
7 ents thereof; or

8 (D) raise a novel legal or policy issue.

9 (11) STATE.—The term “State” means each of
10 the several States, the District of Columbia, and
11 each territory or possession of the United States.

12 (12) TASK FORCE.—The term “Task Force”
13 means a regulatory reform task force established
14 under section 4(b)(1).

15 **SEC. 4. ESTABLISHING REGULATORY REFORM CAPACITY.**

16 (a) REGULATORY REFORM OFFICERS.—

17 (1) IN GENERAL.—Except as provided in sec-
18 tion 7, not later than 60 days after the date of en-
19 actment of this Act, the head of each agency shall
20 designate an employee or officer of the agency as the
21 Regulatory Reform Officer.

22 (2) DUTIES.—In accordance with applicable law
23 and in consultation with relevant senior agency offi-
24 cials, each agency RRO shall oversee—

1 (A) the implementation of regulatory re-
2 form initiatives and policies for the agency to
3 ensure that the agency effectively carries out
4 regulatory reforms; and

5 (B) the termination of programs and ac-
6 tivities that derive from or implement statutes,
7 Executive orders, guidance documents, policy
8 memoranda, rule interpretations, and similar
9 documents, or relevant portions thereof, that
10 have been repealed or rescinded.

11 (b) REGULATORY REFORM TASK FORCES.—

12 (1) ESTABLISHMENT OF AGENCY TASK FORCE;
13 MEMBERSHIP.—Except as provided in section 7, not
14 later than 60 days after the date of enactment of
15 this Act, the head of each agency shall appoint and
16 may remove members to the regulatory reform task
17 force of the agency, which shall be composed of the
18 following members:

19 (A) The agency RRO.

20 (B) A senior agency official from each rel-
21 evant component or office of the agency with
22 significant authority for issuing or repealing
23 regulatory actions.

24 (C) Additional senior agency officials in-
25 volved in the development of rulemaking or

1 other regulatory action at the agency, as deter-
2 mined by the head of the agency.

3 (2) CHAIR.—Unless otherwise designated by the
4 head of the agency, the agency RRO shall chair the
5 Task Force of the agency.

6 (3) JOINT TASK FORCES.—

7 (A) IN GENERAL.—For the consideration
8 of a joint rulemaking, the Director may form a
9 joint regulatory reform task force composed of
10 not fewer than 1 member from the Task Force
11 of each relevant agency.

12 (B) CONSULTATION.—Any joint regulatory
13 reform task force formed under this paragraph
14 shall consult with each relevant Task Force.

15 (4) DUTIES.—Each Task Force shall—

16 (A) conduct ongoing evaluations of regula-
17 tions and other regulatory actions and make
18 recommendations that are consistent with and
19 that could be implemented in accordance with
20 applicable law to the head of the agency regard-
21 ing repeal, replacement, or modification of reg-
22 ulations and regulatory actions; and

23 (B) to the extent practicable—

24 (i) not later than 5 years after the
25 date of enactment of this Act, complete a

1 review of each regulation issued by the
2 agency;

3 (ii) for each regulation or regulatory
4 action reviewed and identified for repeal,
5 replacement, or modification, estimate the
6 cost savings of such repeal, replacement, or
7 modification, as applicable; and

8 (iii) identify regulations that are ap-
9 propriate for repeal, replacement, or modi-
10 fication, and prioritize the evaluation of
11 regulations that—

12 (I) eliminate or have eliminated
13 jobs or inhibit or have inhibited job
14 creation;

15 (II) are outdated, unnecessary, or
16 ineffective;

17 (III) impose costs that exceed
18 benefits;

19 (IV) create a serious inconsist-
20 ency or otherwise interfere with regu-
21 latory reform initiatives and policies;

22 (V) were issued or are main-
23 tained in a manner that is incon-
24 sistent with the requirements of sec-
25 tion 515 of the Treasury and General

1 Government Appropriations Act, 2001
2 (Public Law 106–554; 44 U.S.C.
3 3516 note), or the guidance issued
4 pursuant to that section, including
5 any rule that relies in whole or in part
6 on data, information, or methods that
7 are not publicly available or that are
8 insufficiently transparent to meet the
9 standard for reproducibility; or

10 (VI) were made pursuant to or to
11 implement statutes, Executive orders,
12 or other Presidential directives that
13 have been subsequently rescinded or
14 substantially modified.

15 (c) CONSULTATION WITH STAKEHOLDERS.—In per-
16 forming the tasks under this section, each agency RRO
17 and Task Force—

18 (1) shall seek input and other assistance from
19 the public and from entities significantly affected by
20 regulations, including State, local, and Tribal gov-
21 ernments, small businesses, consumers, non-govern-
22 mental organizations, and trade associations; and

23 (2) may—

24 (A) incorporate specific suggestions from
25 stakeholders in identifying the list of deregula-

1 tory actions to recommend to the head of the
2 agency; and

3 (B) accept or solicit input from the public
4 in any manner, if—

5 (i) the process is transparent to the
6 public and Congress;

7 (ii) a list of each meeting, a list of
8 each stakeholder that submitted a com-
9 ment, and a copy of each written comment
10 are made publicly available online; and

11 (iii) the Task Force issues a public
12 notice of any public meeting to solicit input
13 not less than 7 days before the public
14 meeting and makes detailed minutes of the
15 meeting available online not less than 7
16 days after the date of the meeting.

17 (d) TRANSPARENT REGULATORY REFORM.—

18 (1) WEBSITE.—To the extent practicable, the
19 head of each agency shall publish information about
20 the Task Force of the agency and other regulatory
21 reform initiatives on the website of the agency—

22 (A) which shall include—

23 (i) a list of the members of the Task
24 Force of the agency;

1 (ii) a copy of each report issued under
2 this subsection; and

3 (iii) a link to or copy of each notice of
4 a meeting or solicitation of public com-
5 ments issued by the Task Force of the
6 agency; and

7 (B) which may include—

8 (i) an online forum to receive com-
9 ments from the public; and

10 (ii) any other information about the
11 Task Force or other regulatory reform ini-
12 tiatives at the agency.

13 (2) REPORT.—Not less than twice a year, each
14 agency RRO shall submit to the head of the agency
15 a report on the activities performed under this sec-
16 tion and any recommendations resulting from such
17 activities (which shall be posted by the head of the
18 agency on a publicly accessible website), and shall
19 include the following:

20 (A) A description of any improvement
21 made toward implementation of regulatory re-
22 form initiatives and policies.

23 (B) For each regulation or other regu-
24 latory action reviewed by the Task Force, a de-
25 tailed description of the review.

1 (C) An inventory of each regulation or reg-
2 ulatory action the Task Force recommends the
3 agency consider for repeal, replacement, or
4 modification.

5 (D) A list of all activities conducted under
6 subsection (c), a summary of all comments re-
7 ceived, and a hyperlink to copies of each public
8 comment received.

9 **SEC. 5. ACCOUNTABILITY.**

10 (a) INCORPORATION IN PERFORMANCE PLANS.—

11 (1) IN GENERAL.—Each agency listed in section
12 901(b)(1) of title 31, United States Code, shall in-
13 corporate in the annual performance plan of the
14 agency required under section 1115(b) of title 31,
15 United States Code, performance indicators that
16 measure progress implementing this Act.

17 (2) OMB GUIDANCE.—The Director shall issue,
18 and update as necessary, guidance regarding the im-
19 plementation of this subsection.

20 (b) PERFORMANCE ASSESSMENT.—The head of each
21 agency shall consider the progress implementing this Act
22 in assessing the performance of the Task Force of the
23 agency and those individuals responsible for developing
24 and issuing agency rules.

1 **SEC. 6. REGULATORY PLANNING AND BUDGET.**

2 (a) UNIFIED AGENDA AND ANNUAL REGULATORY
3 PLAN.—

4 (1) UNIFIED REGULATORY AGENDA.—During
5 the months of April and October of each year, the
6 Director shall publish a unified regulatory agenda,
7 which shall include—

8 (A) regulatory and deregulatory actions
9 under development or review at agencies;

10 (B) a Federal regulatory plan of all signifi-
11 cant regulatory actions and associated deregula-
12 tory actions that agencies reasonably expect to
13 issue in proposed or final form in the fiscal year
14 in which the unified regulatory agenda is pub-
15 lished and the following fiscal year; and

16 (C) all information required to be included
17 in the regulatory flexibility agenda under sec-
18 tion 602 of title 5, United States Code.

19 (2) AGENCY SUBMISSIONS.—In accordance with
20 guidance issued by the Director and not less than 60
21 days before each date of publication for the unified
22 regulatory agenda under paragraph (1), the head of
23 each agency shall submit to the Director an agenda
24 of all regulatory actions and deregulatory actions
25 under development at the agency, including the fol-
26 lowing:

1 (A) For each regulatory action and deregulatory action:
2

- 3 (i) A regulation identifier number.
4 (ii) A brief summary of the action.
5 (iii) The legal authority for the action.
6 (iv) Any legal deadline for the action.
7 (v) The name and contact information
8 for a knowledgeable agency official.
9 (vi) Any other information as required
10 by the Director.

11 (B) An annual regulatory plan, which shall
12 include a list of each significant regulatory ac-
13 tion the agency reasonably expects to issue in
14 proposed or final form in the fiscal year in
15 which the unified regulatory agenda is pub-
16 lished and the following fiscal year, including
17 for each significant regulatory action:

- 18 (i) A summary, including the fol-
19 lowing:
20 (I) A statement of the regulatory
21 objectives.
22 (II) The legal authority for the
23 action.
24 (III) A statement of the need for
25 the action.

1 (IV) The agency's schedule for
2 the action.

3 (ii) The estimated cost.

4 (iii) The estimated benefits.

5 (iv) Any deregulatory action identified
6 to offset the estimated cost of the signifi-
7 cant regulatory action and an explanation
8 of how the agency will continue to achieve
9 regulatory objectives if the deregulatory ac-
10 tion is taken.

11 (v) A best approximation of the total
12 cost or savings and any cost or savings as-
13 sociated with a deregulatory action.

14 (vi) An estimate of the economic ef-
15 fects, including any estimate of the net ef-
16 fect that such action will have on the num-
17 ber of jobs in the United States, that was
18 considered in drafting the action, or, if
19 such estimate is not available, a statement
20 affirming that no information on the eco-
21 nomic effects, including the effect on the
22 number of jobs, of the action has been con-
23 sidered.

24 (C) Information required under section
25 602 of title 5, United States Code.

1 (D) Information required under any other
2 law to be reported by agencies about significant
3 regulatory actions, as determined by the Direc-
4 tor.

5 (b) FEDERAL REGULATORY BUDGET.—

6 (1) ESTABLISHMENT.—

7 (A) IN GENERAL.—In the April unified
8 regulatory agenda described in subsection (a),
9 the Director shall establish the annual Federal
10 Regulatory Budget, which specifies the net
11 amount of incremental regulatory costs allowed
12 by the Federal Government and at each agency
13 for the next fiscal year.

14 (B) REGULATORY COST ALLOWANCE.—The
15 Director may set the incremental regulatory
16 cost allowance described in paragraph (1) to
17 allow an increase, prohibit an increase, or re-
18 quire a decrease of incremental regulatory
19 costs.

20 (2) DEFAULT NET INCREMENTAL REGULATORY
21 COST.—If the Director does not set a net amount of
22 incremental regulatory costs allowed for an agency,
23 the net incremental regulatory cost allowed shall be
24 zero.

1 (3) BALANCE ROLLOVER OF INCREMENTAL
2 REGULATORY COST ALLOWANCE.—

3 (A) IN GENERAL.—If an agency does not
4 exhaust all of the incremental regulatory cost
5 allowance for a fiscal year, the balance may be
6 added to the incremental regulatory cost allow-
7 ance for the subsequent fiscal year, without in-
8 creasing the incremental regulatory costs al-
9 lowed for the Federal Government for the sub-
10 sequent fiscal year.

11 (B) IDENTIFICATION.—The Director shall
12 identify the total carryover incremental regu-
13 latory cost allowance available to an agency in
14 the Federal Regulatory Budget.

15 (c) SIGNIFICANT REGULATORY ACTION REQUIRE-
16 MENTS.—Except as otherwise required by law, a signifi-
17 cant regulatory action shall have no effect unless—

18 (1) the—

19 (A) head of the agency identifies not less
20 than 2 deregulatory actions to offset the costs
21 of the significant regulatory action, and to the
22 extent feasible, issues those deregulatory ac-
23 tions before or on the same schedule as the sig-
24 nificant regulatory action;

1 (B) incremental costs of the significant
2 regulatory action as offset by any deregulatory
3 action issued before or on the same schedule as
4 the significant regulatory action do not cause
5 the agency to exceed or contribute to the agen-
6 cy exceeding the incremental regulatory cost al-
7 lowance of the agency for that fiscal year; and

8 (C) significant regulatory action was in-
9 cluded on the most recent version or update of
10 the published unified regulatory agenda; or

11 (2) the issuance of the significant regulatory ac-
12 tion was approved in advance in writing by the Di-
13 rector and the written approval is publicly available
14 online before the issuance of the significant regu-
15 latory action.

16 (d) GUIDANCE BY OMB.—

17 (1) IN GENERAL.—Not later than 90 days after
18 the date of the enactment of this Act, the Director
19 shall establish and issue guidance on how agencies
20 should comply with the requirements of this section,
21 which shall include—

22 (A) a process for standardizing the meas-
23 urement and estimation of regulatory costs, in-
24 cluding cost savings associated with deregula-
25 tory actions;

1 (B) standards for determining what quali-
2 fies as a deregulatory action;

3 (C) standards for determining the costs of
4 existing regulatory actions that are considered
5 for repeal, replacement, or modification;

6 (D) a process for accounting for costs in
7 different fiscal years;

8 (E) methods to oversee the issuance of sig-
9 nificant regulatory actions offset by cost sav-
10 ings achieved at different times or by different
11 agencies;

12 (F) emergencies and other circumstances
13 that may justify individual waivers of the re-
14 quirements of this section; and

15 (G) standards by which the Director will
16 determine whether a regulatory action or a col-
17 lection of regulatory actions qualifies as a sig-
18 nificant regulatory action.

19 (2) UPDATES TO GUIDANCE.—The Director
20 shall update the guidance issued pursuant to para-
21 graph (1) as necessary.

22 **SEC. 7. WAIVER.**

23 (a) WAIVER AUTHORITY.—Upon the written request
24 of the head of an agency, the Director may issue a written
25 waiver of the requirements of section 4 if the Director de-

1 terminates that the agency generally issues very few or no
2 rules.

3 (b) REVOCATION OF WAIVER.—The Director may re-
4 voke at any time a waiver issued under this section.

5 (c) PUBLIC AVAILABILITY OF WAIVERS.—The Direc-
6 tor shall maintain a publicly available list of each agency
7 that is operating under a waiver issued under this section.

8 (d) REQUIREMENT FOR WAIVER.—A waiver under
9 this section shall not be effective unless the written waiver
10 and the written request of the agency are publicly avail-
11 able on the website of the Office of Management and
12 Budget.

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