

AMENDMENT TO H.R. 527
OFFERED BY MS. VELÁZQUEZ OF NEW YORK

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Small Business Regu-
3 latory Improvement Act of 2011”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) Small businesses are frequently the source
7 of new products, methods, and innovations.

8 (2) A vibrant and growing small business sector
9 is critical to creating jobs in a dynamic economy.

10 (3) Regulations designed for application to
11 large-scale entities have been applied uniformly to
12 small businesses and other small entities.

13 (4) Uniform Federal regulatory and reporting
14 requirements in many instances have imposed on
15 small businesses and other small entities dispro-
16 portionately burdensome demands, including legal, ac-
17 counting, and consulting costs.

18 (5) Since 1980, Federal agencies have been re-
19 quired to recognize and take account of the dif-

1 ferences in the scale and resources of regulated enti-
2 ties but have failed to do so.

3 (6) Alternative regulatory approaches that do
4 not conflict with the stated objectives of the statutes
5 the regulations seek to implement may be available
6 and may minimize the significant economic impact
7 of regulations on small businesses and other small
8 entities.

9 (7) Federal agencies have failed to analyze and
10 uncover less costly alternative regulatory approaches,
11 despite the fact that the chapter 6 of title 5, United
12 States Code (commonly known as the Regulatory
13 Flexibility Act), requires them to do so.

14 (8) Federal agencies continue to interpret chap-
15 ter 6 of title 5, United States Code, in a manner
16 that permits them to avoid their analytical respon-
17 sibilities.

18 (9) Significant changes are needed in the meth-
19 ods by which Federal agencies develop and analyze
20 regulations, receive input from affected entities, and
21 develop regulatory alternatives that will lessen the
22 burden or maximize the benefits of final rules to
23 small businesses and other small entities.

24 (10) It is the intention of the Congress to
25 amend chapter 6 of title 5, United States Code, to

1 ensure that all impacts, including foreseeable indi-
2 rect effects, of proposed and final rules are consid-
3 ered by agencies during the rulemaking process and
4 that the agencies assess a full range of alternatives
5 that will limit adverse economic consequences or en-
6 hance economic benefits.

7 (11) Federal agencies should be capable of as-
8 sessing the impact of proposed and final rules with-
9 out delaying the regulatory process or impinging on
10 the ability of Federal agencies to fulfill their statu-
11 tory mandates.

12 **SEC. 3. CLARIFICATION AND EXPANSION OF RULES COV-**
13 **ERED BY THE REGULATORY FLEXIBILITY**
14 **ACT.**

15 Section 601 of title 5, United States Code, is amend-
16 ed by adding at the end the following new paragraph:

17 “(9) **ECONOMIC IMPACT.**—The term ‘economic
18 impact’ means, with respect to a proposed or final
19 rule—

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

22 “(B) any indirect economic effect on small
23 entities which is reasonably foreseeable and re-
24 sults from such rule (without regard to whether

1 small entities will be directly regulated by the
2 rule).”.

3 **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**
4 **ANALYSES.**

5 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

6 Subsection (b) of section 603 of title 5, United States
7 Code, is amended to read as follows:

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

11 “(1) the reasons why the action by the agency
12 is being considered;

13 “(2) the objectives of, and legal basis for, the
14 proposed rule;

15 “(3) the type of small entities to which the pro-
16 posed rule will apply;

17 “(4) the number of small entities to which the
18 proposed rule will apply or why such estimate is not
19 available;

20 “(5) the projected reporting, recordkeeping, and
21 other compliance requirements of the proposed rule,
22 including an estimate of the classes of small entities
23 which will be subject to the requirement, the costs,
24 and the type of professional skills necessary to com-
25 ply with the rule; and

1 “(6) all relevant Federal rules which may dupli-
2 cate, overlap, or conflict with the proposed rule, or
3 the reasons why such a description could not be pro-
4 vided.”.

5 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

6 (1) Paragraph (4) of such section is amended
7 by striking “an explanation” and inserting “a de-
8 tailed explanation”.

9 (2) Paragraph (5) of such section is amended
10 to read as follows:

11 “(4) a description of the projected reporting,
12 recordkeeping, and other compliance requirements of
13 the rule, including an estimate of the classes of
14 small entities which will be subject to the require-
15 ment, the costs, and the type of professional skills
16 necessary to comply with the rule; and”.

17 (c) CERTIFICATION OF NO IMPACT.—Subsection (b)
18 of section 605 of title 5, United States Code, is amended
19 by inserting “detailed” before “statement” both places
20 such term appears.

21 **SEC. 5. PERIODIC REVIEW OF RULES.**

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

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

2 “(a) Not later than 180 days after the enactment of
3 the Small Business Regulatory Improvement Act of 2011,
4 each agency shall publish in the Federal Register and
5 place on its website a plan for the periodic review of rules
6 issued by the agency which the head of the agency deter-
7 mines have a significant economic impact on a substantial
8 number of small entities. Such determination shall be
9 made without regard to whether the agency performed an
10 analysis under section 604. The purpose of the review
11 shall be to determine whether such rules should be contin-
12 ued without change, or should be amended or rescinded,
13 consistent with the stated objectives of applicable statutes,
14 to minimize significant economic impacts on a substantial
15 number of small entities. Such plan may be amended by
16 the agency at any time by publishing the revision in the
17 Federal Register and subsequently placing the amended
18 plan on the agency’s website.

19 “(b) The plan shall provide for the review of all such
20 agency rules existing on the date of the enactment of the
21 Small Business Regulatory Improvement Act of 2011
22 within 10 years of the date of publication of the plan in
23 the Federal Register and for review of rules adopted after
24 the date of enactment of the Small Business Regulatory
25 Improvement Act of 2011 within 10 years after the publi-
26 cation of the final rule in the Federal Register. If the head

1 of the agency determines that completion of the review of
2 existing rules is not feasible by the established date, the
3 head of the agency shall so certify in a statement pub-
4 lished in the Federal Register and may extend the review
5 for not longer than 2 years after publication of notice of
6 extension in the Federal Register. Such certification and
7 notice shall be sent to the Chief Counsel for Advocacy and
8 the Congress.

9 “(c) Each agency shall annually submit a report re-
10 garding the results of its review pursuant to such plan
11 to the Congress and, in the case of agencies other than
12 independent regulatory agencies (as defined in section
13 3502(5) of title 44, United States Code) to the Adminis-
14 trator of the Office of Information and Regulatory Affairs
15 of the Office of Management and Budget. Such report
16 shall include the identification of any rule with respect to
17 which the head of the agency made a determination de-
18 scribed in paragraph (5) or (6) of subsection (d) and a
19 detailed explanation of the reasons for such determination.

20 “(d) In reviewing rules under such plan, the agency
21 shall consider the following factors:

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

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

1 “(3) Comments by the Regulatory Enforcement
2 Ombudsman and the Chief Counsel for Advocacy.

3 “(4) The complexity of the rule.

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

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

12 “(e) The agency shall publish in the Federal Register
13 and on its website a list of rules to be reviewed pursuant
14 to such plan. Such publication shall include a brief de-
15 scription of the rule, the reason why the agency deter-
16 mined that it has a significant economic impact on a sub-
17 stantial number of small entities (without regard to wheth-
18 er it had prepared a final regulatory flexibility analysis
19 for the rule), and request comments from the public, the
20 Chief Counsel for Advocacy, and the Regulatory Enforce-
21 ment Ombudsman concerning the enforcement of the
22 rule.”.

1 **SEC. 6. CHANGES TO THE REGULATORY FLEXIBILITY ACT**
2 **TO COMPORT WITH EXECUTIVE ORDER 13272.**

3 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
4 Section 603 of title 5, United States Code, is amended
5 by adding at the end the following:

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

10 “(1) when the agency submits a draft rule to
11 the Office of Information and Regulatory Affairs at
12 the Office of Management and Budget, if submission
13 is required; or

14 “(2) if no submission to the Office of Informa-
15 tion and Regulatory Affairs is so required, at a rea-
16 sonable time prior to publication of the rule by the
17 agency.”.

18 (b) INCLUSION IN FINAL REGULATORY FLEXIBILITY
19 ANALYSIS OF RESPONSE TO COMMENTS ON CERTIFI-
20 CATION OF PROPOSED RULE.—Paragraph (2) of section
21 604(a) of title 5, United States Code, is amended by in-
22 serting after “initial regulatory flexibility analysis” the fol-
23 lowing: “(or certification of the proposed rule under sec-
24 tion 605(b))”.

