

113TH CONGRESS  
2D SESSION

# S. 2988

To amend the Congressional Budget Act of 1974 to establish a Federal regulatory budget and to impose cost controls on that budget, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2014

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

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## A BILL

To amend the Congressional Budget Act of 1974 to establish a Federal regulatory budget and to impose cost controls on that budget, 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 “Regulatory Cost As-  
5 sessment Act of 2014”.

1 **SEC. 2. AMENDMENTS TO THE CONGRESSIONAL BUDGET**  
2 **ACT OF 1974.**

3 (a) **FEDERAL REGULATORY BUDGET COST CONTROL**  
4 **SYSTEM.**—Title III of the Congressional Budget Act of  
5 1974 is amended—

6 (1) by inserting before section 300 the fol-  
7 lowing:

8 **“PART A—GENERAL PROVISIONS”;**

9 and

10 (2) by adding at the end the following new part:

11 **“PART B—FEDERAL REGULATORY BUDGET COST**  
12 **CONTROL**

13 **“SEC. 321. DEFINITIONS.**

14 “In this part—

15 “(1) the term ‘CBO’ means the Congressional  
16 Budget Office;

17 “(2) the term ‘direct cost of Federal regulation’  
18 means all costs incurred by, and expenditures re-  
19 quired of, the Federal Government in issuing and  
20 enforcing Federal regulations, rules, statements, and  
21 legislation;

22 “(3) the term ‘Federal regulation, rule, state-  
23 ment, or legislation’—

24 “(A) includes any guidance document  
25 issued after notice and an opportunity for com-  
26 ment in accordance with the requirements for

1 the promulgation of a rule under chapter 5 of  
2 title 5, United States Code; and

3 “(B) does not include a Federal regulation,  
4 rule, statement, or legislation applying to—

5 “(i) the military; or

6 “(ii) agency organization, manage-  
7 ment, or personnel;

8 “(4) the term ‘Federal regulatory cost’—

9 “(A) means all costs incurred by, and ex-  
10 penditures required of, the private sector in  
11 complying with any Federal regulation, rule,  
12 statement, or legislation; and

13 “(B) does not include the value of any ben-  
14 efit under the Federal regulation, rule, state-  
15 ment, or legislation;

16 “(5) the term ‘gross domestic product’ means  
17 the gross domestic product of the United States dur-  
18 ing a fiscal year, consistent with Department of  
19 Commerce definitions;

20 “(6) the term ‘OMB’ means the Office of Man-  
21 agement and Budget; and

22 “(7) the term ‘regulatory baseline’ means the  
23 projection described in section 323(a) of the Federal  
24 regulatory cost for the fiscal year after the date of  
25 the projection and the outyears.

1 **“SEC. 322. OMB–CBO REPORTS.**

2 “Not later than 1 year after the date of enactment  
3 of this section, and not later than September 15th of each  
4 odd-numbered year thereafter, OMB and CBO shall joint-  
5 ly submit to the President, the Senate, and the House of  
6 Representatives a report that includes—

7 “(1) a projection of the direct cost of Federal  
8 regulation and the Federal regulatory cost for the  
9 first fiscal year beginning after the date of the re-  
10 port and at least each of the 4 ensuing fiscal years;

11 “(2) a calculation of the estimated direct cost  
12 of Federal regulation and Federal regulatory cost as  
13 a percentage of the gross domestic product;

14 “(3) the reduction in estimated gross domestic  
15 product attributable to private sector compliance  
16 with all Federal regulations, rules, statements, or  
17 legislation;

18 “(4) a detailed description of the effect on the  
19 economy of the United States of Federal regulations,  
20 rules, statements, and legislation, which shall be cat-  
21 egorized as relating to—

22 “(A) regulation of the economy;

23 “(B) security, including homeland security;

24 “(C) the environment;

25 “(D) health and safety; or

26 “(E) the Federal budget;

1           “(5) a discussion of the expected reduction in  
2           personnel, administrative overhead, and pro-  
3           grammatic costs that would be achieved by Federal  
4           agencies that issue regulations, rules, or statements  
5           with a Federal regulatory cost if the Federal agen-  
6           cies reduced the Federal regulatory cost by 5 per-  
7           cent; and

8           “(6) recommendations for budgeting, technical,  
9           and estimating changes to improve the Federal regu-  
10          latory budgeting process.

11   **“SEC. 323. REGULATORY BASELINE.**

12          “(a) IN GENERAL.—For the first fiscal year that be-  
13          gins at least 120 days after the date of enactment of this  
14          section and for every second fiscal year thereafter, CBO,  
15          in consultation with OMB, shall submit to the President,  
16          the Senate, and the House of Representatives a regulatory  
17          baseline, consisting of a projection of the Federal regu-  
18          latory cost for the fiscal year and at least each of the 4  
19          ensuing fiscal years. In preparing the projection of the  
20          regulatory baseline under this subsection, for the second  
21          fiscal year covered under the projection and each fiscal  
22          year thereafter, CBO shall adjust the baseline for the esti-  
23          mated growth during that fiscal year in the gross domestic  
24          product.

1 “(b) DEADLINES.—The CBO shall submit the regu-  
2 latory baselines required under subsection (a)—

3 “(1) for the first regulatory baseline, not later  
4 than 30 days after the date of enactment of this sec-  
5 tion; and

6 “(2) for the second regulatory baseline and  
7 each regulatory baseline thereafter, not later than  
8 September 15 of the fiscal year before the first fiscal  
9 year covered under the regulatory baseline.

10 **“SEC. 324. ESTABLISHMENT OF LEVEL AND ALLOCATIONS.**

11 “(a) ESTABLISHMENT OF LEVEL.—

12 “(1) IN GENERAL.—In addition to the require-  
13 ments under section 301, a concurrent resolution on  
14 the budget for a fiscal year shall set forth the appro-  
15 priate level for the Federal regulatory cost for the  
16 fiscal year and for at least each of the 4 ensuing fis-  
17 cal years.

18 “(2) DEFAULT TOTAL.—If there is not a level  
19 for the Federal regulatory cost that is in effect for  
20 a fiscal year under a concurrent resolution on the  
21 budget—

22 “(A) for the first fiscal year that begins at  
23 least 120 days after the date of enactment of  
24 this section, the appropriate level for the Fed-  
25 eral regulatory cost for the fiscal year shall be

1 the amount of the first regulatory baseline sub-  
2 mitted under section 323; and

3 “(B) for each fiscal year after the fiscal  
4 year described in subparagraph (A), the appro-  
5 priate level for the Federal regulatory cost for  
6 the fiscal year shall be the level for the most re-  
7 cent fiscal year for which such a level was in ef-  
8 fect (under subparagraph (A), this subpara-  
9 graph, or a concurrent resolution on the budg-  
10 et).

11 “(b) ALLOCATION OF TOTALS.—

12 “(1) IN GENERAL.—For the first fiscal year  
13 that begins at least 120 days after the date of enact-  
14 ment of this section, and each fiscal year thereafter,  
15 the Committee on the Budget of the Senate and the  
16 Committee on the Budget of the House of Rep-  
17 resentatives shall each allocate among each com-  
18 mittee of its House and by major functional category  
19 the Federal regulatory cost in effect under sub-  
20 section (a) for such fiscal year and at least each of  
21 the 4 ensuing fiscal years.

22 “(2) SUBALLOCATIONS.—As soon as practicable  
23 after receiving an allocation under paragraph (1),  
24 each committee shall subdivide its allocation among

1 its subcommittees or among programs over which  
2 the committee has jurisdiction.

3 “(c) POINT OF ORDER.—

4 “(1) IN GENERAL.—It shall not be in order in  
5 the Senate or the House of Representatives to con-  
6 sider any bill or resolution, or amendment thereto,  
7 which would cause an allocation or suballocation of  
8 the Federal regulatory cost made under subsection  
9 (b) for a fiscal year to be exceeded.

10 “(2) WAIVER.—A point of order under para-  
11 graph (1) may only be waived by the affirmative  
12 vote of three-fifths of the Members, duly chosen and  
13 sworn.

14 “(d) DETERMINATIONS BY BUDGET COMMITTEES.—  
15 For purposes of this section, the amount of the Federal  
16 regulatory cost for a fiscal year and the amount of the  
17 Federal regulatory cost of a bill or resolution, or amend-  
18 ment thereto, shall be determined by the Committee on  
19 the Budget of the Senate or the Committee on the Budget  
20 of the House of Representatives, as the case may be.

21 **“SEC. 325. ANALYSIS OF FEDERAL REGULATORY COST BY**  
22 **CONGRESSIONAL BUDGET OFFICE.**

23 “(a) IN GENERAL.—CBO shall prepare for each bill  
24 or resolution of a public character reported by any com-  
25 mittee of the Senate or the House of Representatives (ex-



1 cept the Committee on Appropriations of each House),  
2 and submit to such committee—

3 “(1) an estimate of the costs which would be in-  
4 curred by the private sector in carrying out or com-  
5 plying with such bill or resolution in the fiscal year  
6 in which it is to become effective and in each of the  
7 4 fiscal years following such fiscal year, which shall  
8 include a discussion of the methodology used to pre-  
9 pare, and the basis for, each such estimate; and

10 “(2) a comparison of the estimate of costs de-  
11 scribed in paragraph (1) with any available esti-  
12 mates of costs made by such committee or by any  
13 Federal agency.

14 “(b) LOOK-BACK REVIEWS.—CBO shall periodically  
15 submit to Congress a report that—

16 “(1) reviews a sample of laws of a public char-  
17 acter for which an estimate was prepared under sub-  
18 section (a)(1); and

19 “(2) compares the estimates of the costs de-  
20 scribed in paragraphs (1) and (2) of subsection (a)  
21 and the actual costs incurred by the private sector  
22 in carrying out or complying with the law in the fis-  
23 cal year in which it took effect and in each of the  
24 4 fiscal years following such fiscal year.”.

1 **SEC. 3. PRESIDENT'S ANNUAL BUDGET SUBMISSIONS.**

2 Section 1105(a) of title 31, United States Code, is  
3 amended—

4 (1) by redesignating the second paragraph des-  
5 ignated as paragraph (37), relating to outdated or  
6 duplicative plans and reports, as added by section 11  
7 of the GPRA Modernization Act of 2010 (Public  
8 Law 111–352; 124 Stat. 3881), as paragraph (39);  
9 and

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

11 “(40) a regulatory authority budget analysis of  
12 the Federal regulatory cost (as defined in section  
13 321 of the Congressional Budget Act of 1974) of  
14 complying with all current and proposed Federal  
15 regulations and proposals for complying with section  
16 324 of the Congressional Budget Act of 1974 for the  
17 fiscal year for which the budget is submitted and the  
18 4 fiscal years after that year.”.

19 **SEC. 4. ESTIMATION AND DISCLOSURE OF COSTS OF FED-**  
20 **ERAL REGULATION.**

21 (a) COSTS TO PRIVATE SECTOR OF NEW FEDERAL  
22 REGULATIONS.—Chapter 6 of title 5, United States Code,  
23 popularly known as the “Regulatory Flexibility Act”, is  
24 amended—

25 (1) in section 603—

1 (A) in subsection (a), in the second sen-  
2 tence, by inserting before the period the fol-  
3 lowing: “and shall discuss in detail whether the  
4 cost to businesses of complying with the pro-  
5 posed rule will vary depending on the size of the  
6 business and, if so, to what extent the cost will  
7 vary and what factors contribute to the vari-  
8 ation”;

9 (B) in subsection (c)—

10 (i) by redesignating paragraphs (1),  
11 (2), (3), and (4) as subparagraphs (A),  
12 (B), (C), and (D), respectively, and adjust-  
13 ing the margin accordingly;

14 (ii) by inserting “(1)” after “(c)”; and

15 (iii) by striking “Consistent with the”

16 and inserting the following:

17 “(2) The analysis of significant alternatives to the  
18 proposed rule shall include a detailed analysis of the costs  
19 and benefits of the proposed rule and each alternative,  
20 which shall separately address the costs and benefits for  
21 each industry.

22 “(3) Consistent with the”; and

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

24 “(e) Each initial regulatory flexibility analysis shall  
25 also contain a description of the nature and amount of

1 monetary costs that will be incurred by small entities,  
2 other businesses, and individuals in complying with the  
3 proposed rule.”;

4 (2) in section 604(a)—

5 (A) in the first paragraph designated as  
6 paragraph (6) (relating to minimization of sig-  
7 nificant economic impacts), by striking “and”  
8 at the end;

9 (B) by redesignating the second paragraph  
10 (6) (relating to covered agencies), as paragraph  
11 (8); and

12 (C) by inserting after paragraph (6) the  
13 following:

14 “(7) a statement of the nature and amount of  
15 monetary costs that will be incurred by small enti-  
16 ties, other businesses, and individuals in complying  
17 with the rule; and”;

18 (3) in section 607, by inserting before the pe-  
19 riod the following: “, except that estimates of mone-  
20 tary costs under sections 603(d) and 604(a)(7) shall  
21 only be in the form of a numerical description”.

22 (b) AGENCY REPORTS.—Each agency that prepares  
23 an initial regulatory flexibility analysis under chapter 6  
24 of title 5, United States Code, shall, at the same time sub-  
25 mit to each House of Congress, the Congressional Budget

1 Office, and the Office of Management and Budget a cost  
2 estimate and cost benefit analysis of any new proposed  
3 regulations, rules, or statements that would have a Fed-  
4 eral regulatory cost (as defined in section 321 of the Con-  
5 gressional Budget Act of 1974, as added by this Act) of  
6 at least \$10,000,000 for any fiscal year.

7 **SEC. 5. GUIDANCE DOCUMENTS.**

8 (a) DEFINITIONS.—In this section—

9 (1) the terms “agency” and “rule” have the  
10 meanings given such terms in section 551 of title 5,  
11 United States Code; and

12 (2) the term “guidance document” means an  
13 agency statement of general applicability and future  
14 effect, other than a rule, that sets forth a policy on  
15 a statutory, regulatory, or technical issue or an in-  
16 terpretation of a statutory or regulatory issue.

17 (b) LIMITATION ON GUIDANCE DOCUMENTS.—An  
18 agency may not issue a guidance document unless the  
19 agency—

20 (1) issues the guidance document after notice  
21 and an opportunity for comment in accordance with  
22 the requirements for the promulgation of a rule  
23 under chapter 5 of title 5, United States Code; or

24 (2) before the effective date of the guidance  
25 document, submits to Congress a report that—

1 (A) certifies that the guidance document is  
2 not a rule; and

3 (B) explains in detail why the guidance  
4 document does not satisfy the definition of a  
5 rule.

6 **SEC. 6. STUDY OF NONMAJOR RULES.**

7 (a) DEFINITIONS.—In this section—

8 (1) the term “agency” has the meaning given  
9 that term in section 551 of title 5, United States  
10 Code;

11 (2) the term “covered guidance document”  
12 means any guidance document that has resulted or  
13 is likely to result in an annual effect on the economy  
14 of not less than \$10,000,000;

15 (3) the term “covered nonmajor rule” means  
16 any rule that has resulted in or is likely to result in  
17 an annual effect on the economy of not less than  
18 \$10,000,000 and not more than \$100,000,000;

19 (4) the term “guidance document” means an  
20 agency statement of general applicability and future  
21 effect, other than a rule, that sets forth a policy on  
22 a statutory, regulatory, or technical issue or an in-  
23 terpretation of a statutory or regulatory issue;

24 (5) the term “Federal regulatory cost” has the  
25 meaning given that term under section 321 of the

1 Congressional Budget Act of 1974, as added by sec-  
2 tion 2 of this Act; and

3 (6) the term “rule” has the meaning given that  
4 term in section 804 of title 5, United States Code.

5 (b) REPORTS.—Not later than 120 days after the  
6 date of enactment of this Act and every 2 years thereafter,  
7 the Comptroller General of the United States shall submit  
8 to Congress a report regarding covered nonmajor rules  
9 and covered guidance documents, which shall include, for  
10 the 4-year period immediately preceding the report—

11 (1) the number of covered nonmajor rules pro-  
12 mulgated;

13 (2) the number of covered nonmajor rules im-  
14 plemented;

15 (3) the number of covered guidance documents  
16 developed;

17 (4) the number of covered guidance documents  
18 issued;

19 (5) the Federal regulatory cost of each covered  
20 nonmajor rule implemented;

21 (6) the Federal regulatory cost of each covered  
22 guidance document issued;

23 (7) the aggregate Federal regulatory cost of all  
24 covered nonmajor rules implemented;

1           (8) the aggregate Federal regulatory cost of all  
2 covered guidance documents issued; and

3           (9) a discussion of any covered nonmajor rule  
4 for which an initial regulatory flexibility analysis was  
5 prepared under section 603 of title 5, United States  
6 Code, a final regulatory flexibility analysis was pre-  
7 pared under section 604 of title 5, United States  
8 Code, or a cost benefit analysis was prepared that  
9 underestimated the actual Federal regulatory cost of  
10 implementing the covered nonmajor rule.

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