

117TH CONGRESS
2D SESSION

S. _____

To establish a National Regulatory Budget, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MARSHALL (for himself and Mr. CRUZ) introduced the following bill;
which was read twice and referred to the Committee on

A BILL

To establish a National Regulatory 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 “National Regulatory
5 Budget Act of 2022”.

6 **SEC. 2. ESTABLISHMENT OF THE OFFICE OF REGULATORY**
7 **ANALYSIS.**

8 (a) IN GENERAL.—Part I of title 5, United States
9 Code, is amended by inserting after chapter 6 the fol-
10 lowing:

1 **“CHAPTER 6A—NATIONAL REGULATORY**
2 **BUDGET AND OFFICE OF REGU-**
3 **LATORY ANALYSIS**

“Sec.

“613. Definitions.

“614. Office of Regulatory Analysis; establishment; powers.

“615. Functions of Office of Regulatory Analysis; Executive branch agency compliance.

“616. Public disclosure of estimate methodology and data; privacy.

“617. National Regulatory Budget; timeline.

“618. Executive branch agency cooperation mandatory; information sharing.

“619. Enforcement.

“620. Regulatory Analysis Advisory Board.

4 **“§ 613. Definitions**

5 “In this chapter—

6 “(1) the term ‘aggregate costs’, with respect to
7 a covered Federal rule, means the sum of—

8 “(A) the direct costs of the covered Fed-
9 eral rule; and

10 “(B) the regulatory costs of the covered
11 Federal rule;

12 “(2) the term ‘covered Federal rule’ means—

13 “(A) a rule (as defined in section 551);

14 “(B) an information collection requirement
15 given a control number by the Office of Man-
16 agement and Budget; or

17 “(C) guidance or a directive that—

18 “(i) is not described in subparagraph

19 (A) or (B);

1 “(ii)(I) is mandatory in its application
2 to regulated entities; or

3 “(II) represents a statement of agency
4 position that regulated entities would rea-
5 sonably construe as reflecting the enforce-
6 ment or litigation position of the agency;
7 and

8 “(iii) imposes not less than
9 \$25,000,000 in annual costs on regulated
10 entities;

11 “(3) the term ‘direct costs’ means—

12 “(A) expenditures made by an Executive
13 branch agency that relate to the promulgation,
14 administration, or enforcement of a covered
15 Federal rule; or

16 “(B) costs incurred by an Executive
17 branch agency or any other instrumentality of
18 the Federal Government because of a covered
19 Federal rule;

20 “(4) the term ‘Director’ means the Director of
21 the Office of Regulatory Analysis established under
22 section 614(b);

23 “(5) the term ‘Executive branch agency’ has
24 the meaning given the term ‘agency’ in section 551,
25 except that it shall not include an authority of the

1 Government of the United States that is within an-
2 other agency;

3 “(6) the term ‘regulated entity’ means—

4 “(A) a for-profit private sector entity (in-
5 cluding an individual who is in business as a
6 sole proprietor);

7 “(B) a not-for-profit private sector entity;

8 or

9 “(C) a State or local government; and

10 “(7) the term ‘regulatory costs’ means all costs
11 incurred by a regulated entity because of covered
12 Federal rules.

13 **“§ 614. Office of Regulatory Analysis; establishment;
14 powers**

15 “(a) ESTABLISHMENT.—There is established in the
16 executive branch an independent establishment to be
17 known as the ‘Office of Regulatory Analysis’.

18 “(b) DIRECTOR.—

19 “(1) ESTABLISHMENT OF POSITION.—There
20 shall be at the head of the Office of Regulatory
21 Analysis a Director, who shall be appointed by the
22 President, by and with the advice and consent of the
23 Senate.

24 “(2) TERM.—

1 “(A) IN GENERAL.—The term of office of
2 the Director shall—

3 “(i) be 4 years; and

4 “(ii) expire on the last day of Feb-
5 ruary following each Presidential election.

6 “(B) APPOINTMENTS PRIOR TO EXPIRA-
7 TION OF TERM.—Subject to subparagraph (C),
8 an individual appointed as Director to fill a va-
9 cancy prior to the expiration of a term shall
10 serve only for the unexpired portion of the
11 term.

12 “(C) SERVICE UNTIL APPOINTMENT OF
13 SUCCESSOR.—An individual serving as Director
14 at the expiration of a term may continue to
15 serve until a successor is appointed.

16 “(3) POWERS.—

17 “(A) APPOINTMENT OF DEPUTY DIREC-
18 TORS, OFFICERS, AND EMPLOYEES.—

19 “(i) IN GENERAL.—The Director may
20 appoint Deputy Directors, officers, and
21 employees, including attorneys, in accord-
22 ance with chapter 51 and subchapter III of
23 chapter 53.

24 “(ii) TERM OF DEPUTY DIRECTORS.—
25 A Deputy Director shall serve until the ex-

1 piration of the term of office of the Direc-
2 tor who appointed the Deputy Director
3 (and until a successor to that Director is
4 appointed), unless sooner removed by the
5 Director.

6 “(B) CONTRACTING.—

7 “(i) IN GENERAL.—The Director may
8 contract for financial and administrative
9 services (including those related to budget
10 and accounting, financial reporting, per-
11 sonnel, and procurement) with the General
12 Services Administration, or such other
13 Federal agency as the Director determines
14 appropriate, for which payment shall be
15 made in advance, or by reimbursement,
16 from funds of the Office of Regulatory
17 Analysis in such amounts as may be
18 agreed upon by the Director and the head
19 of the Federal agency providing the serv-
20 ices.

21 “(ii) SUBJECT TO APPROPRIATIONS.—
22 Contract authority under clause (i) shall be
23 effective for any fiscal year only to the ex-
24 tent that appropriations are available for
25 that purpose.

1 “(i) the regulatory costs imposed by
2 each Executive branch agency on regulated
3 entities;

4 “(ii) the aggregate costs imposed by
5 each Executive branch agency;

6 “(iii) the aggregate costs imposed by
7 all Executive branch agencies combined;

8 “(iv) the direct costs incurred by the
9 Federal Government because of covered
10 Federal rules issued by each Executive
11 branch agency;

12 “(v) the sum of the costs described in
13 clauses (iii) and (iv);

14 “(vi) the regulatory costs imposed by
15 each Executive branch agency on small
16 businesses, small organizations, and small
17 governmental jurisdictions (as those terms
18 are defined in section 601); and

19 “(vii) the sum of the costs described
20 in clause (vi);

21 “(B) an analysis of any major changes in
22 estimation methodology used by the Office of
23 Regulatory Analysis since the previous annual
24 report;

1 “(C) an analysis of any major estimate
2 changes caused by improved or inadequate data
3 since the previous annual report;

4 “(D) recommendations, both general and
5 specific, regarding—

6 “(i) how regulations may be stream-
7 lined, simplified, and modernized;

8 “(ii) regulations that should be re-
9 pealed; and

10 “(iii) how the Federal Government
11 may reduce the costs of regulations with-
12 out diminishing the effectiveness of regula-
13 tions; and

14 “(E) any other information that the Direc-
15 tor determines may be of assistance to Congress
16 in determining the National Regulatory Budget
17 required under section 617.

18 “(b) REGULATORY ANALYSIS OF NEW RULES.—

19 “(1) REQUIREMENT.—The Director shall pub-
20 lish in the Federal Register and on the website of
21 the Office of Regulatory Analysis a regulatory anal-
22 ysis of each proposed covered Federal rule issued by
23 an Executive branch agency, and each proposed
24 withdrawal or modification of a covered Federal rule
25 by an Executive branch agency, that—

1 “(A) imposes costs on a regulated entity;

2 or

3 “(B) reduces costs imposed on a regulated
4 entity.

5 “(2) CONTENTS.—Each regulatory analysis
6 published under paragraph (1) shall include—

7 “(A) an estimate of the change in regu-
8 latory cost of each proposed covered Federal
9 rule (or proposed withdrawal or modification of
10 a covered Federal rule); and

11 “(B) any other information or rec-
12 ommendation that the Director may choose to
13 provide.

14 “(3) TIMING OF REGULATORY ANALYSIS.—

15 “(A) INITIAL REGULATORY ANALYSIS.—
16 Not later than 60 days after the date on which
17 the Director receives a copy of a proposed cov-
18 ered Federal rule from the head of an Execu-
19 tive branch agency under paragraph (4), the
20 Director shall publish an initial regulatory anal-
21 ysis.

22 “(B) REVISED REGULATORY ANALYSIS.—
23 The Director may publish a revised regulatory
24 analysis at any time.

1 “(4) NOTICE TO DIRECTOR OF PROPOSED COV-
2 ERED FEDERAL RULE.—The head of an Executive
3 branch agency shall provide a copy of each proposed
4 covered Federal rule to the Director in a manner
5 prescribed by the Director.

6 “(c) EFFECTIVE DATES.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), a covered Federal rule may not take ef-
9 fect earlier than 75 days after the date on which the
10 head of the Executive branch agency proposing the
11 covered Federal rule submits a copy of the proposed
12 covered Federal rule to the Director in the manner
13 prescribed by the Director under subsection (b)(4).

14 “(2) EXCEPTION.—If the head of the Executive
15 branch agency proposing a covered Federal rule de-
16 termines that the public health or safety or national
17 security requires that the covered Federal rule be
18 promulgated earlier than the date specified under
19 paragraph (1), the head of the Executive branch
20 agency may promulgate the covered Federal rule
21 without regard to paragraph (1).

22 **“§ 616. Public disclosure of estimate methodology and**
23 **data; privacy**

24 “(a) PRIVACY.—The Director shall comply with all
25 relevant privacy laws, including—

1 “(1) the Confidential Information Protection
2 and Statistical Efficiency Act of 2002 (44 U.S.C.
3 3501 note);

4 “(2) section 9 of title 13; and

5 “(3) section 6103 of the Internal Revenue Code
6 of 1986.

7 “(b) DISCLOSURE.—

8 “(1) IN GENERAL.—To the maximum extent
9 permitted by law, the Director shall disclose, by pub-
10 lication in the Federal Register and on the website
11 of the Office of Regulatory Analysis, the method-
12 ology and data used to generate the estimates in the
13 Report on National Regulatory Costs required under
14 section 615.

15 “(2) GOAL OF DISCLOSURE.—In disclosing the
16 methodology and data under paragraph (1), the Di-
17 rector shall seek to provide sufficient information so
18 that outside researchers may replicate the results
19 contained in the Report on National Regulatory
20 Costs.

21 **“§ 617. National Regulatory Budget; timeline**

22 “(a) DEFINITION.—In this section—

23 “(1) the term ‘annual overall regulatory cost
24 cap’ means the maximum amount of regulatory costs

1 that all Executive branch agencies combined may
2 impose in a fiscal year;

3 “(2) the term ‘annual agency regulatory cost
4 cap’ means the maximum amount of regulatory costs
5 that an Executive branch agency may impose in a
6 fiscal year; and

7 “(3) the term ‘National Regulatory Budget’
8 means an Act of Congress that establishes, for a fis-
9 cal year—

10 “(A) the annual overall regulatory cost
11 cap; and

12 “(B) an annual agency regulatory cost cap
13 for each Executive branch agency.

14 “(b) COMMITTEE DEADLINES.—

15 “(1) REFERRAL.—Not later than March 31 of
16 each year—

17 “(A) the Committee on Small Business
18 and Entrepreneurship of the Senate shall refer
19 to the Committee on Homeland Security and
20 Governmental Affairs of the Senate a bill that
21 sets forth a National Regulatory Budget for the
22 fiscal year beginning on October 1 of that year;
23 and

24 “(B) the Committee on Small Business of
25 the House of Representatives shall refer to the

1 Committee on Oversight and Reform of the
2 House of Representatives a bill that sets forth
3 a National Regulatory Budget for the fiscal
4 year beginning on October 1 of that year.

5 “(2) REPORTING.—Not later than May 31 of
6 each year—

7 “(A) the Committee on Homeland Security
8 and Governmental Affairs of the Senate shall
9 report a bill establishing a National Regulatory
10 Budget for the fiscal year beginning on October
11 1 of that year; and

12 “(B) the Committee on Oversight and Re-
13 form of the House of Representatives shall re-
14 port a bill establishing a National Regulatory
15 Budget for the fiscal year beginning on October
16 1 of that year.

17 “(c) PASSAGE.—Not later than July 31 of each year,
18 the House of Representatives and the Senate shall each
19 pass a bill establishing a National Regulatory Budget for
20 the fiscal year beginning on October 1 of that year.

21 “(d) PRESENTMENT.—Not later than September 15
22 of each year, Congress shall pass and present to the Presi-
23 dent a National Regulatory Budget for the fiscal year be-
24 ginning on October 1 of that year.

25 “(e) DEFAULT BUDGET.—

1 “(1) IN GENERAL.—If a National Regulatory
2 Budget is not enacted with respect to a fiscal year,
3 the most recently enacted National Regulatory
4 Budget shall apply to that fiscal year.

5 “(2) DEFAULT INITIAL BUDGET.—

6 “(A) CALCULATION.—If a National Regu-
7 latory Budget is not enacted with respect to a
8 fiscal year, and no National Regulatory Budget
9 has previously been enacted—

10 “(i) the annual agency regulatory cost
11 cap for an Executive branch agency for the
12 fiscal year shall be equal to the amount of
13 regulatory costs imposed by that Executive
14 branch agency on regulated entities during
15 the preceding fiscal year, as estimated by
16 the Director in the annual report sub-
17 mitted to Congress under section 615(a);
18 and

19 “(ii) the annual overall regulatory cost
20 cap for the fiscal year shall be equal to the
21 sum of the amounts described in clause (i).

22 “(B) EFFECT.—For purposes of section
23 619, an annual agency regulatory cost cap de-
24 scribed in subparagraph (A) that applies to a
25 fiscal year shall have the same effect as if the

1 annual agency regulatory cost cap were part of
2 a National Regulatory Budget applicable to
3 that fiscal year.

4 “(f) INITIAL BUDGET.—The first National Regu-
5 latory Budget shall be with respect to fiscal year 2024.

6 **“§ 618. Executive branch agency cooperation manda-
7 tory; information sharing**

8 “(a) EXECUTIVE BRANCH AGENCY COOPERATION
9 MANDATORY.—Not later than 45 days after the date on
10 which the Director requests any information from an Ex-
11 ecutive branch agency, the Executive branch agency shall
12 provide the Director with the information.

13 “(b) MEMORANDA OF UNDERSTANDING REGARDING
14 CONFIDENTIALITY.—

15 “(1) IN GENERAL.—An Executive branch agen-
16 cy may require the Director to enter into a memo-
17 randum of understanding regarding the confiden-
18 tiality of information provided by the Executive
19 branch agency to the Director under subsection (a)
20 as a condition precedent to providing any requested
21 information.

22 “(2) DEGREE OF CONFIDENTIALITY OR DATA
23 PROTECTION.—An Executive branch agency may not
24 require a greater degree of confidentiality or data
25 protection from the Director in a memorandum of

1 understanding entered into under paragraph (1)
2 than the Executive branch agency itself must adhere
3 to.

4 “(3) SCOPE.—A memorandum of understanding
5 entered into by the Director and an Executive
6 branch agency under paragraph (1) shall—

7 “(A) be general in scope; and

8 “(B) govern all pending and future re-
9 quests made to the Executive branch agency by
10 the Director.

11 “(c) SANCTIONS FOR NON-COOPERATION.—

12 “(1) IN GENERAL.—The appropriations of an
13 Executive branch agency for a fiscal year shall be re-
14 duced by one-half of 1 percent if, during that fiscal
15 year, the Director finds that—

16 “(A) the Executive branch agency has
17 failed to timely provide information that the Di-
18 rector requested under subsection (a);

19 “(B) the Director has provided notice of
20 the failure described in subparagraph (A) to the
21 Executive branch agency;

22 “(C) the Executive branch agency has
23 failed to cure the failure described in subpara-
24 graph (A) within 30 days of being notified
25 under subparagraph (B); and

1 “(iv) providing the requested informa-
2 tion would adversely affect national secu-
3 rity.

4 “(B) NO WAIVER FOR HISTORICALLY NON-
5 COMPLIANT AGENCIES.—The Director of the
6 Office of Management and Budget may not
7 waive a sanction imposed on an Executive
8 branch agency under paragraph (1) if the Exec-
9 utive branch agency has a history of non-com-
10 pliance with requests for information by the Di-
11 rector of the Office of Regulatory Analysis
12 under subsection (a).

13 “(d) NATIONAL SECURITY.—The Director may not
14 require an Executive branch agency to provide information
15 under subsection (a) that would adversely affect national
16 security.

17 **“§ 619. Enforcement**

18 “(a) EXCEEDING ANNUAL AGENCY REGULATORY
19 COST CAP.—An Executive branch agency that exceeds the
20 annual agency regulatory cost cap imposed by the Na-
21 tional Regulatory Budget for a fiscal year may not pro-
22 mulgate a new covered Federal rule that increases regu-
23 latory costs until the Executive branch agency no longer
24 exceeds the annual agency regulatory cost cap imposed by
25 the applicable National Regulatory Budget.

1 “(b) DETERMINATION OF DIRECTOR.—

2 “(1) IN GENERAL.—An Executive branch agen-
3 cy may not promulgate a covered Federal rule unless
4 the Director determines, in conducting the regu-
5 latory analysis of the covered Federal rule under
6 section 615(b)(3)(A) that, after the Executive
7 branch agency promulgates the covered Federal rule,
8 the Executive branch agency will not exceed the an-
9 nual agency regulatory cost cap for that Executive
10 branch agency.

11 “(2) TIMING.—The Director shall make a de-
12 termination under paragraph (1) with respect to a
13 proposed covered Federal rule not later than 60
14 days after the Director receives a copy of the pro-
15 posed covered Federal rule under section 615(b)(4).

16 “(c) EFFECT OF VIOLATION OF THIS SECTION.—

17 “(1) NO FORCE OR EFFECT.—A covered Fed-
18 eral rule that is promulgated in violation of this sec-
19 tion shall have no force or effect.

20 “(2) JUDICIAL ENFORCEMENT.—Any party
21 may bring an action in a district court of the United
22 States to declare that a covered Federal rule has no
23 force or effect because the covered Federal rule was
24 promulgated in violation of this section.

1 **“§ 620. Regulatory Analysis Advisory Board**

2 “(a) ESTABLISHMENT OF BOARD.—In accordance
3 with the Federal Advisory Committee Act (5 U.S.C. App.),
4 the Director shall—

5 “(1) establish a Regulatory Analysis Advisory
6 Board; and

7 “(2) appoint not fewer than 9 and not more
8 than 15 individuals as members of the Regulatory
9 Analysis Advisory Board.

10 “(b) QUALIFICATIONS.—The Director shall appoint
11 individuals with technical and practical expertise in eco-
12 nomics, law, accounting, science, management, and other
13 areas that will aid the Director in preparing the annual
14 Report on National Regulatory Costs required under sec-
15 tion 615.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

17 (1) TABLE OF CHAPTERS.—The table of chap-
18 ters for part I of title 5, United States Code, is
19 amended by inserting after the item relating to
20 chapter 6 the following:

“6A. National Regulatory Budget and Office of Regulatory Analysis 613”.

21 (2) INTERNAL REVENUE CODE OF 1986.—Sec-
22 tion 6103(j) of the Internal Revenue Code of 1986
23 is amended by adding at the end the following:

24 “(7) OFFICE OF REGULATORY ANALYSIS.—
25 Upon written request by the Director of the Office

1 of Regulatory Analysis established under section 614
2 of title 5, United States Code, the Secretary shall
3 furnish to officers and employees of the Office of
4 Regulatory Analysis return information for the pur-
5 pose of, but only to the extent necessary for, an
6 analysis of regulatory costs.”.

7 **SEC. 3. REPORT ON DUPLICATIVE PERSONNEL; REPORT ON**
8 **REGULATORY ANALYSIS.**

9 (a) DEFINITION.—In this section, the term “Direc-
10 tor” means the Director of the Office of Regulatory Anal-
11 ysis established under section 614(b) of title 5, United
12 States Code, as added by section 2.

13 (b) REPORT ON DUPLICATIVE PERSONNEL.—Not
14 later than December 31, 2022, the Director shall submit
15 to Congress a report determining positions in the Federal
16 Government that are—

17 (1) duplicative of the work performed by the
18 Office of Regulatory Analysis established under sec-
19 tion 614 of title 5, United States Code, as added by
20 section 2; or

21 (2) otherwise rendered cost ineffective by the
22 work of the Office of Regulatory Analysis.

23 (c) REPORT ON REGULATORY ANALYSIS.—

24 (1) REPORT REQUIRED.—Not later than June
25 30, 2023, the Director shall submit to Congress a

1 report analyzing the practice of Federal regulatory
2 analysis with respect to, and the effectiveness of—

3 (A) chapter 6 of title 5, United States
4 Code (commonly known as the “Regulatory
5 Flexibility Act”);

6 (B) the Small Business Regulatory En-
7 forcement Fairness Act of 1996 (5 U.S.C. 601
8 note);

9 (C) chapter 35 of title 44, United States
10 Code (commonly known as the “Paperwork Re-
11 duction Act”);

12 (D) each Executive order that mandates
13 economic analysis of Federal regulations; and

14 (E) Office of Management and Budget cir-
15 culars, directives, and memoranda that mandate
16 economic analysis of Federal regulations.

17 (2) RECOMMENDATIONS.—The report under
18 paragraph (1) shall include recommendations about
19 how Federal regulatory analysis may be improved.

20 **SEC. 4. ADMINISTRATIVE PROCEDURE.**

21 (a) DEFINITION OF “RULE”.—Section 551(4) of title
22 5, United States Code, is amended by inserting after “re-
23 quirements of an agency” the following: “, whether or not
24 the agency statement amends the Code of Federal Regula-
25 tions and including, without limitation, a statement de-

1 scribed by the agency as a regulation, rule, directive, or
2 guidance.”.

3 (b) NOTICE OF PROPOSED RULEMAKING.—Section
4 553(b) of title 5, United States Code, is amended, fol-
5 lowing the flush text, in subparagraph (A) by striking “in-
6 terpretative rules, general statements of policy, or”.