

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 926

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## AN ACT

To promote regulatory flexibility and enhance public participation in Federal agency rulemaking, 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 Reform  
5        and Relief Act”.

1           **TITLE I—STRENGTHENING**  
2           **REGULATORY FLEXIBILITY**

3   **SEC. 101. JUDICIAL REVIEW.**

4           (a) AMENDMENT.—Section 611 of title 5, United  
5 States Code, is amended to read as follows:

6   **“§611. Judicial review**

7           “(a)(1) Except as provided in paragraph (2), not  
8 later than one year notwithstanding any other provision  
9 of law after the effective date of a final rule with respect  
10 to which an agency—

11                   “(A) certified, pursuant to section 605(b), that  
12           such rule would not have a significant economic im-  
13           pact on a substantial number of small entities; or

14                   “(B) prepared a final regulatory flexibility anal-  
15           ysis pursuant to section 604,

16 an affected small entity may petition for the judicial re-  
17 view of such certification or analysis in accordance with  
18 the terms of this subsection. A court having jurisdiction  
19 to review such rule for compliance with the provisions of  
20 section 553 or under any other provision of law shall have  
21 jurisdiction to review such certification or analysis. In the  
22 case where an agency delays the issuance of a final regu-  
23 latory flexibility analysis pursuant to section 608(b), a pe-  
24 tition for judicial review under this subsection shall be  
25 filed not later than one year notwithstanding any other

1 provision of law after the date the analysis is made avail-  
2 able to the public.

3 “(2) For purposes of this subsection, the term ‘af-  
4 fected small entity’ means a small entity that is or will  
5 be adversely affected by the final rule.

6 “(3) Nothing in this subsection shall be construed to  
7 affect the authority of any court to stay the effective date  
8 of any rule or provision thereof under any other provision  
9 of law.

10 “(4)(A) In the case where the agency certified that  
11 such rule would not have a significant economic impact  
12 on a substantial number of small entities, the court may  
13 order the agency to prepare a final regulatory flexibility  
14 analysis pursuant to section 604 if the court determines,  
15 on the basis of the rulemaking record, that the certifi-  
16 cation was arbitrary, capricious, an abuse of discretion,  
17 or otherwise not in accordance with law.

18 “(B) In the case where the agency prepared a final  
19 regulatory flexibility analysis, the court may order the  
20 agency to take corrective action consistent with the re-  
21 quirements of section 604 if the court determines, on the  
22 basis of the rulemaking record, that the final regulatory  
23 flexibility analysis was prepared by the agency without ob-  
24 servance of procedure required by section 604.

1       “(5) If, by the end of the 90-day period beginning  
2 on the date of the order of the court pursuant to para-  
3 graph (4) (or such longer period as the court may pro-  
4 vide), the agency fails, as appropriate—

5               “(A) to prepare the analysis required by section  
6       604; or

7               “(B) to take corrective action consistent with  
8       the requirements of section 604,  
9 the court may stay the rule or grant such other relief as  
10 it deems appropriate.

11       “(6) In making any determination or granting any  
12 relief authorized by this subsection, the court shall take  
13 due account of the rule of prejudicial error.

14       “(b) In an action for the judicial review of a rule,  
15 any regulatory flexibility analysis for such rule (including  
16 an analysis prepared or corrected pursuant to subsection  
17 (a)(4)) shall constitute part of the whole record of agency  
18 action in connection with such review.

19       “(c) Nothing in this section bars judicial review of  
20 any other impact statement or similar analysis required  
21 by any other law if judicial review of such statement or  
22 analysis is otherwise provided by law.”.

23       (b) EFFECTIVE DATE.—The amendment made by  
24 subsection (a) shall apply only to final agency rules issued  
25 after the date of enactment of this Act.

1 **SEC. 102. RULES COMMENTED ON BY SBA CHIEF COUNSEL**  
2 **FOR ADVOCACY.**

3 (a) IN GENERAL.—Section 612 of title 5, United  
4 States Code, is amended by adding at the end the follow-  
5 ing new subsection:

6 “(d) ACTION BY THE SBA CHIEF COUNSEL FOR AD-  
7 VOCACY.—

8 “(1) TRANSMITTAL OF PROPOSED RULES AND  
9 INITIAL REGULATORY FLEXIBILITY ANALYSIS TO  
10 SBA CHIEF COUNSEL FOR ADVOCACY.—On or before  
11 the 30th day preceding the date of publication by an  
12 agency of general notice of proposed rulemaking for  
13 a rule, the agency shall transmit to the Chief Coun-  
14 sel for Advocacy of the Small Business Administra-  
15 tion—

16 “(A) a copy of the proposed rule; and

17 “(B)(i) a copy of the initial regulatory  
18 flexibility analysis for the rule if required under  
19 section 603; or

20 “(ii) a determination by the agency that an  
21 initial regulatory flexibility analysis is not re-  
22 quired for the proposed rule under section 603  
23 and an explanation for the determination.

24 “(2) STATEMENT OF EFFECT.—On or before  
25 the 15th day following receipt of a proposed rule and  
26 initial regulatory flexibility analysis from an agency

1 under paragraph (1), the Chief Counsel for Advoca-  
2 cacy may transmit to the agency a written statement  
3 of the effect of the proposed rule on small entities.

4 “(3) RESPONSE.—If the Chief Counsel for Ad-  
5 vocacy transmits to an agency a statement of effect  
6 on a proposed rule in accordance with paragraph  
7 (2), the agency shall publish the statement, together  
8 with the response of the agency to the statement, in  
9 the Federal Register at the time of publication of  
10 general notice of proposed rulemaking for the rule.

11 “(4) SPECIAL RULE.—Any proposed rules is-  
12 sued by an appropriate Federal banking agency (as  
13 that term is defined in section 3(q) of the Federal  
14 Deposit Insurance Act (12 U.S.C. 1813(q)), the Na-  
15 tional Credit Union Administration, or the Office of  
16 Federal Housing Enterprise Oversight, in connection  
17 with the implementation of monetary policy or to en-  
18 sure the safety and soundness of federally insured  
19 depository institutions, any affiliate of such an insti-  
20 tution, credit unions, or government sponsored hous-  
21 ing enterprises or to protect the Federal deposit in-  
22 surance funds shall not be subject to the require-  
23 ments of this subsection.”.

24 (b) CONFORMING AMENDMENT.—Section 603(a) of  
25 title 5, United States Code, is amended by inserting “in

1 accordance with section 612(d)” before the period at the  
2 end of the last sentence.

3 **SEC. 103. SENSE OF CONGRESS REGARDING SBA CHIEF**  
4 **COUNSEL FOR ADVOCACY.**

5 It is the sense of Congress that the Chief Counsel  
6 for Advocacy of the Small Business Administration should  
7 be permitted to appear as amicus curiae in any action or  
8 case brought in a court of the United States for the pur-  
9 pose of reviewing a rule.

10 **TITLE II—REGULATORY IMPACT**  
11 **ANALYSES**

12 **SEC. 201. DEFINITIONS.**

13 Section 551 of title 5, United States Code, is amend-  
14 ed by striking “and” at the end of paragraph (13), by  
15 striking the period at the end of paragraph (14) and in-  
16 serting a semicolon, and by adding at the end the follow-  
17 ing:

18 “(15) ‘major rule’ means any rule subject to  
19 section 553(c) that is likely to result in—

20 “(A) an annual effect on the economy of  
21 \$50,000,000 or more;

22 “(B) a major increase in costs or prices for  
23 consumers, individual industries, Federal,  
24 State, or local government agencies, or geo-  
25 graphic regions, or

1           “(C) significant adverse effects on competi-  
2           tion, employment, investment, productivity, in-  
3           novation, or on the ability of United States-  
4           based enterprises to compete with foreign-based  
5           enterprises in domestic and export markets; and

6           “(16) ‘Director’ means the Director of the Of-  
7           fice of Management and Budget.”.

8   **SEC. 202. RULEMAKING NOTICES FOR MAJOR RULES.**

9           Section 553 of title 5, United States Code, is amend-  
10          ed by adding at the end the following:

11          “(f)(1) Each agency shall for a proposed major rule  
12          publish in the Federal Register, at least 90 days before  
13          the date of publication of the general notice required  
14          under subsection (b), a notice of intent to engage in rule-  
15          making.

16          “(2) A notice under paragraph (1) for a proposed  
17          major rule shall include, to the extent possible, the infor-  
18          mation required to be included in a regulatory impact  
19          analysis for the rule under subsection (i)(4)(B) and (D).

20          “(3) For a major rule proposed by an agency, the  
21          head of the agency shall include in a general notice under  
22          subsection (b), a preliminary regulatory impact analysis  
23          for the rule prepared in accordance with subsection (i).

24          “(4) For a final major rule, the agency shall include  
25          with the statement of basis and purpose—

1           “(A) a summary of a final regulatory impact  
2 analysis of the rule in accordance with subsection  
3 (i); and

4           “(B) a clear delineation of all changes in the in-  
5 formation included in the final regulatory impact  
6 analysis under subsection (i) from any such informa-  
7 tion that was included in the notice for the rule  
8 under subsection (b).

9 The agency shall provide the complete text of a final regu-  
10 latory impact analysis upon request.

11          “(5) The issuance of a notice of intent to engage in  
12 rulemaking under paragraph (1) and the issuance of a  
13 preliminary regulatory impact analysis under paragraph  
14 (3) shall not be considered final agency action for pur-  
15 poses of section 704.

16          “(6) In a rulemaking involving a major rule, the  
17 agency conducting the rulemaking shall make a written  
18 record describing the subject of all contacts the agency  
19 made with persons outside the agency relating to such  
20 rulemaking. If the contact was made with a non-govern-  
21 mental person, the written record of such contact shall be  
22 made available, upon request to the public.”.

1 **SEC. 203. HEARING REQUIREMENT FOR PROPOSED RULES;**  
2 **AND EXTENSION OF COMMENT PERIOD.**

3 (a) HEARING REQUIREMENT.—Section 553 of title 5,  
4 United States Code, as amended by section 202, is further  
5 amended by adding after subsection (f) the following:

6 “(g) If more than 100 interested persons acting indi-  
7 vidually submit requests for a hearing to an agency re-  
8 garding any major rule proposed by the agency, the agen-  
9 cy shall hold such a hearing on the proposed rule.”.

10 (b) EXTENSION OF COMMENT PERIOD.—Section 553  
11 of title 5, United States Code, as amended by subsection  
12 (a), is further amended by adding after subsection (g) the  
13 following:

14 “(h) If during the 90-day period beginning on the  
15 date of publication of a notice under subsection (f) for a  
16 proposed major rule, or if during the period beginning on  
17 the date of publication or service of notice required by sub-  
18 section (b) for a proposed major rule, more than 100 per-  
19 sons individually contact the agency to request an exten-  
20 sion of the period for making submissions under sub-  
21 section (c) pursuant to the notice, the agency—

22 “(1) shall provide an additional 30-day period  
23 for making those submissions; and

24 “(2) may not adopt the rule until after the ad-  
25 ditional period.”.

1 (c) RESPONSE TO COMMENTS.—Section 553(c) of  
2 title 5, United States Code, is amended—

3 (1) by inserting “(1)” after “(c)”; and

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

5 “(2) Each agency shall publish in the Federal Reg-  
6 ister, with each rule published under section 552(a)(1)(D),  
7 responses to the substance of the comments received by  
8 the agency regarding the rule.”.

9 **SEC. 204. REGULATORY IMPACT ANALYSIS.**

10 Section 553 of title 5, United States Code, as amend-  
11 ed by section 203, is amended by adding after subsection  
12 (h) the following:

13 “(i)(1) Each agency shall, in connection with every  
14 major rule, prepare, and, to the extent permitted by law,  
15 consider, a regulatory impact analysis. Such analysis may  
16 be combined with any regulatory flexibility analysis per-  
17 formed under sections 603 and 604.

18 “(2) Each agency shall initially determine whether a  
19 rule it intends to propose or issue is a major rule. The  
20 Director shall have authority to order a rule to be treated  
21 as a major rule and to require any set of related rules  
22 to be considered together as a major rule.

23 “(3) Except as provided in subsection (j), agencies  
24 shall prepare—

1           “(A) a preliminary regulatory impact analysis,  
2           which shall be transmitted, along with a notice of  
3           proposed rulemaking, to the Director at least 60  
4           days prior to the publication of notice of proposed  
5           rulemaking, and

6           “(B) a final regulatory impact analysis, which  
7           shall be transmitted along with the final rule at least  
8           30 days prior to the publication of a major rule.

9           “(4) Each preliminary and final regulatory impact  
10          analysis shall contain the following information:

11           “(A) A description of the potential benefits of  
12           the rule, including any beneficial effects that cannot  
13           be quantified in monetary terms and the identifica-  
14           tion of those likely to receive the benefits.

15           “(B) An explanation of the necessity, legal au-  
16           thority, and reasonableness of the rule and a de-  
17           scription of the condition that the rule is to address.

18           “(C) A description of the potential costs of the  
19           rule, including any adverse effects that cannot be  
20           quantified in monetary terms, and the identification  
21           of those likely to bear the costs.

22           “(D) An analysis of alternative approaches, in-  
23           cluding market based mechanisms, that could sub-  
24           stantially achieve the same regulatory goal at a  
25           lower cost and an explanation of the reasons why

1 such alternative approaches were not adopted, to-  
2 gether with a demonstration that the rule provides  
3 for the least costly approach.

4 “(E) A statement that the rule does not conflict  
5 with, or duplicate, any other rule or a statement of  
6 the reasons why such a conflict or duplication exists.

7 “(F) A statement of whether the rule will re-  
8 quire on-site inspections or whether persons will be  
9 required by the rule to maintain any records which  
10 will be subject to inspection, and a statement of  
11 whether the rule will require persons to obtain li-  
12 censes, permits, or other certifications including  
13 specification of any associated fees or fines.

14 “(G) An estimate of the costs to the agency for  
15 implementation and enforcement of the rule and of  
16 whether the agency can be reasonably expected to  
17 implement the rule with the current level of appro-  
18 priations.

19 “(5)(A) the Director is authorized to review and pre-  
20 pare comments on any preliminary or final regulatory im-  
21 pact analysis, notice of proposed rulemaking, or final rule  
22 based on the requirements of this subsection.

23 “(B) Upon the request of the Director, an agency  
24 shall consult with the Director concerning the review of  
25 a preliminary impact analysis or notice of proposed rule-

1 making and shall refrain from publishing its preliminary  
2 regulatory impact analysis or notice of proposed rule-  
3 making until such review is concluded. The Director's re-  
4 view may not take longer than 90 days after the date of  
5 the request of the Director.

6       “(6)(A) An agency may not adopt a major rule unless  
7 the final regulatory impact analysis for the rule is ap-  
8 proved or commented upon in writing by the Director or  
9 by an individual designated by the Director for that pur-  
10 pose.

11       “(B) Upon receiving notice that the Director intends  
12 to comment in writing with respect to any final regulatory  
13 impact analysis or final rule, the agency shall refrain from  
14 publishing its final regulatory impact analysis or final rule  
15 until the agency has responded to the Director's comments  
16 and incorporated those comments in the agency's response  
17 in the rulemaking file. If the Director fails to make such  
18 comments in writing with respect to any final regulatory  
19 impact analysis or final rule within 90 days of the date  
20 the Director gives such notice, the agency may adopt such  
21 final regulatory impact analysis or final rule.

22       “(7) Notwithstanding section 551(16), for purposes  
23 of this subsection with regard to any rule proposed or is-  
24 sued by an appropriate Federal banking agency (as that  
25 term is defined in section 3(q) of the Federal Deposit In-

1 surance Act (12 U.S.C. 1813(q)), the National Credit  
2 Union Administration, or the Office of Federal Housing  
3 Enterprise Oversight, the term ‘Director’ means the head  
4 of such agency, Administration, or Office.’’.

5 **SEC. 205. STANDARD OF CLARITY.**

6 Section 553 of title 5, United States Code, as amend-  
7 ed in section 204, is amended by adding after subsection  
8 (i) the following:

9 “(j) To the extent practicable, the head of an agency  
10 shall seek to ensure that any proposed major rule or regu-  
11 latory impact analysis of such a rule is written in a reason-  
12 ably simple and understandable manner and provides ade-  
13 quate notice of the content of the rule to affected per-  
14 sons.’’.

15 **SEC. 206. EXEMPTIONS.**

16 Section 553 of title 5, United States Code, as amend-  
17 ed by section 205, is further amended by adding after sub-  
18 section (j) the following:

19 “(k)(1) The provisions of this section regarding  
20 major rules shall not apply to—

21 “(A) any regulation that responds to an emer-  
22 gency situation if such regulation is reported to the  
23 Director as soon as is practicable;

24 “(B) any regulation for which consideration  
25 under the procedures of this section would conflict

1 with deadlines imposed by statute or by judicial  
2 order;

3 “(C) any regulation proposed or issued in con-  
4 nection with the implementation of monetary policy  
5 or to ensure the safety and soundness of federally  
6 insured depository institutions, any affiliate of such  
7 institution, credit unions, or government sponsored  
8 housing enterprises regulated by the Office of Fed-  
9 eral Housing Enterprise Oversight;

10 “(D) any agency action that the head of the  
11 agency certifies is limited to interpreting, implement-  
12 ing, or administering the internal revenue laws of  
13 the United States, including any regulation proposed  
14 or issued in connection with ensuring the collection  
15 of taxes from a subsidiary of a foreign company  
16 doing business in the United States; and

17 “(E) any regulation proposed or issued pursu-  
18 ant to section 553 of title 5, United States Code, in  
19 connection with imposing trade sanctions against  
20 any country that engages in illegal trade activities  
21 against the United States that are injurious to  
22 American technology, jobs, pensions, or general eco-  
23 nomic well-being.

24 A regulation described in subparagraph (B) shall be re-  
25 ported to the Director with a brief explanation of the con-

1 flict and the agency, in consultation with the Director,  
2 shall, to the extent permitted by statutory or judicial dead-  
3 lines, adhere to the process of this section.

4 “(2) The Director may in accordance with the pur-  
5 poses of this section exempt any class or category of regu-  
6 lations from any or all requirements of this section.

7 “(3) For purposes of paragraph (1), the term ‘emer-  
8 gency situation’ means a situation that is—

9 “(A) immediately impending and extraordinary  
10 in nature, or

11 “(B) demanding attention due to a condition,  
12 circumstance, or practice reasonably expected to  
13 cause death, serious illness, or severe injury to hu-  
14 mans or substantial endangerment to private prop-  
15 erty or the environment if no action is taken.”.

16 **SEC. 207. REPORT.**

17 The Director of the Office of Management and Budg-  
18 et shall submit a report to the Congress no later than 24  
19 months after the date of the enactment of this Act con-  
20 taining an analysis of rulemaking procedures of Federal  
21 agencies and an analysis of the impact of those rule-  
22 making procedures on the regulated public and regulatory  
23 process.

1 **SEC. 208. EFFECTIVE DATE.**

2 The amendment made by this title shall apply only  
3 to final agency rules issued after rulemaking begun after  
4 the date of enactment of this Act.

5 **TITLE III—PROTECTIONS**

6 **SEC. 301. PRESIDENTIAL ACTION.**

7 Pursuant to the authority of section 7301 of title 5,  
8 United States Code, the President shall, within 180 days  
9 of the date of the enactment of this title, prescribe regula-  
10 tions for employees of the executive branch to ensure that  
11 Federal laws and regulations shall be administered con-  
12 sistent with the principle that any person shall, in connec-  
13 tion with the enforcement of such laws and regulations—

14 (1) be protected from abuse, reprisal, or retalia-  
15 tion, and

16 (2) be treated fairly, equitably, and with due re-  
17 gard for such person's rights under the Constitution.

Passed the House of Representatives March 1,  
1995.

Attest:

*Clerk.*



104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

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**H. R. 926**

**AN ACT**

To promote regulatory flexibility and enhance public participation in Federal agency rulemaking, and for other purposes.