



The Clearing Unnecessary Regulatory Burdens (CURB) Act (S. 602) Would Increase Regulatory Uncertainty and Require the Impossible

The CURB Act would go far beyond a simple codification of previous executive orders:

- Currently, the Office of Information and Regulatory Affairs (OIRA) reviews detailed agency cost-benefit analyses for “economically significant” proposed regulations – those having an annual impact of \$100 million or more on the economy. However, the CURB Act would broaden the mandate of OIRA to review the cost-benefit analysis of “*all significant rules*” that materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or raise novel legal or policy issues. **The Congressional Research Service (CRS) estimates that the CURB Act’s expansion would mean that OIRA, now reviewing about 100 economically significant rules per year under a rigorous cost-benefit analysis rubric, would be faced with an annual workload of about 650 rules. CRS questions whether OIRA would have the resources and staffing necessary to handle this new, vastly expanded mandate.**

The CURB Act would increase regulatory uncertainty by limiting the effectiveness of industry-oriented guidance documents:

- The CURB Act would also burden agencies and businesses by requiring OIRA review of significant guidance documents issued by agencies. Guidance documents are issued to make things easier for both small and large businesses that rely on them to clarify what a rule means and how it should be applied. These documents can be particularly important for new players, such as biotech firms new to the Food and Drug Administration’s drug approval process. **The CURB Act would place significant procedural hurdles in front of any agency that seeks to use guidance documents to clarify issues for businesses impacted by its rules. The ensuing delays would increase regulatory uncertainty.**

The CURB Act requires agencies to make almost impossible determinations:

- S. 602 mandates that agencies report to OIRA their assessment of a proposed regulation’s impact on “the promotion of the efficient functioning of the economy and private markets,” including the impact on job creation, the cost of energy, and consumer prices – something that is nearly impossible to predict. These highly speculative analyses would be subject to judicial review under this bill. **A reviewing court could overturn an entire regulation simply because an agency wasn’t able to predict the impossible.**

The CURB Act would restrict agencies in responding to regulatory violations:

- **The CURB Act would reduce penalties for lawbreakers** who happen to be small entities. This is both unnecessary and potentially harmful to the public. Although the purported goal of the CURB Act is to protect small entities from having to pay a fine for failing to report information, these businesses already have this protection: the Small Business Regulatory Enforcement and Fairness Act (SBREFA) of 1996 required agencies to establish a program “to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.” This provides agencies with the flexibility to reduce or waive penalties for small businesses on a case-by-case basis when it is appropriate and deserved. **The CURB Act, on the other hand, would leave agencies with virtually no discretion in responding to regulatory violations by small businesses. Further, relaxing reporting requirements could endanger the public by reducing the data available to agencies, leaving them in the dark about potential problems in need of safety rules, such as accident reporting or pollution discharges.**

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