

114TH CONGRESS  
2D SESSION

# S. 2582

To ensure economic stability, accountability, and efficiency of Federal Government operations by establishing a moratorium on midnight rules during a President's final days in office, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2016

Mrs. ERNST (for herself and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

---

## A BILL

To ensure economic stability, accountability, and efficiency of Federal Government operations by establishing a moratorium on midnight rules during a President's final days in office, 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 "Midnight Rule Relief  
5 Act of 2016".

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) ADMINISTRATOR.—The term “Adminis-  
2           trator” means the Administrator of the Office of In-  
3           formation and Regulatory Affairs within the Office  
4           of Management and Budget.

5           (2) AGENCY.—The term “agency”—

6                   (A) has the meaning given the term in sec-  
7                   tion 551 of title 5, United States Code; and

8                   (B) does not include—

9                           (i) the Federal Election Commission;

10                           (ii) the Board of Governors of the  
11                   Federal Reserve System;

12                           (iii) the Federal Deposit Insurance  
13                   Corporation; or

14                           (iv) the United States Postal Service.

15           (3) DEADLINE.—The term “deadline” means  
16           any date certain for fulfilling any obligation or exer-  
17           cising any authority established by or under—

18                   (A) any Federal statute or rule; or

19                   (B) any court order implementing any  
20           Federal statute, regulation, or rule.

21           (4) MIDNIGHT RULE.—The term “midnight  
22           rule” means an agency statement of general applica-  
23           bility and future effect, issued during the morato-  
24           rium period, that—

1 (A) is intended to have the force and effect  
2 of law; and

3 (B) is designed—

4 (i) to implement, interpret, or pre-  
5 scribe law or policy; or

6 (ii) to describe the procedure or prac-  
7 tice requirements of an agency.

8 (5) MORATORIUM PERIOD.—The term “morato-  
9 rium period” means the period beginning the day  
10 after the day referred to in section 1 of title 3,  
11 United States Code, and ending on January 20 of  
12 the following year, in which a President is not serv-  
13 ing a consecutive term.

14 (6) RULE.—The term “rule” has the meaning  
15 given the term in section 551 of title 5, United  
16 States Code.

17 (7) SMALL ENTITY.—The term “small entity”  
18 has the meaning given the term in section 601 of  
19 title 5, United States Code.

20 **SEC. 3. MORATORIUM ON MIDNIGHT RULES.**

21 Except as provided under sections 4 and 5, during  
22 the moratorium period, an agency may not propose or fi-  
23 nalize any midnight rule unless the Administrator finds  
24 the midnight rule will not result in any of the following:

1           (1) An annual effect on the economy of  
2           \$100,000,000 or more.

3           (2) A major increase in costs or prices for con-  
4           sumers, individual industries, Federal, State, or local  
5           government agencies, or geographic regions.

6           (3) Significant adverse effects on competition,  
7           employment, investment, productivity, innovation, or  
8           on the ability of United States-based enterprises to  
9           compete with foreign-based enterprises in domestic  
10          and export markets.

11          (4) A significant economic impact on a substan-  
12          tial number of small entities.

13 **SEC. 4. SPECIAL RULE ON STATUTORY, REGULATORY, AND**  
14 **JUDICIAL DEADLINES.**

15          (a) IN GENERAL.—Section 3 shall not apply with re-  
16          spect to any deadline for, relating to, or involving any mid-  
17          night rule that—

18               (1) was established before the beginning of the  
19               moratorium period; and

20               (2) is required to occur during the moratorium  
21               period.

22          (b) PUBLICATION OF DEADLINES.—Not later than  
23          30 days after the beginning of a moratorium period, the  
24          Administrator shall identify and publish in the Federal  
25          Register a list of deadlines covered by subsection (a).

1 **SEC. 5. EXCEPTIONS.**

2 (a) **EMERGENCY EXCEPTION.**—Section 3 shall not  
3 apply to a midnight rule if the President determines by  
4 Executive order that the midnight rule is—

5 (1) necessary because of an imminent threat to  
6 health or safety or other emergency;

7 (2) necessary for the enforcement of criminal  
8 laws;

9 (3) necessary for the national security of the  
10 United States; or

11 (4) issued pursuant to any statute imple-  
12 menting an international trade agreement.

13 (b) **DEREGULATORY EXCEPTION.**—Section 3 shall  
14 not apply to a midnight rule if the Administrator—

15 (1) finds the midnight rule is limited to repeal-  
16 ing an existing rule; and

17 (2) publishes a certification of that finding in  
18 the Federal Register.

○