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*S. 981, the Regulatory Improvement Act of 1998:
The Most Recent Attempt to Develop A Solution in Search of a Problem*

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Abstract by Janet C. Goldberg

The 104th Congress, perceiving problems with the regulatory process, passed numerous regulatory reform laws, including the Paperwork Reduction Act of 1995 (PRA) (amending a 1980 version of the statute), the Unfunded Mandates Reform Act of 1995 (UMRA), and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The original PRA required the Office of Information and Regulatory Affairs, located within the Office of Management and Budget, to review and approve government information collection requests. The amended PRA maintains this requirement, but also provides that notice must be given to the public regarding proposed collections of information and that requests for information need not be complied with if the request lacks an OMB control number. The UMRA requires federal agencies to provide a qualitative and quantitative assessment of the effects of proposed regulations on state and local governments and the private sector, when a federal mandate may result in annual expenditures of \$100 million or more by such non-federal entities. Additionally, the UMRA requires that agencies imposing federal mandates consider a variety of regulatory alternatives and choose the least burdensome alternative. SBREFA requires that federal agencies submit all rules to the Congress and the General Accounting Office (GAO) before the rule can take effect. The GAO must prepare a report assessing the extent to which an agency complied with statutory procedural requirements whenever an agency proposes a “major rule” (\$100 million or greater economic impact). Moreover, SBREFA amends the Regulatory Flexibility Act (RFA), which requires preparation of initial and final analyses related to a regulation’s impact on small entities, in two ways. First, SBREFA permits judicial review of agencies’ compliance with RFA. Second, SBREFA requires an agency to provide a factual basis for certification that a proposed rule will not have a significant economic impact on small entities.

The following Congress proposed legislation, the Regulatory Improvement Act of 1998 (RIA), S. 981, to fix additional alleged “problems” with the regulatory system. The RIA would require an agency issuing a “major rule” to perform cost/benefit analyses and (health/safety/environmental) risk assessment, determine whether the benefits justified the costs, and procure independent peer review of the cost/benefit analyses and risk assessment. RIA also directed agencies to review, every five years, “economically significant” rules (annual economic impact of \$100 million or greater) and rules having a significant impact on a substantial number of small entities. Finally, RIA required agencies to choose the most cost-effective alternative that achieved the objectives of the rule, and to provide a written statement for any proposed rules which included a federal mandate and could result in an annual expenditure in excess of \$100 million. RIA was

redundant with the extensive regulatory reforms passed during the 104th Congress and threatened to complicate the regulatory process without conferring additional benefits.