

Union Calendar No. 617

115TH CONGRESS
2^D SESSION

H. R. 50

[Report No. 115–798, Part I]

To provide for additional safeguards with respect to imposing Federal mandates, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

Ms. FOXX (for herself and Mr. CUELLAR) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committees on the Budget, Rules, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE 29, 2018

Additional sponsors: Mr. PETERSON, Mr. SUOZZI, Mr. SESSIONS, and Mr. GOSAR

JUNE 29, 2018

Reported from the Committee on Oversight and Government Reform with an amendment

[Insert the part printed in italic]

JUNE 29, 2018

The Committees on the Budget, Rules, and the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To provide for additional safeguards with respect to imposing
Federal mandates, 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 “Unfunded Mandates
5 Information and Transparency Act of 2017”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is—

8 (1) to improve the quality of the deliberations
9 of Congress with respect to proposed Federal man-
10 dates by—

11 (A) providing Congress and the public with
12 more complete information about the effects of
13 such mandates; and

14 (B) ensuring that Congress acts on such
15 mandates only after focused deliberation on
16 their effects; and

17 (2) to enhance the ability of Congress and the
18 public to identify Federal mandates that may impose
19 undue harm on consumers, workers, employers,
20 small businesses, private property owners, and State,
21 local, and tribal governments.

1 **SEC. 3. PROVIDING FOR CONGRESSIONAL BUDGET OFFICE**
2 **STUDIES ON POLICIES INVOLVING CHANGES**
3 **IN CONDITIONS OF GRANT AID.**

4 Section 202(g) of the Congressional Budget Act of
5 1974 (2 U.S.C. 602(g)) is amended by adding at the end
6 the following new paragraph:

7 “(3) **ADDITIONAL STUDIES.**—At the request of
8 any Chairman or ranking member of the minority of
9 a Committee of the Senate or the House of Rep-
10 resentatives, the Director shall conduct an assess-
11 ment comparing the authorized level of funding in a
12 bill or resolution to the prospective costs of carrying
13 out any changes to a condition of Federal assistance
14 being imposed on State, local, or tribal governments
15 participating in the Federal assistance program con-
16 cerned or, in the case of a bill or joint resolution
17 that authorizes such sums as are necessary, an as-
18 sessment of an estimated level of funding compared
19 to such costs.”.

20 **SEC. 4. CLARIFYING THE DEFINITION OF DIRECT COSTS TO**
21 **REFLECT CONGRESSIONAL BUDGET OFFICE**
22 **PRACTICE.**

23 Section 421(3) of the Congressional Budget Act of
24 1974 (2 U.S.C. 658(3)(A)(i)) is amended—

25 (1) in subparagraph (A)(i), by inserting “incur
26 or” before “be required”; and

1 (2) in subparagraph (B), by inserting after “to
2 spend” the following: “or could forgo in profits, in-
3 cluding costs passed on to consumers or other enti-
4 ties taking into account, to the extent practicable,
5 behavioral changes,”.

6 **SEC. 5. EXPANDING THE SCOPE OF REPORTING REQUIRE-**
7 **MENTS TO INCLUDE REGULATIONS IMPOSED**
8 **BY INDEPENDENT REGULATORY AGENCIES.**

9 Paragraph (1) of section 421 of the Congressional
10 Budget Act of 1974 (2 U.S.C. 658) is amended by striking
11 “, but does not include independent regulatory agencies”
12 and inserting “, except it does not include the Board of
13 Governors of the Federal Reserve System, the Federal
14 Open Market Committee, or the Consumer Financial Pro-
15 tection Bureau”.

16 **SEC. 6. AMENDMENTS TO REPLACE OFFICE OF MANAGE-**
17 **MENT AND BUDGET WITH OFFICE OF INFOR-**
18 **MATION AND REGULATORY AFFAIRS.**

19 The Unfunded Mandates Reform Act of 1995 (Public
20 Law 104–4; 2 U.S.C. 1511 et seq.) is amended—

21 (1) in section 103(c) (2 U.S.C. 1511(c))—

22 (A) in the subsection heading, by striking
23 “OFFICE OF MANAGEMENT AND BUDGET” and
24 inserting “OFFICE OF INFORMATION AND REG-
25 ULATORY AFFAIRS”; and

1 (B) by striking “Director of the Office of
2 Management and Budget” and inserting “Ad-
3 ministrator of the Office of Information and
4 Regulatory Affairs”;

5 (2) in section 205(e) (2 U.S.C. 1535(c))—

6 (A) in the subsection heading, by striking
7 “OMB”; and

8 (B) by striking “Director of the Office of
9 Management and Budget” and inserting “Ad-
10 ministrator of the Office of Information and
11 Regulatory Affairs”; and

12 (3) in section 206 (2 U.S.C. 1536), by striking
13 “Director of the Office of Management and Budget”
14 and inserting “Administrator of the Office of Infor-
15 mation and Regulatory Affairs”.

16 **SEC. 7. APPLYING SUBSTANTIVE POINT OF ORDER TO PRI-**
17 **VATE SECTOR MANDATES.**

18 Section 425(a)(2) of the Congressional Budget Act
19 of 1974 (2 U.S.C. 658d(a)(2)) is amended—

20 (1) by striking “Federal intergovernmental
21 mandates” and inserting “Federal mandates”; and

22 (2) by inserting “or 424(b)(1)” after “section
23 424(a)(1)”.

1 **SEC. 8. REGULATORY PROCESS AND PRINCIPLES.**

2 Section 201 of the Unfunded Mandates Reform Act
3 of 1995 (2 U.S.C. 1531) is amended to read as follows:

4 **“SEC. 201. REGULATORY PROCESS AND PRINCIPLES.**

5 “(a) IN GENERAL.—Each agency shall, unless other-
6 wise expressly prohibited by law, assess the effects of Fed-
7 eral regulatory actions on State, local, and tribal govern-
8 ments and the private sector (other than to the extent that
9 such regulatory actions incorporate requirements specifi-
10 cally set forth in law) in accordance with the following
11 principles:

12 “(1) Each agency shall identify the problem
13 that it intends to address (including, if applicable,
14 the failures of private markets or public institutions
15 that warrant new agency action) as well as assess
16 the significance of that problem.

17 “(2) Each agency shall examine whether exist-
18 ing regulations (or other law) have created, or con-
19 tributed to, the problem that a new regulation is in-
20 tended to correct and whether those regulations (or
21 other law) should be modified to achieve the in-
22 tended goal of regulation more effectively.

23 “(3) Each agency shall identify and assess
24 available alternatives to direct regulation, including
25 providing economic incentives to encourage the de-
26 sired behavior, such as user fees or marketable per-

1 mits, or providing information upon which choices
2 can be made by the public.

3 “(4) If an agency determines that a regulation
4 is the best available method of achieving the regu-
5 latory objective, it shall design its regulations in the
6 most cost-effective manner to achieve the regulatory
7 objective. In doing so, each agency shall consider in-
8 centives for innovation, consistency, predictability,
9 the costs of enforcement and compliance (to the gov-
10 ernment, regulated entities, and the public), flexi-
11 bility, distributive impacts, and equity.

12 “(5) Each agency shall assess both the costs
13 and the benefits of the intended regulation and, rec-
14 ognizing that some costs and benefits are difficult to
15 quantify, propose or adopt a regulation, unless ex-
16 pressly prohibited by law, only upon a reasoned de-
17 termination that the benefits of the intended regula-
18 tion justify its costs.

19 “(6) Each agency shall base its decisions on the
20 best reasonably obtainable scientific, technical, eco-
21 nomic, and other information concerning the need
22 for, and consequences of, the intended regulation.

23 “(7) Each agency shall identify and assess al-
24 ternative forms of regulation and shall, to the extent
25 feasible, specify performance objectives, rather than

1 specifying the behavior or manner of compliance
2 that regulated entities must adopt.

3 “(8) Each agency shall avoid regulations that
4 are inconsistent, incompatible, or duplicative with its
5 other regulations or those of other Federal agencies.

6 “(9) Each agency shall tailor its regulations to
7 minimize the costs of the cumulative impact of regu-
8 lations.

9 “(10) Each agency shall draft its regulations to
10 be simple and easy to understand, with the goal of
11 minimizing the potential for uncertainty and litiga-
12 tion arising from such uncertainty.

13 “(b) REGULATORY ACTION DEFINED.—In this sec-
14 tion, the term ‘regulatory action’ means any substantive
15 action by an agency (normally published in the Federal
16 Register) that promulgates or is expected to lead to the
17 promulgation of a final rule or regulation, including ad-
18 vance notices of proposed rulemaking and notices of pro-
19 posed rulemaking.”.

20 **SEC. 9. EXPANDING THE SCOPE OF STATEMENTS TO AC-**
21 **COMPANY SIGNIFICANT REGULATORY AC-**
22 **TIONS.**

23 (a) IN GENERAL.—Subsection (a) of section 202 of
24 the Unfunded Mandates Reform Act of 1995 (2 U.S.C.
25 1532) is amended to read as follows:

1 “(a) IN GENERAL.—Unless otherwise expressly pro-
2 hibited by law, before promulgating any general notice of
3 proposed rulemaking or any final rule, or within six
4 months after promulgating any final rule that was not pre-
5 ceded by a general notice of proposed rulemaking, if the
6 proposed rulemaking or final rule includes a Federal man-
7 date that may result in an annual effect on State, local,
8 or tribal governments, or to the private sector, in the ag-
9 gregate of \$100,000,000 or more in any 1 year, the agency
10 shall prepare a written statement containing the following:

11 “(1) The text of the draft proposed rulemaking
12 or final rule, together with a reasonably detailed de-
13 scription of the need for the proposed rulemaking or
14 final rule and an explanation of how the proposed
15 rulemaking or final rule will meet that need.

16 “(2) An assessment of the potential costs and
17 benefits of the proposed rulemaking or final rule, in-
18 cluding an explanation of the manner in which the
19 proposed rulemaking or final rule is consistent with
20 a statutory requirement and avoids undue inter-
21 ference with State, local, and tribal governments in
22 the exercise of their governmental functions.

23 “(3) A qualitative and quantitative assessment,
24 including the underlying analysis, of benefits antici-
25 pated from the proposed rulemaking or final rule

1 (such as the promotion of the efficient functioning of
2 the economy and private markets, the enhancement
3 of health and safety, the protection of the natural
4 environment, and the elimination or reduction of dis-
5 crimination or bias).

6 “(4) A qualitative and quantitative assessment,
7 including the underlying analysis, of costs antici-
8 pated from the proposed rulemaking or final rule
9 (such as the direct costs both to the Government in
10 administering the final rule and to businesses and
11 others in complying with the final rule, and any ad-
12 verse effects on the efficient functioning of the econ-
13 omy, private markets (including productivity, em-
14 ployment, and international competitiveness), health,
15 safety, and the natural environment).

16 “(5) Estimates by the agency, if and to the ex-
17 tent that the agency determines that accurate esti-
18 mates are reasonably feasible, of—

19 “(A) the future compliance costs of the
20 Federal mandate; and

21 “(B) any disproportionate budgetary ef-
22 fects of the Federal mandate upon any par-
23 ticular regions of the Nation or particular
24 State, local, or tribal governments, urban or

1 rural or other types of communities, or par-
2 ticular segments of the private sector.

3 “(6)(A) A detailed description of the extent of
4 the agency’s prior consultation with the private sec-
5 tor and elected representatives (under section 204)
6 of the affected State, local, and tribal governments.

7 “(B) A detailed summary of the comments and
8 concerns that were presented by the private sector
9 and State, local, or tribal governments either orally
10 or in writing to the agency.

11 “(C) A detailed summary of the agency’s eval-
12 uation of those comments and concerns.

13 “(7) A detailed summary of how the agency
14 complied with each of the regulatory principles de-
15 scribed in section 201.

16 “(8) An assessment of the effects that the pro-
17 posed rulemaking or final rule are expected to have
18 on private property owners, including the use and
19 value of affected property.”.

20 (b) REQUIREMENT FOR DETAILED SUMMARY.—Sub-
21 section (b) of section 202 of such Act is amended by in-
22 serting “detailed” before “summary”.

23 **SEC. 10. ENHANCED STAKEHOLDER CONSULTATION.**

24 Section 204 of the Unfunded Mandates Reform Act
25 of 1995 (2 U.S.C. 1534) is amended—

1 (1) in the section heading, by inserting “**AND**
2 **PRIVATE SECTOR**” before “**INPUT**”;

3 (2) in subsection (a)—

4 (A) by inserting “, and impacted parties
5 within the private sector (including small busi-
6 ness),” after “on their behalf”;

7 (B) by striking “Federal intergovernmental
8 mandates” and inserting “Federal mandates”;
9 and

10 (3) by amending subsection (c) to read as fol-
11 lows:

12 “(c) **GUIDELINES.**—For appropriate implementation
13 of subsections (a) and (b) consistent with applicable laws
14 and regulations, the following guidelines shall be followed:

15 “(1) Consultations shall take place as early as
16 possible, before issuance of a notice of proposed rule-
17 making, continue through the final rule stage, and
18 be integrated explicitly into the rulemaking process.

19 “(2) Agencies shall consult with a wide variety
20 of State, local, and tribal officials and impacted par-
21 ties within the private sector (including small busi-
22 nesses). Geographic, political, and other factors that
23 may differentiate varying points of view should be
24 considered.

1 “(3) Agencies should estimate benefits and
2 costs to assist with these consultations. The scope of
3 the consultation should reflect the cost and signifi-
4 cance of the Federal mandate being considered.

5 “(4) Agencies shall, to the extent practicable—

6 “(A) seek out the views of State, local, and
7 tribal governments, and impacted parties within
8 the private sector (including small business), on
9 costs, benefits, and risks; and

10 “(B) solicit ideas about alternative meth-
11 ods of compliance and potential flexibilities, and
12 input on whether the Federal regulation will
13 harmonize with and not duplicate similar laws
14 in other levels of government.

15 “(5) Consultations shall address the cumulative
16 impact of regulations on the affected entities.

17 “(6) Agencies may accept electronic submis-
18 sions of comments by relevant parties but may not
19 use those comments as the sole method of satisfying
20 the guidelines in this subsection.”.

21 **SEC. 11. NEW AUTHORITIES AND RESPONSIBILITIES FOR**
22 **OFFICE OF INFORMATION AND REGULATORY**
23 **AFFAIRS.**

24 Section 208 of the Unfunded Mandates Reform Act
25 of 1995 (2 U.S.C. 1538) is amended to read as follows:

1 **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**
2 **FAIRS RESPONSIBILITIES.**

3 “(a) IN GENERAL.—The Administrator of the Office
4 of Information and Regulatory Affairs shall provide mean-
5 ingful guidance and oversight so that each agency’s regu-
6 lations for which a written statement is required under
7 section 202 are consistent with the principles and require-
8 ments of this title, as well as other applicable laws, and
9 do not conflict with the policies or actions of another agen-
10 cy. If the Administrator determines that an agency’s regu-
11 lations for which a written statement is required under
12 section 202 do not comply with such principles and re-
13 quirements, are not consistent with other applicable laws,
14 or conflict with the policies or actions of another agency,
15 the Administrator shall identify areas of non-compliance,
16 notify the agency, and request that the agency comply be-
17 fore the agency finalizes the regulation concerned.

18 “(b) ANNUAL STATEMENTS TO CONGRESS ON AGEN-
19 CY COMPLIANCE.—The Director of the Office of Informa-
20 tion and Regulatory Affairs annually shall submit to Con-
21 gress, including the Committee on Homeland Security and
22 Governmental Affairs of the Senate and the Committee
23 on Oversight and Government Reform of the House of
24 Representatives, a written report detailing compliance by
25 each agency with the requirements of this title that relate
26 to regulations for which a written statement is required

1 by section 202, including activities undertaken at the re-
2 quest of the Director to improve compliance, during the
3 preceding reporting period. The report shall also contain
4 an appendix detailing compliance by each agency with sec-
5 tion 204.”.

6 **SEC. 12. RETROSPECTIVE ANALYSIS OF EXISTING FEDERAL**
7 **REGULATIONS.**

8 The Unfunded Mandates Reform Act of 1995 (Public
9 Law 104–4; 2 U.S.C. 1511 et seq.) is amended—

10 (1) by redesignating section 209 as section 210;

11 and

12 (2) by inserting after section 208 the following
13 new section 209:

14 **“SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FED-**
15 **ERAL REGULATIONS.**

16 “(a) REQUIREMENT.—At the request of the chairman
17 or ranking minority member of a standing or select com-
18 mittee of the House of Representatives or the Senate, an
19 agency shall conduct a retrospective analysis of an existing
20 Federal regulation promulgated by an agency.

21 “(b) REPORT.—Each agency conducting a retrospec-
22 tive analysis of existing Federal regulations pursuant to
23 subsection (a) shall submit to the chairman of the relevant
24 committee, Congress, and the Comptroller General a re-

1 port containing, with respect to each Federal regulation
2 covered by the analysis—

3 “(1) a copy of the Federal regulation;

4 “(2) the continued need for the Federal regula-
5 tion;

6 “(3) the nature of comments or complaints re-
7 ceived concerning the Federal regulation from the
8 public since the Federal regulation was promulgated;

9 “(4) the extent to which the Federal regulation
10 overlaps, duplicates, or conflicts with other Federal
11 regulations, and, to the extent feasible, with State
12 and local governmental rules;

13 “(5) the degree to which technology, economic
14 conditions, or other factors have changed in the area
15 affected by the Federal regulation;

16 “(6) a complete analysis of the retrospective di-
17 rect costs and benefits of the Federal regulation that
18 considers studies done outside the Federal Govern-
19 ment (if any) estimating such costs or benefits; and

20 “(7) any litigation history challenging the Fed-
21 eral regulation.”.

22 **SEC. 13. EXPANSION OF JUDICIAL REVIEW.**

23 Section 401(a) of the Unfunded Mandates Reform
24 Act of 1995 (2 U.S.C. 1571(a)) is amended—

25 (1) in paragraphs (1) and (2)(A)—

1 (A) by striking “sections 202 and
2 203(a)(1) and (2)” each place it appears and
3 inserting “sections 201, 202, 203(a) (1) and
4 (2), and 205 (a) and (b)”;

5 (B) by striking “only” each place it ap-
6 pears;

7 (2) in paragraph (2)(B), by striking “section
8 202” and all that follows through the period at the
9 end and inserting the following: “section 202, pre-
10 pare the written plan under section 203(a) (1) and
11 (2), or comply with section 205 (a) and (b), a court
12 may compel the agency to prepare such written
13 statement, prepare such written plan, or comply with
14 such section.”; and

15 (3) in paragraph (3), by striking “written state-
16 ment or plan is required” and all that follows
17 through “shall not” and inserting the following:
18 “written statement under section 202, a written plan
19 under section 203(a) (1) and (2), or compliance with
20 sections 201 and 205 (a) and (b) is required, the in-
21 adequacy or failure to prepare such statement (in-
22 cluding the inadequacy or failure to prepare any es-
23 timate, analysis, statement, or description), to pre-
24 pare such written plan, or to comply with such sec-
25 tion may”.

1 **SEC. 14. REAUTHORIZATION.**

2 *Section 109 of the Unfunded Mandates Reform Act of*
3 *1995 (2 U.S.C. 1516) is amended to read as follows:*

4 **“SEC. 109. AUTHORIZATION OF APPROPRIATIONS.**

5 *“There are authorized to be appropriated to the Con-*
6 *gressional Budget Office \$1,500,000 for each of fiscal years*
7 *2018 through 2024 to carry out the provisions of this title.”.*

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