

CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS
CREATION ACT

—————
JUNE 3, 1998.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. BURTON of Indiana, from the Committee on Government
Reform and Oversight, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 1704]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom
was referred the bill (H.R. 1704) to establish a Congressional Office
of Regulatory Analysis, having considered the same, report favor-
ably thereon with an amendment and recommend that the bill as
amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof
the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Congressional Office of Regulatory Analysis Creation Act”.

SEC. 2. FINDINGS.

The Congress finds that—

- (1) Federal regulations have had a positive impact in protecting the environment and the health and safety of all Americans; however, uncontrolled increases in the costs that regulations place on the economy cannot be sustained;
- (2) the legislative branch has a responsibility to see that the laws it passes are properly implemented by the executive branch;
- (3) effective implementation of chapter 8 of title 5 of the United States Code (relating to congressional review of agency rulemaking) is essential to controlling the regulatory burden that the Government places on the economy; and
- (4) in order for the legislative branch to fulfill its responsibilities under chapter 8 of title 5, United States Code, it must have accurate and reliable information on which to base its decisions.

SEC. 3. ESTABLISHMENT OF OFFICE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a Congressional Office of Regulatory Analysis (hereinafter in this Act referred to as the “Office”). The Office shall be headed by a Director.

(2) APPOINTMENT.—The Director shall be appointed by the Speaker of the House of Representatives and the majority leader of the Senate after considering recommendations received from the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the Committee on Government Reform and Oversight of the House of Representatives, without regard to political affiliation and solely on the basis of the Director’s ability to perform the duties of the Office.

(3) TERM.—The term of office of the Director shall be 4 years, but no Director shall be permitted to serve more than 3 terms. Any individual appointed as Director to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of that term. An individual serving as Director at the expiration of that term may continue to serve until the individual’s successor is appointed.

(4) REMOVAL.—The Director may be removed by a concurrent resolution of the Congress.

(5) COMPENSATION.—The Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as in effect from time to time, for level III of the Executive Schedule in section 5314 of title 5, United States Code.

(b) PERSONNEL.—The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the duties, powers, and functions imposed on the Office or on the Director. For purposes of pay (other than pay of the Director) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the House of Representatives.

(c) EXPERTS AND CONSULTANTS.—In carrying out the duties and functions of the Office, the Director may procure the temporary (not to exceed one year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants, by employment at rates of pay not in excess of the daily equivalent of the highest rate of basic pay under the General Schedule of section 5332 of title 5, United States Code.

(d) RELATIONSHIP TO EXECUTIVE BRANCH.—The Director is authorized to secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the executive branch of Government, including the Office of Management and Budget, and the regulatory agencies and commissions of the Government. All such departments, agencies, establishments, and regulatory agencies and commissions shall promptly furnish the Director any available material which the Director determines to be necessary in the performance of the Director’s duties and functions (other than material the disclosure of which would be a violation of law). The Director is also authorized, upon agreement with the head of any such department, agency, establishment, or regulatory agency or commission, to utilize its services, facilities, and personnel with or without reimbursement; and the head of each such department, agency, establishment, or regulatory agency or

commission is authorized to provide the Office such services, facilities, and personnel.

(e) **RELATIONSHIP TO OTHER AGENCIES OF CONGRESS.**—In carrying out the duties and functions of the Office, and for the purpose of coordinating the operations of the Office with those of other congressional agencies with a view to utilizing most effectively the information, services and capabilities of all such agencies in carrying out the various responsibilities assigned to each, the Director is authorized to obtain information, data, estimates, and statistics developed by the General Accounting Office, Congressional Budget Office, and the Congressional Research Service, and (upon agreement with them) to utilize their services, facilities, and personnel with or without reimbursement. The Comptroller General, the Director of the Congressional Budget Office, and the Director of the Congressional Research Service are authorized to provide the Office with the information, data, estimates, and statistics, and the services, facilities, and personnel, referred to in the preceding sentence.

(f) **ASSISTANCE TO THE CONGRESS.**—The Director of the Office shall provide to the Committee on Government Reform and Oversight of the House of Representatives, information that will assist the committee in the discharge of all matters within its jurisdiction, including information with respect to its jurisdiction over authorization and oversight of the Office of Information and Regulatory Affairs of the Office of Management and Budget.

(g) **INFORMATION.**—

(1) **FREEDOM OF INFORMATION.**—The Office shall make available information from its activities in accordance with section 552 of title 5, United States Code.

(2) **PUBLIC DOCKET.**—The Office shall maintain a publicly available log of information (other than information which may not be released under section 552(b) of title 5, United States Code) which shall contain at a minimum—

(A) all written communications, regardless of format, between Office personnel and any person who is not employed by the Federal Government; and

(B) the dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations between Office personnel and any person not employed by the Federal Government, and the subject matter of such communications.

(h) **APPROPRIATIONS.**—There are authorized to be appropriated to the Office \$5,200,000 for each of fiscal years 1998 through 2006. No funds shall be authorized to be appropriated for the Office in a year when the annual appropriation for the Legislative Branch exceeds the appropriation provided for the Legislative Branch for fiscal year 1998, reduced by the amount appropriated for the Office for such year.

SEC. 4. RESPONSIBILITIES.

(a) **TRANSFER OF FUNCTIONS UNDER CHAPTER 8 FROM GAO TO OFFICE.**—

(1) **DIRECTOR'S NEW AUTHORITY.**—Section 801 of title 5, United States Code, is amended—

(A) by striking “Comptroller General” each place it occurs and inserting “Director of the Office”; and

(B) by striking “the Comptroller General’s report” in subsection (a)(2)(B) and inserting “the report of the Director of the Office”.

(2) **DEFINITION.**—Section 804 is amended by adding at the end the following:

“(4) The term ‘Director of the Office’ means the Director of the Congressional Office of Regulatory Affairs established by section 3 of the Congressional Office of Regulatory Analysis Creation Act.”

(3) **MAJOR RULES.**—Section 801(a)(2)(A) of title 5, United States Code, is amended to read as follows:

“(2)(A) The Director of the Office shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 30 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Director shall include—

“(i) an assessment of the compliance by the Federal agency with the requirements in paragraph (1)(B); and

“(ii) an analysis of the rule by the Director, using any relevant data and analyses generated by the Federal agency and any data of the Office, including the following:

“(I) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits.

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

“(III) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms.

“(IV) A description of alternative approaches that could achieve the same regulatory goal at a lower cost, together with an analysis of the potential benefits and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted.

“(V) A summary of how these results differ, if at all, from the results that the promulgating agency received when conducting similar analyses.”

(4) NONMAJOR RULES.—The Office shall conduct an assessment and analysis, as described in section 801(a)(2)(A) of title 5, United States Code, of any nonmajor rule, as defined in section 804(3) of such title, when requested to do so by a committee of the House of Representatives or the Senate, or individual Representative or Senator.

(5) PRIORITIES.—

(A) ASSIGNMENT.—To ensure that analysis of the most significant regulations occurs, the Office shall give first priority to, and is required to conduct analyses of, all “major” rules, as defined in section 804(2) of title 5, United States Code. Secondary priority shall be assigned to requests from committees of the House of Representatives and the Senate. Tertiary priority shall be assigned to requests from individual Representatives and Senators.

(B) DISCRETION TO DIRECTOR OF OFFICE.—The Director of the Office shall have the discretion to assign priority among the secondary and tertiary requests.

(b) TRANSFER OF CERTAIN FUNCTIONS UNDER THE UNFUNDED MANDATES REFORM ACT OF 1995 FROM CBO TO OFFICE.—

(1) COST OF REGULATIONS.—Section 103 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1511) is amended—

(A) in subsection (b), by striking “the Director” and inserting “the Director of the Congressional Office of Regulatory Analysis”; and

(B) in subsection (c), by inserting after “Budget Office” the following: “or the Director of the Congressional Office of Regulatory Analysis”.

(2) ASSISTANCE TO THE CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS.—Section 206 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1536) is amended—

(A) by amending the section heading to read as follows: “**SEC. 206. assistance to the congressional office of regulatory analysis.**”; and

(B) in paragraph (2), by striking “the Director of the Congressional Budget Office” and inserting “the Director of the Congressional Office of Regulatory Analysis”.

(c) OTHER REPORTS.—In addition to the analyses of major and nonmajor rules described in subsection (a), the Office shall also issue an annual report including estimates of the total costs and benefits of all existing Federal regulations.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

I. PURPOSE AND SUMMARY

The purpose of the “Congressional Office of Regulatory Analysis Creation Act” is to establish a Congressional Office of Regulatory Analysis (CORA) to aid Congress in analyzing Federal regulations. CORA would consolidate Congress’ regulatory analysis functions, which are now performed by the Congressional Budget Office (CBO) and the General Accounting Office (GAO). CORA’s responsibilities would include: (1) analyzing all major rules and reporting to Congress on their potential costs, benefits, and alternate approaches that could achieve the same regulatory goals at lower costs; (2) analyzing non-major rules, which currently are not analyzed by GAO and the Office of Management and Budget (OMB), at the request of committees or Members of Congress; and (3) annually issue a report on the total costs and benefits of Federal regulations to the economy.

II. NEED FOR LEGISLATION

The burden of regulations on the American public is on the rise as the Federal agencies continue to issue a steady stream of new regulations—approximately 4,000 in 1997 alone. Last year, the impact on the economy of just 59 of these rules (“major” rules which cost at least \$100 million each) was at least \$6 billion. And total regulatory costs in 1997 were \$688 billion—up 1.6 percent from the previous year, 7.2 percent over the past five years, and 25.3 percent over the past ten years.¹

Regulation now costs over \$½ trillion per year. When these costs are passed on to the consumer, the typical family of four pays approximately \$6,875 per year in hidden regulatory costs. Families spend more on regulation than on medical expenses, food, transportation, recreation, clothing, and savings. In fact, U.S. regulatory costs in 1997 (\$688 billion) exceeded 1996 personal income taxes (\$631 billion) and 1995 corporate profits (\$601 billion). The number of regulations on the books continues to climb as well—45,783 final rules have been issued in the past decade (since 1986). Agency budgets to enforce regulations are on the rise as well. Budgeted enforcement spending for social and economic regulatory programs is expected to hit \$17.2 billion in 1998. That is a 223 percent increase since 1970 when enforcement spending was \$4.6 billion.²

Congress has delegated to the agencies the responsibility of writing regulations. But Congress is still responsible for ensuring that these regulations achieve their goals in the most efficient and effective way. At the National Economic Growth, Natural Resources, and Regulatory Affairs Subcommittee’s hearing on the bill to establish the Congressional Office of Regulatory Analysis (CORA) (H.R. 1704), Robert Hahn of the American Enterprise Institute and Robert Litan of the Brookings Institute testified that, “Congress has traditionally paid much less attention to the benefits and costs of regulation than to directly budgeted expenditures. This imbalance should be rectified.” The Congressional Review Act (CRA) (5 U.S.C. §801), which gives Congress the responsibility to review Federal regulations as they are issued, helps to rectify this imbalance.

But Congress needs the expertise that CORA would provide to carry out its duty under the CRA. Currently, Congress does not have the information it needs to carefully evaluate regulations. The only analyses it has to rely on are those provided by the agencies which promulgate the rules. There is no official, third-party analysis of new regulations. Wendy Gramm, Director of the Regulatory Analysis Program at George Mason University, testified before the Subcommittee that “there is no organization currently up and running that is systematically providing careful analyses of agency rulemaking proposals. Thus if agencies do a poor job analyzing the costs, benefits, and impacts of regulations, there is little record or basis for preventing regulations that are overly burdensome. Not only does this result in more regulations whose costs exceed their

¹ Clyde Wayne Crews, Jr., “Ten Thousand Commandments: A Policymaker’s Snapshot of the Federal Regulatory State,” 1998 Edition.

² Clyde Wayne Crews, Jr., “Ten Thousand Commandments: A Policymaker’s Snapshot of the Federal Regulatory State,” 1998 Edition.

benefits, but also poorly drafted ones that might actually endanger rather than promote public health and safety.”

Congress and the American people have a right to know whether the regulations issued by the agencies are truly protecting health, safety, and the environment. The Committee recognizes that agencies frequently devote vast resources to developing rules that have negligible health or environmental benefits. In many cases, the rules may actually do more harm than good. By scrutinizing the integrity of agency benefit analyses, CORA will help bring to light the true effects of regulation on public health and the environment and spur debate on how the Federal regulatory agencies can more effectively and efficiently carry out their statutory mandates.

The author of H.R. 1704, Representative Sue Kelly (R-NY), intends CORA to provide Congress with the resources it needs to execute its responsibilities under the CRA. Rep. Kelly testified before the Subcommittee that, due to a lack of reliable analyses of regulations, “Congress is at a disadvantage when trying to determine just how a particular regulation will impact the economy, making it that much more difficult to effectively implement the CRA. This is a problem [CORA] is designed to address. If established, CORA would be charged with conducting its own analyses of select new rules to help determine their potential impact on the economy and small businesses. It would break the monopoly of information that has traditionally been held by the agencies and help Congress exercise its vital oversight responsibility.” Gramm made a similar point that, “[t]he benefits of the bill, if enacted, are the independent analyses that Congress will receive concerning regulations. Using this analysis, Congress will be able to eliminate unnecessary regulations, using the Congressional Review Act, and to prevent burdensome regulations from being imposed on states and individuals, using either the CRA or careful oversight of agencies.”

Furthermore, CORA will not duplicate or impinge on the substantive oversight functions of the committees of jurisdiction. Rather, CORA will examine each new major rule from the standpoint of professional standards, principles, and methods of cost-benefit analysis, in order to determine, on a comparative basis, whether each agency is producing credible analyses. The Committee recognizes that OIRA has failed to effectively carry out its responsibility to develop, and oversee the agencies’ application of standard methods of cost-benefit analysis. As a result, the cost and benefit data generated government wide is a veritable patch-work quilt of different and contradictory assumptions and methods of wildly varying degrees of quality. By comparing and analyzing these data, CORA will provide a powerful incentive to OIRA and the regulatory agencies to reach agreement on the methods of cost-benefit analysis and take seriously their responsibilities to produce such analyses in a professional, credible, and intellectually honest manner.

CORA would also have the beneficial effect of consolidating all the regulatory functions of Congress under one roof. Currently, the GAO conducts regulatory analyses under the CRA, and the CBO conducts analyses under the Unfunded Mandates Reform Act. Hahn and Litan testified that CORA “provides a central focus for the Congressional study of regulatory activity. * * * It is better to

put similar functions under one roof to avoid unnecessary duplication of effort.” Although CORA has been criticized as creating more bureaucracy, it would actually streamline Congress’s regulatory duties.

The model for CORA is the CBO. In the same way that the CBO was established in 1975 to equip Congress to address the growing budget problem, CORA should be established to equip Congress to address the growing and significant regulatory problem. CORA would serve as a CBO for regulations. The CBO provides a constructive check on the budget estimates issued by the Office of Management and Budget (OMB). Litan, a former OMB staff member in the Clinton Administration, testified that “there was this creative tension, sometimes not so friendly, between OMB and CBO on scoring. But * * * there was value to it. Even while we were disagreeing all the time, I knew, and I think OMB knows, there’s value in having an honest check on the numbers and the assessments. And that’s why [Congress] created a Congressional Budget Office.”

Just as CBO provides a check on OMB, CORA would provide a check on OMB’s Office of Information and Regulatory Affairs (OIRA). OIRA’s job is to help the President monitor regulatory and paperwork burdens and to review agency regulations before they are promulgated to ensure that the agencies have considered the potential costs and other impacts. In testifying about the benefits of CORA, Litan said, “if you have an independent office, * * * you’re going to stiffen a lot of backbones. Number one, you’re going to stiffen the backbone of OIRA, because they’re going to be forced to take their review responsibilities more seriously than they would otherwise. Number two, you’re going to stiffen the backbone of the agencies, because the agencies may or may not be able to snow OIRA, but they’re very unlikely to snow * * * [CORA]. * * * And so on individual rules, you’re going to have stiffened backbones and that’s a key benefit of having this separate institution.”

CORA is particularly needed because OIRA is not doing its job. Gramm, a former Administrator of OIRA in the Reagan Administration, testified that, “[i]n recent years OIRA has been ineffective. This conclusion is based on a review of regulations that have been issued by the Executive Branch. An effective OIRA, for example, would have required EPA to provide a better analysis before promulgating the 1997 proposals further regulating ozone and particulate matter.”

OIRA has failed to critically review agency regulatory submissions. With respect to the 4,476 regulatory reviews completed by OIRA to date during the Clinton Administration, OMB only returned to the agencies 13 regulatory submissions (i.e., less than 0.3%), including 3 from a minor agency (the Railroad Retirement Board). In contrast, there were 87 returns during the Bush Administration and 192 returns in the first Reagan term.³

OMB’s 1997 “Report on the Costs and Benefits of Federal Regulations” is further evidence of the need for CORA. OMB was required to report to Congress on the estimated costs and benefits of

³February 25, 1998, letter from Don Arbuckle, Deputy Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to Chairman David McIntosh, Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs.

all major rules reviewed or finalized during a 12-month period in 1996 and 1997. But, OMB provided cost and benefit information for only 14 out of 59 major rules issued during that period, because the agencies had not provided OMB any estimates for the remaining 45 rules. If the agencies did prepare cost and benefit analyses for these rules, it is disturbing that OMB isn't aware of these analyses—or isn't willing to report the information to Congress as required by law.

Clearly, Congress needs to take an active role in reviewing regulations to ensure that they result in the maximum benefit to public health, safety, and the environment, for the lowest cost. To do so, Congress needs an independent, reliable source of regulatory analyses, particularly in the absence of a strong OIRA. CORA would meet this need.

III. COMMITTEE ACTION

The “Congressional Office of Regulatory Analysis Creation Act” (H.R. 1704) was introduced on May 22, 1997 by Rep. Sue Kelly, for herself and Rep. Jim Talent. After introduction, the bill was referred to the Committee on the Judiciary, and in addition to the Committee on Government Reform and Oversight. On March 13, 1998, the Committee on the Judiciary reported the bill, House Report 105–441. In March 1998, the bill was referred sequentially to the Committee on House Oversight. On May 22, 1998, the Committee on House Oversight discharged the bill.

On March 11, 1998, National Economic Growth, Natural Resources, and Regulatory Affairs Subcommittee Chairman David McIntosh held a hearing to consider the bill. Witnesses at the hearing included: Representative Sue Kelly, (NY); Sharon Miller, CEO, Immediate Temporary Help, Midland, Michigan; Wendy Gramm, Director, Regulatory Analysis Program, George Mason University; Robert W. Hahn, Resident Scholar, American Enterprise Institute; Robert E. Litan, Director of Economic Studies, The Brookings Institution; and Gary Bass, Executive Director, OMB Watch.

At the hearing, Rep. Kelly testified, “H.R. 1704 is a very simple concept that will help Congress deal with an increasingly complex and burdensome regulatory system. It will give Congress the resources it needs to oversee the regulations that the Executive Branch issues on a regular basis and facilitate use of the Congressional Review Act.”

Sharon Miller testified, “CORA can serve a vital function for America's small business[es], and put real strength into SBREFA [the Small Business Regulatory Enforcement Fairness Act]. It would be a small budget, small staff addition to Capitol Hill whose impact could be far reaching.”

Wendy Gramm emphasized the need for an independent analysis of regulations. She concluded that, “A Congressional Office of Regulatory Analysis can help ensure that [the] resources that American families dedicate [to regulations] each year are used wisely, and * * * help ensure that regulations are written to implement the laws appropriately, as Congress has written them, and ultimately make society better off.”

In his testimony, Robert Hahn discussed the important role that CORA would play—“That office could help inform the public and

the Congress about the benefits and costs of regulation. Too often, we believe that legislators and agencies find it in their interest to highlight the benefits of regulation without also noting the costs. We believe it is important to highlight both and that the public has a right to know how and why regulations are implemented. This bill addresses a fundamental problem with the current regulatory effort. Despite the growing importance of Federal regulation in everyday life, neither the public nor Congress has sufficient information to fully appreciate the impact on the welfare of the average citizen." Addressing the Subcommittee members, Robert Litan noted that OMB's "Report to Congress On the Costs and Benefits of Federal Regulations" "didn't help you in Congress with your job, which is to compare the cost effectiveness of different statutes and different regulatory efforts." He went on to address the inadequacy of OMB's Report in analyzing regulatory costs and benefits and concluded that "having an independent office out there to do this every year would prod OMB to do a lot of their work, and, at the same time, provide you with useful information because your business is legislating, not making individual rules."

Gary Bass testified in opposition to the bill. He was concerned that CORA would slow down the rule making process: "one of the biggest problems with the rulemaking process is we need to speed it up, not take it and make slower with more analyses." He also voiced doubts about CORA's ability to complete the analyses described in the legislation in the given time, with the given resources.

After taking into account the testimony from the witnesses at the hearing, the Subcommittee held a mark up of H.R. 1704 on March 17, 1998. Chairman McIntosh offered an amendment in the nature of a substitute to the bill. By voice vote, the Subcommittee approved forwarding H.R. 1704, as amended, to the full Committee on Government Reform and Oversight for consideration.

On May 21, 1998, the full Committee held a mark up of H.R. 1704. Two amendments were accepted. The first, offered by Rep. Kanjorski, applies the Freedom of Information Act to CORA, and the second, offered by Rep. Blagojevich, ensures that CORA's funding is drawn from existing Legislative Branch funding and does not increase the total budget of the Legislative Branch. Rep. McIntosh accepted this amendment with the understanding that he and Rep. Blagojevich would work to change the language before it goes to the House floor. Rep. McIntosh intends to ensure that funding for CORA will not depend on funding for the Legislative Branch remaining at 1998 levels, but will allow for a natural growth in Legislative Branch appropriations. Rep. Blagojevich indicated that he would be pleased to work with Rep. McIntosh on this matter. By voice vote, the full Committee approved reporting H.R. 1704, as amended, to the full House.

IV. SECTION-BY-SECTION ANALYSIS

SECTION 1: SHORT TITLE

SECTION 2: FINDINGS

SECTION 3: ESTABLISHMENT OF OFFICE

Establishment and appointment of Director

Section 3(a) establishes a Congressional Office of Regulatory Analysis (CORA), and provides for the appointment of a Director of the Office by the Speaker of the House and the Majority Leader of the Senate after considering recommendations of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs of the House Committee on Government Reform and Oversight. The appointment is to be made without regard to political affiliation. The term of the Director is four years, for a maximum of three terms. The Director may be removed by a concurrent resolution of the Congress. The Director shall be compensated at the same level as level III employees under the Executive Schedule.

The Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is responsible for oversight of Executive Branch agencies' compliance with regulatory procedures, including the conduct of cost-benefit analyses and compliance with the requirements of the CRA. Because CORA's function is to assess and analyze the agencies' cost-benefit analyses and compliance with the CRA, the Committee expects that CORA and the Subcommittee will work closely together in overseeing the agencies' activities. Moreover, the Committee expects that the Subcommittee's views will be particularly useful in ensuring that the Director of CORA is a person of substantial experience and critical judgment with respect to agency compliance with regulatory procedures.

Personnel

Section 3(b) authorizes the Director of CORA to appoint personnel needed to carry out the duties and functions of CORA. Personnel appointments are made without regard to political affiliation. For the purposes of pay and employment benefits, rights, and privileges, all personnel of CORA are to be treated as if they were employees of the House of Representatives.

Consulting assistance

Section 3(c) authorizes the Director to procure the temporary services of outside experts and consultants to assist in discharging the duties and functions of CORA.

Relationship to the executive branch

Section 3(d) authorizes the Director to secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the Executive Branch of the government, including the Office of Management and Budget (OMB) and the regulatory agencies and commissions. All such departments, agencies, establishments, and commissions shall promptly furnish the Director any available material which the Director

deems necessary to perform his duties and functions. The Director is also authorized, upon agreement with the head of any such department, agency, establishment, or commission, to utilize its services, facilities, and personnel with or without reimbursement. The head of each such department, agency, establishment, or commission is authorized to provide CORA such services, facilities, and personnel.

Relationship to other agencies of Congress

Section 3(e) authorizes the Director to secure information, data, estimates, and statistics developed by the other agencies of Congress, including the General Accounting Office (GAO), Congressional Budget Office (CBO), and the Congressional Research Service (CRS), and, upon agreement with them, to utilize their services, facilities, and personnel with or without reimbursement. The head of each such agency is authorized to provide CORA with the information, data, estimates, and statistics requested.

Assistance to the Congress

Section 3(f) requires the Director of CORA to provide information to the House Committee on Government Reform and Oversight on matters pertinent to the Committee's jurisdiction, including the Committee's authorization and oversight of OMB's Office of Information and Regulatory Affairs (OIRA).

OIRA is the central repository of information and expertise on regulatory affairs within the Executive Branch. OIRA is expected to work with and provide guidance to the regulatory agencies in conducting cost-benefit analyses for major rules and in complying with regulatory laws, including the Congressional Review Act. Because CORA will function as a check and counterpart to OIRA within the Legislative Branch, the Committee expects that CORA will give close attention to the regulatory analysis activities and methods of OIRA. Furthermore, because the Government Reform and Oversight Committee's Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs is OIRA's authorizing and oversight committee, the Committee recognizes that CORA and the Subcommittee have a common interest in monitoring OIRA's regulatory analysis activities. It is essential to the effective discharge of the Subcommittee's oversight functions that it have accurate information on OIRA's performance of its regulatory analysis and guidance functions, particularly as they relate to Executive Branch regulatory agencies' conduct of cost-benefit analyses and compliance with the Congressional Review Act. To ensure that the Subcommittee has full access to such information in a usable form, the Committee expects that CORA will work closely with the Subcommittee and provide this information to the Subcommittee on an ongoing basis.

Freedom of Information

Section 3(g) requires CORA to comply with the requirements of the Freedom of Information Act and maintain a publicly available log of written and substantive oral communications between Office personnel and persons not employed by the Federal Government.

Appropriations

Section 3(h) authorizes appropriations of \$5.2 million for CORA for each fiscal year from 1998 through 2006, except that no funds shall be authorized for the Office in the event that total Legislative Branch funding exceeds the amount appropriated for fiscal year 1998. This section ensures that the Office's funding is drawn from existing Legislative Branch funding and does not increase the total budget of the Legislative Branch.

SECTION 4: RESPONSIBILITIES

Transfer of GAO's responsibilities under the Congressional Review Act to CORA

Section 4(a) transfers, for the purposes of the Congressional Review Act (CRA) (5 U.S.C. § 801), the functions now designated to the Comptroller General of GAO to the Director of CORA. Specifically, the Director is required to submit a report to Congress for each "major" rule, reviewing the issuing agency's compliance with all applicable regulatory procedures in the course of developing the rule.

Additional analysis of major rules

In addition to this procedural review, Section 4(a) also requires CORA to conduct its own analysis of each major rule. This analysis shall not duplicate the regulatory impact analysis conducted by the agency. Rather, CORA shall use data and analyses generated by the agency in developing the rule, as well as any data otherwise acquired by CORA. Each analysis must include descriptions of the projected costs and benefits of the rule, as well as a determination of the potential net benefits of the rule, a description of alternative, less costly approaches and the legal obstacles, if any, to adopting such alternatives. Finally, the analysis must summarize how CORA's findings differ, if at all, from the cost and benefit estimates of the agency. This analysis must be included in CORA's report to Congress on each rule.

Time allotted for completion of analysis and report

Under the CRA, GAO has 15 days to complete its procedural review and report its findings to Congress. The bill amends the CRA to increase the amount of time CORA needs to complete both the procedural review and the analysis to 30 days. The Committee has determined that 30 days is a sufficient period of time for CORA to complete its review and analysis, in view of the fact that CORA will have authority under section 3(d) to obtain data and estimates from the agencies at any time. The Committee expects that CORA will, when necessary or appropriate, commence the process of obtaining and analyzing the relevant information for each major rule prior to the date on which the final rule is reported to Congress. The Committee considered and rejected the possibility of allowing CORA a longer period in which to complete its analysis. A period greater than 30 days would take away too much of the 60-day period in which Congress has to review a regulation and, if necessary, introduce a resolution of disapproval. It is essential that Congress

receive CORA's report for each major rule in a timely manner to allow for full consideration of the report's findings.

Review of non-major rules upon request of committee or member

In addition to its review and analysis of major rules, CORA is required to provide a review and analysis of any non-major rule, upon the request of any committee or individual member of Congress. CORA is required to give major rules first priority. Rules reviewed pursuant to requests by committees or individual members are given second and third priority, respectively. The Director of CORA is given discretion to assign priority among secondary and tertiary requests.

Transfer of certain CBO functions under the Unfunded Mandates Reform Act to CORA

Section 4(b) amends the Unfunded Mandates Reform Act, transferring to the Director of CORA certain functions now designated to the Director of CBO. The Unfunded Mandates Reform Act requires the Director of CBO to compare the agency's estimates of costs that a new regulation is expected to impose on state and local governments with cost estimates previously produced by CBO at the time the relevant authorizing legislation was introduced. The bill would transfer the comparison function to CORA (but CBO would retain the function of producing cost estimates at the time the legislation is enacted).

Report on total costs of Federal regulations

Section 4(c) requires CORA to issue an annual report providing estimates of the total costs and benefits of all Federal regulations.

SECTION 5: EFFECTIVE DATE

V. COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

VI. COMMITTEE RECOMMENDATIONS

On March 17, 1998, the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs met in open session and ordered favorably reported the bill H.R. 1704, in the form of an amendment in the nature of a substitute, by a voice vote, a quorum being present. On May 21, 1998, the Committee met in open session and ordered favorably reported the bill H.R. 1704, in the form of an amendment in the nature of a substitute by a voice vote, a quorum being present.

Vote of the Committee

There were recorded votes on two amendments during the Committee's consideration of H.R. 1704, as follows:

ROLLCALL NO. 1

1. An amendment offered by Mr. Kanjorski to the amendment in the nature of the substitute reported by the Subcommittee regarding redesignating subsection (g) as subsection (h) and insert after line 3 the following: (g) INFORMATION.— Approved 21–17.

YEAS	NAYS
Mrs. Morella	Mr. Burton
Mr. Shays	Mr. Gilman
Mr. Sanford	Mr. Hastert
Mr. Waxman	Mr. Cox
Mr. Lantos	Ms. Ros-Lehtinen
Mr. Wise	Mr. McHugh
Mr. Owens	Mr. Horn
Mr. Towns	Mr. Mica
Mr. Kanjorski	Mr. Davis (VA)
Mr. Condit	Mr. McIntosh
Mr. Sanders	Mr. Souder
Mrs. Maloney	Mr. Shadegg
Mr. Barrett	Mr. Sununu
Ms. Norton	Mr. Pappas
Mr. Cummings	Mr. Barr
Mr. Kucinich	Mr. Miller
Mr. Blagojevich	Mr. Lewis
Mr. Davis (IL)	Mr. Tierney
Mr. Turner	Mr. Allen
Mr. Ford	

ROLLCALL NO. 2

2. An amendment offered by Mr. Kucinich to the amendment in the nature of a substitute reported by the Subcommittee regarding the appointment and vacancy of the Director of CORA. Defeated 20–16.

NAYS	YEAS
Mr. Burton	Mr. Waxman
Mr. Gilman	Mr. Owens
Mr. Hastert	Mr. Kanjorski
Mrs. Morella	Mr. Condit
Mr. Shays	Mr. Sanders
Mr. Cox	Mrs. Maloney
Ms. Ros-Lehtinen	Mr. Barrett
Mr. McHugh	Ms. Norton
Mr. Horn	Mr. Cummings
Mr. Mica	Mr. Kucinich
Mr. Davis (VA)	Mr. Blagojevich
Mr. McIntosh	Mr. Davis (IL)
Mr. Souder	Mr. Tierney
Mr. Shadegg	Mr. Turner
Mr. Sanford	Mr. Allen
Mr. Sununu	Mr. Ford

Mr. Pappas
 Mr. Barr
 Mr. Miller
 Mr. Lewis

VII. NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

VIII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1704, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 1, 1998.

Hon. DAN BURTON,
Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1704, the Congressional Office of Regulatory Analysis Creation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mary Maginniss.

Sincerely,

JUNE E. O'NEIL, *Director.*

Enclosure.

H.R. 1704—Congressional Office of Regulatory Analysis Creation Act

Summary: H.R. 1704 would create a Congressional Office of Regulatory Analysis (CORA), to provide the Congress an independent analysis of the costs and benefits or rules that agencies issue as part of the regulatory process. The bill also would require CORA to report annually on the total cost of federal regulations to the U.S. economy. It would transfer to CORA certain functions now assigned to the General Accounting Office (GAO) and the Congressional Budget Office (CBO). To carry out these functions, the bill would authorize the appropriation of \$5.2 million a year for the 1998–2006 period. CBO estimates that implementing H.R. 1704 would have no budgetary impact for 1998 and a cost of about \$3 million in 1999 because the bill's provisions would not take effect until 180 days after enactment. We estimate outlays of about \$5 million in each of the fiscal years 2000 through 2006, assuming appropriation of the authorized amounts.

Enacting H.R. 1704 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 1704 contains no intergovernmental or private-sector mandates as de-

fined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: H.R. 1704 would establish a new Congressional office, CORA, to analyze all major federal rule, and, upon request of a Member of Congress or a committee, any nonmajor rule. The Speaker of the House and the Majority Leader of the Senate would appoint the director, who could serve up to three terms of four years each. The director would be authorized to hire staff, experts, and consultants, and to secure data and support from executive and Congressional agencies. The bill would transfer to the director certain functions of the CBO, which, under the Unfunded Mandates Reform Act (Public Law 104-4), is required, if requested, to compare its cost estimates for regulations with those transmitted by OMB. It also would transfer to CORA the responsibility of GAO to review procedures that federal agencies follow in preparing regulations as required by the Congressional Review Act (Public Law 104-21). Finally, CORA would be required to assist the House Committee on Government Reform and Oversight in carrying out its responsibilities.

Section 4 of the bill would require CORA to analyze major regulations issued by federal agencies using relevant agency data to evaluate the costs and benefits of complying with federal regulations. Descriptions of alternative approaches, along with their costs and benefits, would also be included in the analysis. CORA would be required to issue its report on each major rule within 30 calendar days after an agency's submission or publication of a proposed rule. H.R. 1704 would authorize the appropriation of \$5.2 million in each of the fiscal years 1998 through 2006 to carry out the duties of the new office, except that the authorization for CORA would decline to zero if appropriations for the legislative branch for a particular year exceed the 1998 appropriation reduced by the amount appropriated for CORA.

Assuming appropriation of the authorized amounts, CBO estimates that outlays would total about \$3 million in fiscal year 1999 and \$5.2 million in each of the fiscal years 2000 through 2006. Because the bill's provisions would not take effect until 180 days after enactment, CBO assumes that no appropriations would be made available for CORA in 1998.

We estimate that GAO would save about \$500,000 beginning in 1999 if its regulatory review functions were shifted to CORA. CBO currently catalogues regulatory impact analyses (RIAs) but has received no requests to date to prepare a cost estimate for an RIA; as a result, we expect that savings to CBO would be negligible if H.R. 1704 were enacted.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 1704 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO estimate: On March 13, 1998, CBO transmitted a cost estimate for H.R. 1704, as ordered reported by the House Committee on the Judiciary on March 4, 1998. The two versions of the bill are similar, but the version approved by the Committee on the Judiciary would require that CORA conduct a regulatory impact

analysis of each major regulation issued by a federal agency, whereas the version approved by the Committee on Government Reform and Oversight would require CORA to analyze each major rule (but would not require the new office to complete RIAs). Both versions of the bill would limit the annual authorization of appropriations to about \$5 million. We estimated that the Judiciary Committee's version of the bill could cost as much as \$30 million a year if CORA were to complete independent and comprehensive RIAs of all major rules, but only about \$5 million annually if it were to conduct analyses consisting largely of reviews of agency studies.

Estimate prepared by: Mary Maginniss.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

IX. CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 1 and Article I, section 8 of the Constitution.

X. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

* * * * *

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the [Comptroller General] *Director of the Office* a report containing—

- (i) a copy of the rule;
- (ii) a concise general statement relating to the rule, including whether it is a major rule; and
- (iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the [Comptroller General] *Director of the Office* and make available to each House of Congress—

(i) * * *

* * * * *

[(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency’s compliance with procedural steps required by paragraph (1)(B).]

(2)(A) *The Director of the Office shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 30 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Director shall include—*

(i) an assessment of the compliance by the Federal agency with the requirements in paragraph (1)(B); and

(ii) an analysis of the rule by the Director, using any relevant data and analyses generated by the Federal agency and any data of the Office, including the following:

(I) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits.

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

(III) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms.

(IV) A description of alternative approaches that could achieve the same regulatory goal at a lower cost, together with an analysis of the potential benefits and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted.

(V) A summary of how these results differ, if at all, from the results that the promulgating agency received when conducting similar analyses.

(B) Federal agencies shall cooperate with the [Comptroller General] *Director of the Office* by providing information relevant to [the Comptroller General’s report] *the report of the Director of the Office* under subparagraph (A).

* * * * *

§ 804. Definitions

For purposes of this chapter—

(1) * * *

* * * * *

(4) *The term “Director of the Office” means the Director of the Congressional Office of Regulatory Affairs established by sec-*

tion 3 of the Congressional Office of Regulatory Analysis Creation Act.

* * * * *

UNFUNDED MANDATES REFORM ACT OF 1995

* * * * *

**TITLE I—LEGISLATIVE
ACCOUNTABILITY AND REFORM**

* * * * *

SEC. 103. COST OF REGULATIONS.

(a) * * *

(b) STATEMENT OF COST.—At the request of a committee chairman or ranking minority member, [the Director] *the Director of the Congressional Office of Regulatory Analysis* shall, to the extent practicable, prepare a comparison between—

(1) an estimate by the relevant agency, prepared under section 202 of this Act, of the costs of regulations implementing an Act containing a Federal mandate; and

(2) the cost estimate prepared by the Congressional Budget Office for such Act when it was enacted by the Congress.

(c) COOPERATION OF OFFICE OF MANAGEMENT AND BUDGET.—At the request of the Director of the Congressional Budget Office or *the Director of the Congressional Office of Regulatory Analysis*, the Director of the Office of Management and Budget shall provide data and cost estimates for regulations implementing an Act containing a Federal mandate covered by part B of title IV of the Congressional Budget and Impoundment Control Act of 1974 (as added by section 101 of this Act).

* * * * *

**TITLE II—REGULATORY
ACCOUNTABILITY AND REFORM**

* * * * *

[SEC. 206. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.]

SEC. 206. ASSISTANCE TO THE CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to [the Director of the Congressional Budget Office] *the Director of the Congressional Office of Regulatory Analysis* on a reasonably timely basis after promulgation of the general notice of pro-

posed rulemaking or of the final rule for which the statement was prepared.

* * * * *

XI. UNFUNDED MANDATES REFORM ACT; PUBLIC LAW 104-4,
SECTION 423

The Committee finds that the legislation does not impose any Federal mandates within the meaning of section 423 of the Unfunded Mandates Reform Act (P.L. 104-4).

MINORITY VIEWS

The bill would create a new entity in the legislative branch—the Congressional Office of Regulatory Analysis (CORA)—to take over some of the duties of the Government Accounting Office and the Congressional Budget Office relating to the review of agency cost/benefit analyses. It would also conduct its own independent cost/benefit analysis for all major regulations and at the request of a member of Congress or a committee, nonmajor regulations. The bill authorizes \$5.2 million per year for this new bureaucracy.

We are concerned that the bill creates an unnecessary new bureaucracy, establishes a partisan process for appointing CORA's Director, and may place a greater value on costs than on benefits. We are pleased with the changes adopted during the full Committee mark-up, which open the activities of CORA to the public eye and limit appropriations in an effort to prevent duplicative funding, but believe that additional changes are needed in the legislation.

I. AMENDMENTS ADOPTED IN COMMITTEE MARK-UP

A. DISCLOSURE PROVISIONS OPEN CORA TO SUNSHINE

We are pleased that the Committee adopted the amendment offered by Rep. Kanjorski that ensures that CORA will be open to public scrutiny by making basic information about CORA and its analyses available for review.

Regulatory review provides an opportunity for special interests to seek to influence the rulemaking process. In the executive branch, there are safeguards to protect against inappropriate influence such as the Federal Register Act, Administrative Procedure Act (which includes both the Sunshine Act and the Freedom of Information Act), and Executive Order 12866, all of which open the regulatory process to public scrutiny. These laws help ensure that agency decisions are a product of an open process and that the government is accountable for its actions. Interested parties on either side influence regulations by submitting written comments to the agency decisionmaker. These comments are included in a public docket, allowing others to review and rebut them.

These protections do not automatically apply to legislative entities like CORA. However, the amendment offered by Rep. Kanjorski provides that the Freedom of Information Act (FOIA) and the disclosure provisions in Executive Order 12866 will apply to CORA. As a result of the amendment, CORA must maintain a public docket that discloses contacts between CORA and outside groups.

B. FUNDING LIMITS PROTECT AGAINST DUPLICATION

We are also pleased that the Committee adopted the amendment offered by Rep. Blagojevich that limits appropriations for CORA in an effort to preserve taxpayer dollars. Under this amendment, no

funds will be authorized for CORA unless total legislative branch appropriations, including CORA, do not exceed current funding levels. This amendment ensures that funds for CORA will be subtracted from the appropriations for the legislative branch. It could save the American taxpayer more than \$5 million per year.

It is appropriate to deduct funding for CORA from the legislative branch appropriations because the functions of CORA could be performed by Congressional committees and existing Congressional support agencies. The Government Reform and Oversight Committee, for example, is charged with overseeing the executive branch and the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs has oversight over regulatory affairs. When the Subcommittee is concerned that an Administration's cost/benefit analysis is inadequate, it can hold a hearing on the issue. In fact, last year, the Subcommittee held a hearing on the adequacy of the EPA's analysis of the clean air standards on ozone and particulate matter.

Unfortunately, the Subcommittee has been more concerned with pursuing partisan political investigations than overseeing the regulatory process. It held a total of only three hearings last year. It did not hold any hearings between July 1997 and March 1998. During that nine month time period, most of the Subcommittee's resources were devoted to the investigation of the White House Database, which many consider to be a purely partisan investigation.

We should not fund both CORA and Congressional committees to do the same job. If the Government Reform Committee and other committees choose to abrogate their regulatory oversight to CORA, they should not be given funds to duplicate CORA's efforts. This amendment protects against such double funding.

II. REMAINING CONCERNS

The passage of the amendments offered by Reps. Kanjorski and Blagojevich addressed important problems with H.R. 1704. Other problems remain, however, and should be addressed on the House floor.

A. CORA IS AN UNNECESSARY NEW BUREAUCRACY

Most of CORA's duties are already being handled by the promulgating agencies, the General Accounting Office (GAO), the Congressional Budget Office (CBO), the Office of Information and Regulatory Affairs (OIRA), and the Committee on Government Reform and Oversight. Under current law, agencies must prepare thorough cost/benefit analyses (Regulatory Impact Analyses or RIAs) for major regulations. These analyses are reviewed by OIRA and reviewed again by the GAO. Furthermore, for the last two years, OIRA has estimated the total cost and benefit of regulations. CORA would assume GAO's duty to review the agency analyses, one of the CBO's duties under the Unfunded Mandates Act, and OIRA's duty to estimate the annual cost and benefit of regulations.

The creation of a new bureaucracy runs contrary to earlier efforts to streamline government. In FY96, Congress took the controversial step of eliminating funding for the Office of Technology Assess-

ment (OTA), which advised Congress on scientific and technological issues. In support of elimination, Senator Connie Mack said, “This information is available to the Congress from many other sources. * * * We have to be willing to say there are some things we can do without.” These same arguments apply to the creation of CORA. Considering the numerous analyses that are already performed by the agencies, OIRA, and others, the need for CORA is difficult to demonstrate.

B. APPOINTMENT PROCESS IS PARTISAN

The bill provides that the Director of CORA would be appointed by the Speaker of the House and the Majority Leader of the Senate. This process is modeled after the appointment process for the Director of the Congressional Budget Office.

The majority has been under criticism in the media for using the CBO’s appointment process to encourage its political agenda. According to press accounts, the majority has threatened to replace the current CBO Director, June O’Neill, in part because she would not apply dynamic scoring—the process used to project economic growth produced by tax cuts—when scoring the budget. Commenting on this situation, *The Hill* editorialized. “Perhaps it is naive to argue that the CBO should be above the political fray. But Congress and its leaders risk damaging their own credibility when they bring pressure on the CBO to produce budget projections that support their political ideology.”

Not all legislative support agencies are appointed in this manner. For instance, the Comptroller General of the GAO is appointed by the President, by and with the advice and consent of the Senate. A vacancy is filled with the recommendation of a commission comprised of the Speaker of the House, the President pro tempore of the Senate, the majority and minority leaders of the House and Senate, and the chairmen and ranking members of the Senate Government Affairs and the House Government Reform Committees. The Director of the Congressional Research Service is appointed by the Librarian of Congress. The Librarian of Congress is appointed by the President, by and with the advice of the Senate.

Representative Kucinich offered an amendment to adopt these bipartisan appointment procedures. Unfortunately, his amendment was rejected along party lines.

C. CORA PLACES MORE EMPHASIS ON COSTS OF REGULATION THAN ON BENEFITS

CORA would be required to determine the potential “net benefits” of the rule. Under current law, agencies are not required to calculate net benefits. They perform a cost/benefit analysis which includes a description of costs and benefits. However, a net benefits calculation greatly undervalues unquantifiable benefits, because they cannot be included in a numerical calculation. Many of the most important benefits of regulations—lives saved, increased quality of life, a more pristine environment, and the knowledge of a safer environment—cannot be quantified. Thus, a net benefits calculation can be misleading, placing greater emphasis on costs than on benefits.

HENRY A. WAXMAN.
JOHN F. TIERNEY.
TOM LANTOS.
MAJOR R. OWENS.
EDOLPHUS TOWNS.
PAUL E. KANJORSKI.
BERNARD SANDERS.
CAROLYN B. MALONEY.
TOM BARRETT.
ELEANOR H. NORTON.
ELIJAH E. CUMMINGS.
DENNIS J. KUCINICH.
ROD R. BLAGOJEVICH.
DANNY K. DAVIS.
TOM ALLEN
HAROLD FORD, Jr.

