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REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY ACT OF 2015

JULY 21, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 427]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 427) to amend chapter 8 of title 5, United States Code, to provide that major rules of the executive branch shall have no force or effect unless a joint resolution of approval is enacted into law, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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49–006

The Amendment

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulations from the Executive in Need of Scrutiny Act of 2015".

SEC. 2. PURPOSE.

The purpose of this Act is to increase accountability for and transparency in the Federal regulatory process. Section 1 of article I of the United States Constitution grants all legislative powers to Congress. Over time, Congress has excessively delegated its constitutional charge while failing to conduct appropriate oversight and retain accountability for the content of the laws it passes. By requiring a vote in Congress, the REINS Act will result in more carefully drafted and detailed legislation, an improved regulatory process, and a legislative branch that is truly accountable to the American people for the laws imposed upon them.

SEC. 3. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Chapter 8 of title 5, United States Code, is amended to read as follows:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

"Sec.
"801. Congressional review.
"802. Congressional approval procedure for major rules.
"803. Congressional disapproval procedure for nonmajor rules.
"804. Definitions.
"805. Judicial review.
"806. Exemption for monetary policy.
"807. Effective date of certain rules.

"§ 801. Congressional review

"(a)(1)(A) Before a rule may take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule;

"(iii) a classification of the rule as a major or nonmajor rule, including an explanation of the classification specifically addressing each criteria for a major rule contained within sections 804(2)(A), 804(2)(B), and 804(2)(C);

"(iv) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and

"(v) 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 and make available to each House of Congress—

"(i) a complete copy of the cost-benefit analysis of the rule, if any;

"(ii) the agency's actions pursuant to sections 603, 604, 605, 607, and 609 of this title;

"(iii) the agency's actions pursuant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

"(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

"(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

"(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction by the end of 15 calendar days after the submission or publication date. The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B) and an assessment of whether the major rule imposes any new limits or mandates on private-sector activity.

"(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

"(3) A major rule relating to a report submitted under paragraph (1) shall take effect upon enactment of a joint resolution of approval described in section 802 or as provided for in the rule following enactment of a joint resolution of approval described in section 802, whichever is later.

"(4) A nonmajor rule shall take effect as provided by section 803 after submission to Congress under paragraph (1).

"(5) If a joint resolution of approval relating to a major rule is not enacted within the period provided in subsection (b)(2), then a joint resolution of approval relating to the same rule may not be considered under this chapter in the same Congress by either the House of Representatives or the Senate.

"(b)(1) A major rule shall not take effect unless the Congress enacts a joint resolution of approval described under section 802.

"(2) If a joint resolution described in subsection (a) is not enacted into law by the end of 70 session days or legislative days, as applicable, beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), then the rule described in that resolution shall be deemed not to be approved and such rule shall not take effect.

"(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a major rule may take effect for one 90-calendar-day period if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

"(2) Paragraph (1) applies to a determination made by the President by Executive order that the major rule should take effect because such rule is—

"(A) necessary because of an imminent threat to health or safety or other emergency;

"(B) necessary for the enforcement of criminal laws;

"(C) necessary for national security; or

"(D) issued pursuant to any statute implementing an international trade agreement.

"(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802.

"(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

"(A) in the case of the Senate, 60 session days, or

"(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress is scheduled to adjourn a session of Congress through the date on which the same or succeeding Congress first convenes its next session, sections 802 and 803 shall apply to such rule in the succeeding session of Congress.

"(2)(A) In applying sections 802 and 803 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

"(i) such rule were published in the Federal Register on—

"(I) in the case of the Senate, the 15th session day, or

"(II) in the case of the House of Representatives, the 15th legislative day, after the succeeding session of Congress first convenes; and

"(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

"(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

"(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

"§ 802. Congressional approval procedure for major rules

"(a)(1) For purposes of this section, the term 'joint resolution' means only a joint resolution addressing a report classifying a rule as major pursuant to section 801(a)(1)(A)(iii) that—

"(A) bears no preamble;

"(B) bears the following title (with blanks filled as appropriate): 'Approving the rule submitted by _____ relating to _____.';

"(C) includes after its resolving clause only the following (with blanks filled as appropriate): 'That Congress approves the rule submitted by _____ relating to _____.'; and

"(D) is introduced pursuant to paragraph (2).

"(2) After a House of Congress receives a report classifying a rule as major pursuant to section 801(a)(1)(A)(iii), the majority leader of that House (or his or her respective designee) shall introduce (by request, if appropriate) a joint resolution described in paragraph (1)—

"(A) in the case of the House of Representatives, within three legislative days; and

"(B) in the case of the Senate, within three session days.

"(3) A joint resolution described in paragraph (1) shall not be subject to amendment at any stage of proceeding.

"(b) A joint resolution described in subsection (a) shall be referred in each House of Congress to the committees having jurisdiction over the provision of law under which the rule is issued.

"(c) In the Senate, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 session days after its introduction, such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th session day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

"(d)(1) In the Senate, when the committee or committees to which a joint resolution is referred have reported, or when a committee or committees are discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

"(e) In the House of Representatives, if any committee to which a joint resolution described in subsection (a) has been referred has not reported it to the House at the end of 15 legislative days after its introduction, such committee shall be discharged from further consideration of the joint resolution, and it shall be placed on the appropriate calendar. On the second and fourth Thursdays of each month it shall be in order at any time for the Speaker to recognize a Member who favors passage of a joint resolution that has appeared on the calendar for at least 5 legislative days to call up that joint resolution for immediate consideration in the House without intervention of any point of order. When so called up a joint resolution shall be considered as read and shall be debatable for 1 hour equally divided and controlled by the proponent and an opponent, and the previous question shall be considered as ordered to its passage without intervening motion. It shall not be in order to reconsider the vote on passage. If a vote on final passage of the joint resolution has not been taken by the third Thursday on which the Speaker may recognize a Member under this subsection, such vote shall be taken on that day.

"(f)(1) If, before passing a joint resolution described in subsection (a), one House receives from the other a joint resolution having the same text, then—

"(A) the joint resolution of the other House shall not be referred to a committee; and

"(B) the procedure in the receiving House shall be the same as if no joint resolution had been received from the other House until the vote on passage, when the joint resolution received from the other House shall supplant the joint resolution of the receiving House.

"(2) This subsection shall not apply to the House of Representatives if the joint resolution received from the Senate is a revenue measure.

"(g) If either House has not taken a vote on final passage of the joint resolution by the last day of the period described in section 801(b)(2), then such vote shall be taken on that day.

"(h) This section and section 803 are enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such is deemed to be part of the rules of each

House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a) and superseding other rules only where explicitly so; and

"(2) with full recognition of the Constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

"§ 803. Congressional disapproval procedure for nonmajor rules

"(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the nonmajor rule submitted by the _____ relating to _____, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

"(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

"(2) For purposes of this section, the term submission or publication date means the later of the date on which—

"(A) the Congress receives the report submitted under section 801(a)(1); or

"(B) the nonmajor rule is published in the Federal Register, if so published.

"(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 15 session days after the date of introduction of the joint resolution, such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

"(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

"(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

"(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—

"(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

"(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

"(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

"(1) The joint resolution of the other House shall not be referred to a committee.

"(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

"(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(B) the vote on final passage shall be on the joint resolution of the other House.

"§ 804. Definitions

"For purposes of this chapter—

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1).

"(2) The term 'major rule' means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

"(A) an annual effect on the economy of $100,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

"(3) The term 'nonmajor rule' means any rule that is not a major rule.

"(4) The term 'rule' has the meaning given such term in section 551, except that such term does not include—

"(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefore, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

"(B) any rule relating to agency management or personnel; or

"(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

"(5) The term 'submission date or publication date', except as otherwise provided in this chapter, means—

"(A) in the case of a major rule, the date on which the Congress receives the report submitted under section 801(a)(1); and

"(B) in the case of a nonmajor rule, the later of—

"(i) the date on which the Congress receives the report submitted under section 801(a)(1); and

"(ii) the date on which the nonmajor rule is published in the Federal Register, if so published.

"§ 805. Judicial review

"(a) No determination, finding, action, or omission under this chapter shall be subject to judicial review.

"(b) Notwithstanding subsection (a), a court may determine whether a Federal agency has completed the necessary requirements under this chapter for a rule to take effect.

"(c) The enactment of a joint resolution of approval under section 802 shall not be interpreted to serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, shall not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule except for purposes of determining whether or not the rule is in effect.

"§ 806. Exemption for monetary policy

"Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

"§ 807. Effective date of certain rules

"Notwithstanding section 801—

"(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping; or

"(2) any rule other than a major rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.".

SEC. 4. BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 802 OF TITLE 5, UNITED STATES CODE.

Section 257(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new subparagraph:

"(E) BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 802 OF TITLE 5, UNITED STATES CODE.—Any rules subject to the congressional approval procedure set forth in section 802 of chapter 8 of title 5, United States Code, affecting budget authority, outlays, or receipts shall be assumed to be effective unless it is not approved in accordance with such section.".

SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF RULES.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to determine, as of the date of the enactment of this Act—

(1) how many rules (as such term is defined in section 804 of title 5, United States Code) were in effect;

(2) how many major rules (as such term is defined in section 804 of title 5, United States Code) were in effect; and

(3) the total estimated economic cost imposed by all such rules.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to Congress that contains the findings of the study conducted under subsection (a).

Purpose and Summary

H.R. 427, the "Regulations From the Executive in Need of Scrutiny Act of 2015," also known as the REINS Act, reforms the Congressional Review Act of 1996 ("CRA").[1] The CRA was adopted to increase the accountability of Federal regulatory agencies and the Congress by creating a fast-track legislative process for Congress to overturn a final Federal regulation within 60 days of the rule's publication in the Federal Register. In the 19 years since the CRA was adopted, however, Federal regulatory agencies have issued well over 60,000 regulations, including well over 1,000 major regulations, while Congress has overturned only one regulation using the CRA. The number of major regulations, moreover, has increased markedly in recent years, and this trend shows no signs of abating. The REINS Act reforms the CRA, insofar as the CRA applies to major regulations. The REINS Act would require Congress to pass within 60 days, and the President to sign, a joint resolution approving a new major regulation issued by a regulatory agency before the regulation could take effect.

Background and Need for the Legislation

I. INTRODUCTION

Rep. Todd Young (R–IN) introduced H.R. 427, the "Regulations From the Executive in Need of Scrutiny Act of 2015" (the "REINS Act," or the "Bill") on January 21, 2015. As mentioned above, the REINS Act reforms the Congressional Review Act (CRA) to require congressional approval of major agency regulations before the regulations can go into effect. Major regulations are those that produce $100 million or more in impacts on the U.S. economy, spur major increases in costs or prices for consumers, or have certain other significant adverse effects on the economy. The REINS Act passed the House as H.R. 367 during the 113th Congress, on a bipartisan vote

[1] *See* Contract with America Advancement Act of 1996, H.R. 3136, 104th Cong., § 251 (1996) (enacted as 104 P.L. 121, codified at 5 U.S.C. §§ 801–808).

of 232–183, and as H.R. 10 during the 112th Congress, on a bipartisan vote of 241–184.

II. NEED FOR THE LEGISLATION

A. History of the Congressional Review Act and the Need for Reform

The Congressional Review Act,[2] part of the 1994 "Contract with America," sprung from a desire for more active congressional control over a rapidly growing body of administrative rules. Prior to the CRA, Congress had employed other means to assert its authority over agencies, ranging from ordinary oversight to the unicameral legislative veto mechanism ruled unconstitutional in *INS v. Chadha,* 462 U.S. 919 (1983).[3] These means, however, proved inadequate.

To remedy this problem, the CRA established a mechanism for Congress to review and disapprove Federal agencies' rules through an expedited legislative process. Recognizing in light of *Chadha* that Congress must conform to the Constitution's requirements of bicameralism and presentment, the CRA required that rules be disapproved by a joint resolution of both houses which would then be presented to the President for signature. In this way, the CRA followed the model of the Rules Enabling Act (28 U.S.C. 2072, *et seq.*), under which the Supreme Court has for many years promulgated rules of practice and procedure and rules of evidence for the Federal courts, subject to review that often has been exercised by Congress.

Despite its conceptual promise, the CRA has produced few results. A study by the Congressional Research Service, for example, found that, as of May 2008, only 47 joint resolutions of disapproval had been introduced in both houses of Congress, relating to just 28 rules. During the same time period, Federal agencies had promulgated 47,540 major and non-major rules.[4] Since the CRA's enactment, it has only once been used successfully to disapprove a single rule.[5] It is widely believed that this one rule—an Occupational Safety and Health Administration rule from the twilight of the Clinton administration—was disapproved more because of the convergence of special circumstances that are unlikely to recur consistently, rather than as a reliable example of how the CRA can effectively be used.[6] A recent case in point is this term's S.J. Res. 8,

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[2] Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), P.L. 104–121, 110 Stat. 857–874, Subtitle E (codified at 5 U.S.C. secs. 801–808).

[3] The legislative veto was particularly popular from the early 1970's through 1983. Under this approach, an enabling statute sometimes provided that rules promulgated under its authority were subject to reversal if one or both of Houses of Congress passed a resolution repealing the Executive Branch's action. In 1983, however, the Supreme Court struck down the legislative veto in *INS v. Chadha,* 462 U.S. 919, on the grounds that, when Congress acted "legislatively," it had to conform to the dictates of the Constitution's bicameralism and presentment requirements (*see* Article I, section 7, clause 2). Because the unicameral legislative veto was a legislative act that did not adhere to these provisions, it violated the Constitutional design for the separation of powers.

[4] Congressional Research Service, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade,* Report No. RL30116 (May 8, 2008).

[5] S.J. Res. 16, 107th Cong. (2001) (enacted).

[6] The OSHA ergonomic standards were controversial from the first publication in 1992 of the initial proposal for a rulemaking. There was Congressional opposition to the standards as well, which led to riders prohibiting OSHA from promulgating proposed or final ergonomic rules during fiscal years 1995, 1996 and 1998. OSHA issued its final standard in 2000 after Congress was unable to pass another rider in that year's appropriations. Shortly after the rule was issued and became effective, control of the White House changed parties. Therefore, there was control of both Houses of Congress and the presidency by the same party, longstanding opposition of

which both the House and Senate passed to disapprove the National Labor Relations Board's new rule on ambush union elections,[7] but which President Obama vetoed. Although joint resolutions have in numerous cases been introduced to pressure agencies to modify or withdraw their rules,[8] as time shows that Congress is unlikely to use the CRA effectively to disapprove of rules, the use of joint resolutions as a source of pressure becomes less and less effective.

The need for further reform is thus evident, and since the CRA's enactment Congress has continued to consider initiatives to foster greater congressional responsibility in the oversight of agency rulemaking. The Subcommittee on Commercial and Administrative Law, for example, held a hearing during the 104th Congress on the role of Congress in monitoring administrative rulemaking.[9] At the hearing, the Subcommittee considered three bills that provided to varying degrees for congressional *approval* of administrative rules before they could become effective.[10] Subsequently, CRA reform was a prominent topic in the Commercial and Administrative Law Subcommittee's Administrative Law, Process and Procedure Project for the 21st Century, which was highly active during the 108th and 109th Congresses. The first recommendation for CRA reform noted in the Subcommittee's interim report on the project ("Interim Report") was reform to require congressional approval of agency rules before the rules could become effective.[11]

As time has gone by, and particularly since the onset of the Obama administration, the need for CRA reform has become all the more pressing. In 2014, for example, Federal agencies promulgated 3,541 final rules, while Congress passed and the President signed into law only 224 statutes.[12] The total costs of Federal regulation, meanwhile, are estimated to exceed $1.8 trillion—a figure that equals eleven percent of the United States' 2013 Gross Domestic Product.[13] Douglas Holtz-Eakin, Ph.D., former Congressional Budget Office Director and current head of the American Action Forum, testified in 2013 before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law that, taking into account the costs imposed by Obama administration regulations as of that date as

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the rule by those in control of Congress, and a President who was willing to seek the disapproval of a rule enacted at the end of the term of a previous administration.

[7] *Representation—Case Procedures; Final Rule,* 79 Fed. Reg. 74308 (Dec. 15, 2014).

[8] The disapproval mechanism was utilized, for example, by Rep. Wicker (R–MS) to achieve a compromise with OSHA regarding its rule setting exposure limits on methylene chloride by introducing H.J. Res. 67, 105th Cong. (1997), to disapprove the OSHA rule. The introduction of the resolution encouraged OSHA to negotiate with Rep. Wicker, who was able to include a provision in the FY 1998 Labor, HHS and Education appropriations requiring OSHA to provide onsite assistance for companies to comply with the new rules.

[9] *Role of Congress in Monitoring Administrative Rulemaking: Hearing on H.R. 47, H.R. 2727, and H.R. 2990 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 104th Cong. 2nd Sess. 104–93 (1996).

[10] H.R. 47 (Rep. Taylor, R–NC); H.R. 2727 (Rep. Hayworth, D–AZ); and H.R. 2990 (Rep. Smith, R–MI).

[11] House Judiciary Committee, Subcommittee on Commercial and Administrative Law, *Interim Report on the Administrative Law, Process and Procedure Project for the 21st Century,* Committee Print No. 10 (Dec. 2006) at 104.

[12] C. Wayne Crews, Jr., *Ten Thousand Commandments: Federal Regulation—the Updates,* Competitive Enterprise Institute (April 2014) (available at http://www.tenthousandcommandments.com/p/federal-regulation-updates.html); C. Wayne Crews, Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State, 2015 ed.,* Competitive Enterprise Institute at 60–61 (May 2015) *(Ten Thousand Commandments).*

[13] *See Ten Thousand Commandments* at 60–61; World Bank: Data: GDP (Current US dollars) (available at http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?order=wbapi_data_value_2013+wbapi_data_value+wbapi_data_value-last&sort=asc).

well as those proposed regulations pending as of that date, "[d]uring the past 4 years, the cumulative regulatory cost burden has increased by more than $520 billion[.]"[14] Dr. Holtz-Eakin further testified that:

> To put the $520 billion figure in perspective, it is more than the combined gross domestic product of Portugal and Norway, and there is little evidence 2013 will slow this pace. Based on a review of the 2012 Unified Agenda, AAF identified $123 billion in possible regulations this year, based on only 40 regulations (out of 2,387 active actions).[15]

Many other regulations, moreover, have been promulgated since and will surely continue to be issued under the Obama administration—such as the many still intended to implement the Patient Protection and Affordable Care Act, P.L. 111–148, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203. These regulations just as surely will add large additional costs to the regulatory burden on U.S. job creators and the U.S. economy. From 2009 through 2013, for example, the Obama administration issued on average 81 new major regulations per year.[16]

A. Legislative History of the REINS Act

The REINS Act was first introduced during the 111th Congress, as H.R. 3765. As reintroduced successively since then, and consistent with the recommendation of the Subcommittee on Commercial and Administrative Law's 2006 Interim Report, the REINS Act requires congressional approval of major rules, but essentially preserves the existing CRA process for non-major rules.

Through its reforms, the REINS Act effectively constrains the delegation of Congressional authority by limiting the size and scope of rulemaking permission. Once major rules are drafted, they must be approved by both houses of Congress and signed by the President, satisfying the bicameralism and presentment requirements of the Constitution. This will increase Congress' accountability for the content of Federal legal requirements and foster more deliberation before the Federal Government expands its reach into the lives of Americans through added regulation. The Act also can be expected to have a significant salutary effect on the substantive quality of major Federal rules and agency compliance with administrative law requirements before major rules are promulgated and submitted to Congress. Finally, although the Act does not change Congressional Review Act procedures for review of non-major rules, it can be hoped that the Act's impacts on the quality of major-rulemaking will improve the overall culture of Federal rulemaking, elevating the quality of non-major-rulemaking in the process.

At the Subcommittee's March 5, 2013 legislative hearing, the most recent legislative hearing held on the legislation, Mr. Gattuso and Prof. Claeys testified in support of the REINS Act; Prof. Levin testified against it. In summary, Mr. Gattuso discussed the increas-

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[14] Statement of Douglas Holtz-Eakin at "Hearing on the Obama Administration's Regulatory War on Jobs, the Economy, and America's Global Competitiveness," February 28, 2013, at 3 (available at http://judiciary.house.gov/hearings/113th/02282013/Holtz-Eakin%2002282013.pdf.

[15] *Id.*

[16] C. Wayne Crews, Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State, 2014 ed.,* Competitive Enterprise Institute (April 2014).

ing burden of regulations on the economy over the past several decades, the palpably greater increase in major regulation experienced under the Obama administration to date, and the strong likelihood of continuing, accelerated regulatory growth during the second term of the Obama administration. Mr. Gattuso presented his view that the REINS Act represents a sound, effective, manageable, and constitutional means to assure that the largest new regulatory burdens are not placed on the people without the approval of the people's elected representatives. He also emphasized that the REINS Act is not inherently anti-regulatory, but simply assures that accountable, elected representatives will have the final say over whether or not to impose a new major rule. Prof. Claeys testified that the REINS Act represented a constitutional means of providing for Congressional approval of new major regulations, implementing Congress' powers under Article 1, sec. 1, of the Constitution and the Necessary and Proper Clause. He opined that the Act would not run afoul of the *Chadha* rule against unicameral legislative vetoes, in that the REINS Act itself would be enacted bicamerally, followed by presentment to and signature by the President, and any legislation—specifically, approval resolutions—subsequently arising under the REINS Act would also become law only following bicameral passage and presentment to and signature by the President. Prof. Claeys also emphasized that Justice Stephen Breyer and constitutional law professor Laurence Tribe had in the past written that a congressional approval mechanism for regulations, like that in the REINS Act, would be constitutional. Prof. Levin proffered his view that the REINS Act's constitutionality was at least subject to question, in that the failure of an approval resolution in either chamber of Congress would mean that the regulation addressed by the resolution could not become effective. Prof. Levin also testified that the additional work required of Congress under the REINS Act would be too great, and that Congress' role under the Bill would impede regulatory agencies' fulfillment of their regulatory mandates.

As mentioned above, the REINS Act passed the House as H.R. 367 during the 113th Congress, on a bipartisan vote of 232–183, and as H.R. 10 during the 112th Congress, on a bipartisan vote of 241–184. Further background information on the REINS Act can be found in the Committee's reports on H.R. 367 and H.R. 10, the Subcommittee's records for its legislative and oversight hearings on the REINS Act, and the Rules Committee's report on H.R. 10.

Hearings

The Committee on the Judiciary held no hearings this term on H.R. 427, but held multiple hearings on the REINS Act during the two prior Congresses. During the 113th Congress, the Subcommittee on Regulatory Reform, Commercial and Administrative Law held a legislative hearing on H.R. 367 on March 5, 2013, as discussed above. During the 112th Congress, the Subcommittee on Courts, Commercial and Administrative Law held an oversight hearing on the REINS Act on January 24, 2011, followed by a legislative hearing on March 8, 2011. Witnesses at the oversight hearing included former Rep. David McIntosh, then of Mayer Brown; Professor Jonathan Adler of Case Western Reserve University School of Law; and, Sally Katzen, visiting professor of law at New

York University School of Law and senior advisor at the Podesta Group. Witnesses at the legislative hearing included Professor Claeys; Professor David Schoenbrod of New York Law School; and, David Goldston, Natural Resources Defense Council.

Committee Consideration

On April 15, 2015, the Committee met in open session and ordered the bill H.R. 427 favorably reported with an amendment, by a rollcall vote of 15 to 10, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 427.

1. Amendment #1, offered by Mr. King. The Amendment requires a study and report to Congress by the Comptroller General on the number of regulations in effect on the date of enactment, the number of major regulations in effect on that date of enactment, and the total estimated economic cost imposed by all such regulations. The Amendment was approved by a rollcall vote of 15 to 6.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)	X		
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)			
Mr. Forbes (VA)			
Mr. King (IA)	X		
Mr. Franks (AZ)	X		
Mr. Gohmert (TX)	X		
Mr. Jordan (OH)			
Mr. Poe (TX)			
Mr. Chaffetz (UT)	X		
Mr. Marino (PA)	X		
Mr. Gowdy (SC)			
Mr. Labrador (ID)			
Mr. Farenthold (TX)	X		
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Ms. Walters (CA)	X		
Mr. Buck (CO)	X		
Mr. Ratcliffe (TX)	X		
Mr. Trott (MI)	X		
Mr. Bishop (MI)	X		
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Cohen (TN)			
Mr. Johnson (GA)		X	
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)		X	
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)		X	
Mr. Jeffries (NY)			
Mr. Cicilline (RI)		X	
Mr. Peters (CA)			
Total	15	6	

2. Amendment #2, offered by Mr. Conyers. The Amendment exempts from the REINS Act any rule relating to protection of the public health or safety. The Amendment was defeated by a rollcall vote of 5 to 17.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)			
Mr. Forbes (VA)			
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)			
Mr. Poe (TX)			
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Labrador (ID)		X	
Mr. Farenthold (TX)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Ms. Walters (CA)		X	
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)		X	
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Cohen (TN)			
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)			
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)			
Mr. Cicilline (RI)	X		
Mr. Peters (CA)			
Total	5	17	

3. Amendment #3, offered by Mr. Collins. The Amendment requires reports submitted to Congress on major rules to include an assessment as to whether or not the rule imposes any new limits or mandates on private-sector activity. The amendment also effects a technical correction. The Amendment was approved by a rollcall vote of 15 to 7.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)	X		
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)			
Mr. Forbes (VA)			
Mr. King (IA)	X		
Mr. Franks (AZ)	X		
Mr. Gohmert (TX)	X		
Mr. Jordan (OH)			
Mr. Poe (TX)			
Mr. Chaffetz (UT)			
Mr. Marino (PA)	X		
Mr. Gowdy (SC)			
Mr. Labrador (ID)	X		
Mr. Farenthold (TX)	X		
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Ms. Walters (CA)	X		
Mr. Buck (CO)	X		
Mr. Ratcliffe (TX)	X		
Mr. Trott (MI)	X		
Mr. Bishop (MI)	X		
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)			
Mr. Johnson (GA)		X	
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)		X	
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)		X	
Mr. Jeffries (NY)			
Mr. Cicilline (RI)		X	
Mr. Peters (CA)			
Total	15	7	

4. Amendment #4, offered by Mr. Johnson. The Amendment exempts from the REINS Act any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget determines would result in net job growth. The Amendment was defeated by a rollcall vote of 9 to 17.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)			
Mr. Forbes (VA)			
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)			
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Labrador (ID)		X	
Mr. Farenthold (TX)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Ms. Walters (CA)		X	
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)		X	
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)	X		
Mr. Cicilline (RI)	X		
Mr. Peters (CA)			
Total	9	17	

5. Amendment #5, offered by Ms. Chu. The Amendment exempts from the REINS Act any rule that pertains to protecting schools and children from gun violence. The Amendment was defeated by a rollcall vote of 10 to 11.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)			
Mr. Forbes (VA)			
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)			
Mr. Jordan (OH)			
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)			
Mr. Labrador (ID)		X	
Mr. Farenthold (TX)			
Mr. Collins (GA)		X	
Mr. DeSantis (FL)			
Ms. Walters (CA)			
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)		X	
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)	X		
Mr. Cicilline (RI)	X		
Mr. Peters (CA)	X		
Total	10	11	

6. Amendment #6, offered by Ms. Del Bene. The Amendment exempts from the REINS Act any rule made by the Federal Communications Commission pursuant to title VI of the Middle Class Tax Relief and Job Creation Act of 2012. The Amendment was defeated by a rollcall vote of 10 to 14.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)		X	
Mr. Forbes (VA)			
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)			
Mr. Labrador (ID)		X	
Mr. Farenthold (TX)			
Mr. Collins (GA)		X	
Mr. DeSantis (FL)			
Ms. Walters (CA)			
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)		X	
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	

ROLLCALL NO. 6—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)	X		
Mr. Cicilline (RI)	X		
Mr. Peters (CA)	X		
Total	10	14	

7. Amendment #7, offered by Mr. Jeffries. The Amendment exempts from the REINS Act any rule that pertains to protection of the safety and soundness of the banking and financial services industries of the United States. The Amendment was defeated by a rollcall vote of 9 to 15.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)		X	
Mr. Forbes (VA)			
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)			
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Labrador (ID)		X	
Mr. Farenthold (TX)			
Mr. Collins (GA)		X	
Mr. DeSantis (FL)			
Ms. Walters (CA)			
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)		X	
Mr. Trott (MI)		X	
Mr. Bishop (MI)		X	

ROLLCALL NO. 7—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr. (MI), Ranking Member			
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)	X		
Mr. Cicilline (RI)	X		
Mr. Peters (CA)	X		
Total	9	15	

8. Amendment #8, offered by Mr. Cicilline. The Amendment exempts from the REINS Act any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget determines would result in greater benefits than costs to society. The Amendment was defeated by a rollcall vote of 9 to 14.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)		X	
Mr. Chabot (OH)			
Mr. Issa (CA)		X	
Mr. Forbes (VA)			
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)			
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)			
Mr. Gowdy (SC)			
Mr. Labrador (ID)		X	
Mr. Farenthold (TX)			
Mr. Collins (GA)		X	
Mr. DeSantis (FL)			
Ms. Walters (CA)			
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)		X	
Mr. Trott (MI)		X	

ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Bishop (MI)		X	
Mr. Conyers, Jr. (MI), Ranking Member			
Mr. Nadler (NY)	X		
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Jeffries (NY)	X		
Mr. Cicilline (RI)	X		
Mr. Peters (CA)	X		
Total	9	14	

9. Motion to report H.R. 427 as amended. The bill will increase accountability and transparency in the Federal regulatory process. The motion was agreed to by a rollcall vote of 15 to 10.

ROLLCALL NO. 9

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)	X		
Mr. Chabot (OH)			
Mr. Issa (CA)	X		
Mr. Forbes (VA)			
Mr. King (IA)	X		
Mr. Franks (AZ)	X		
Mr. Gohmert (TX)	X		
Mr. Jordan (OH)			
Mr. Poe (TX)	X		
Mr. Chaffetz (UT)	X		
Mr. Marino (PA)			
Mr. Gowdy (SC)	X		
Mr. Labrador (ID)	X		
Mr. Farenthold (TX)			
Mr. Collins (GA)	X		
Mr. DeSantis (FL)			
Ms. Walters (CA)			
Mr. Buck (CO)	X		
Mr. Ratcliffe (TX)	X		
Mr. Trott (MI)	X		
Mr. Bishop (MI)	X		

ROLLCALL NO. 9—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)		X	
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)		X	
Mr. Johnson (GA)		X	
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)		X	
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)		X	
Mr. Jeffries (NY)		X	
Mr. Cicilline (RI)		X	
Mr. Peters (CA)		X	
Total	15	10	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises 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.

New Budget Authority and Tax Expenditures

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

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 427, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 28, 2015.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 427, the "Regulations From the Executive in Need of Scrutiny Act of 2015."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226–2860.

Sincerely,

KEITH HALL,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 427—Regulations From the Executive in Need of Scrutiny Act of 2015.

As ordered reported by the House Committee on the Judiciary on April 15, 2015.

SUMMARY

Under current law, the Congress can prevent a rule from taking effect by enacting a joint resolution of *disapproval.* In contrast, H.R. 427 would require enactment of a joint resolution of *approval* prior to any major rule taking effect. In doing so, H.R. 427 would make the implementation of new major regulations dependent on future legislation. Because CBO does not assume enactment of subsequent legislation in estimating a bill's effect on direct spending and revenues, this estimate addresses the costs and savings that would be realized if anticipated major rules do not take effect.

Eighty-two major rules have been issued per year, on average, over the past 5 years. Major rules vary greatly in their nature and scope. CBO and the staff of the Joint Committee on Taxation (JCT) cannot determine the budgetary effects of making all future major rules subject to Congressional approval, but we expect that, in the absence of subsequent legislative action affecting those rules, enacting H.R. 427 would have significant effects on both direct spending and revenues. Pay-as-you-go procedures apply because enacting H.R. 427 would affect direct spending and revenues.

CBO expects that implementing H.R. 427 also could have a significant impact on spending subject to appropriation, although we cannot determine the magnitude of that effect.

CBO expects that H.R. 427 would impose no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Background

The Congressional Review Act (CRA) of 1996 requires Federal agencies to submit final rules to the Congress and the Comptroller General before they may take effect. Final rules may be annulled by the Congress if a joint resolution of disapproval is enacted into law. H.R. 427 would amend current law to require that the Congress enact a joint resolution of approval before any major rule may take effect, thereby making implementation of major rules contingent on future Congressional action.

The definition of a major rule, which was originally set by the CRA and would be unchanged by H.R. 427, is any rule that the Office of Management and Budget (OMB) finds has resulted in or is likely to result in:

- An annual effect on the economy of $100,000,000 or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.[1]

H.R. 427 specifies special Congressional procedures and explicit timelines for enacting a joint resolution of approval for major rules. Under H.R. 427, if a joint resolution of approval is not enacted within 70 legislative (or session) days of receiving the major rule and accompanying report from a Federal agency, the rule could not take effect. Further, the Congress could not reconsider a joint resolution of approval relating to that rule in the same Congress. However, a major rule could take effect for one 90-calendar-day period without Congressional approval if the President determines, via an executive order, that the major rule was necessary for one of four reasons: (1) to respond to an imminent threat to health or safety, (2) to enforce criminal laws, (3) to protect national security, or (4) to implement an international trade agreement.

Historical data show that Federal agencies published 80 major rules in 2014, and 82 major rules, on average, over the past 5 calendar years.[2] Major rules published in recent years include rules that required warnings for cigarette packages and advertisements, set Medicare payment rates for inpatient psychiatric facilities, and established national emission standards for hazardous air pollutants from industrial, commercial, and institutional boilers. However, looking to recent major rules as a way to estimate the number of future major rules that would be affected by H.R. 427 may not be a good guide to what would happen under the bill because agencies might change course if the bill was enacted.

Because major rules are issued to implement current law, the budgetary effects of anticipated rules are reflected in CBO's baseline projections. (The baseline is governed by section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985—the Deficit Control Act). For example, routine annual rules establish new payment rates for a variety of Medicare services. Such updated payment rates reflect changes in the price indices specified to be used for those services by current law; the result is often an increase in payment rates and thus an increase in spending.

Under the Deficit Control Act, actions that are contingent on future Congressional action are generally not included in CBO's baseline projections. H.R. 427 would amend the Deficit Control Act to require that CBO, in its baseline projections, continue to assume that any planned major rule will go into effect, unless the rule has already been promulgated and the Congress has not enacted a res-

[1] See 5 USC § 804(2).
[2] GAO Federal Rules Database, http://www.gao.gov/legal/congressact/fedrule.html.

olution of approval within the 70-day period that would be established under the bill. (Without that provision amending the Deficit Control Act, H.R. 427 would result in baseline projections that did not reflect the budgetary impact of major rules.)

As a result, CBO's baseline projections would retain the budgetary impact of major rules even though under the bill, future Congressional action would be necessary to approve such rules. For example, if H.R. 427 is enacted, baseline projections would continue to reflect the assumption that payment rates for Medicare providers would rise over time, even though raising those rates would require future Congressional action. Accordingly, a Congressional resolution of approval for a major rule raising such rates would be estimated as having no cost relative to CBO's baseline projections. (If the Congress does not pass a joint resolution of approval, then CBO's subsequent baseline projections would be updated to exclude the budgetary impact of the proposed rule.)

Impact on Direct Spending

H.R. 427 would prevent all major rules from taking effect unless subsequent legislation is enacted. Because CBO does not assume enactment of future legislation in estimating effects on direct spending and revenues, in assessing the budgetary effects of H.R. 427, CBO considered the costs and savings that would be realized if anticipated major rules do not take effect. The budgetary consequences would vary tremendously because the budgetary impact of different rules varies considerably. For example, of the three rules mentioned above, only one—which set Medicare payment rates for inpatient psychiatric facilities—has a significant Federal budgetary impact.

Preventing some major rules from taking effect would result in costs to the Federal Government, while preventing others would result in savings. On net, CBO estimates that enacting H.R. 427 would have a significant effect on direct spending, but we cannot determine the magnitude or sign of those changes for any year or period of years. Short-term effects would largely result from: (1) preventing annual updates to payment schedules for certain Medicare services and other routine revisions to aspects of certain government programs, including payment rate reductions scheduled to take place under the Medicare physician fee schedule, and (2) altering the implementation of new Federal programs with substantial budget effects.

Routine Updates to Government Programs. Many major rules that occur routinely are related to the government's health care programs and in particular pertain to Medicare. Some examples include rules that establish annual updates to payment rates for services provided by hospitals, physicians, and other Medicare providers. Enacting H.R. 427 would freeze payment structures for those providers at current levels pending future Congressional actions. Similarly, payment rates (such as the annual benefit amount for each individual) under some other Federal programs might also be frozen under the bill in the absence of future Congressional actions. CBO cannot estimate the net impact of all such changes.

Implementation of New Federal Programs. Enacting H.R. 427 could also affect the implementation of significant legislation for which major rules have not been issued. For example, enacting

H.R. 427 could necessitate Congressional action in order to implement new initiatives aimed at making more electromagnetic spectrum available for wireless services. As required by title VI of the Middle Class Tax Relief and Job Creation Act of 2012, the Federal Communications Commission (FCC) is developing proposed rules for what are known as "incentive auctions," for private firms to voluntarily relinquish some or all of their existing spectrum rights in exchange for a payment from the FCC. That spectrum would then be available for new licensed uses. Provisions in that act regarding the use of spectrum by Federal agencies and the development of a wireless network for public safety users are being implemented through rulemaking by the Department of Commerce. Making implementation of those programs contingent on future legislation would increase net direct spending (by reducing auction receipts expected under current law) by several billion dollars over the 2016–2025 period, relative to current law.

Impact on Revenues

Enacting H.R. 427 would also affect tax revenues, and JCT expects that preventing regulations from going into effect could reduce collections of revenues in some cases and increase collections in other cases. JCT cannot determine the sign or magnitude of the possible effects on revenues.

Impact on Spending Subject to Appropriation

H.R. 427 also would affect programs for which spending is subject to the annual appropriation process. However, CBO cannot determine the magnitude of that effect. For example, if the major rules issued by the Environmental Protection Agency were prevented from taking effect, there could be reductions in spending for the agency, if future appropriations were reduced. A second example involves annual calculations made by the Department of Housing and Urban Development (HUD) of the fair-market rents that it uses to determine rental subsidies for low-income individuals. We expect that the bill would prohibit those calculations from being implemented, which would prevent the rental subsidy from being adjusted for changes in market conditions. Any increase in rents would be paid for by the tenant and not by HUD, and if tenants were unable to pay the increased rent, some landlords would probably leave the program.

The legislation also would require the Government Accountability Office (GAO) to prepare a study on the rules and their economic cost. Based on information from agencies and on similar GAO reports, CBO estimates that completing the study would cost less than $500,000 over the next few years.

Impact on Future Legislation

If H.R. 427 was enacted, the budgetary effects of planned major rules would continue to be reflected in baseline projections, unless a rule had already been promulgated and a joint resolution of approval had not been enacted within the time period specified by the bill. Because cost estimates reflect changes relative to CBO's baseline, a cost estimate for a joint resolution of approval for a major rule would not include the direct spending and revenue effects of implementing that rule.

For future legislation whose implementation would be contingent upon the promulgation of major rules, CBO would estimate the budgetary effects assuming those major rules would take effect, to be consistent with how that legislation would be treated in subsequent baseline projections. However, if a joint resolution of approval was ultimately not enacted, CBO's baseline projections would be updated to reflect that inaction and thus to exclude the effects of the major rules involved. If a joint resolution of approval for a major rule that had not been approved were considered in a subsequent Congress, the costs or savings associated with that major rule would be counted for budget enforcement purposes because its effects would not be in the baseline at that point.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Pay-as-you-go procedures apply to H.R. 427 because enacting the legislation would affect direct spending and revenues. CBO and JCT cannot determine the sign or magnitude of those effects.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

CBO expects that H.R. 427 would impose no intergovernmental or private-sector mandates as defined in UMRA. By requiring major rules to be approved by a joint resolution of Congress and potentially delaying or halting the implementation of those rules, the bill could affect public or private entities in a number of ways, including slowing reimbursements and eliminating or changing regulatory requirements. Although the costs and savings tied to those individual effects could be significant, CBO has no basis for estimating either the overall direction or magnitude of those effects on public or private entities because of uncertainty about the nature and number of regulations affected.

ESTIMATE PREPARED BY:

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Duplication of Federal Programs

No provision of H.R. 427 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 427 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 427 increases accountability and transparency in the Federal regulatory process by reforming the Congressional Review Act of 1996 to require Congress to approve all new major regulations.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 427 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title. Section 1 sets forth the short title of the bill as the "Regulations From the Executive In Need of Scrutiny Act of 2015."

Sec. 2. Purpose. Section 2 establishes the purpose of the REINS Act, which is to increase accountability and transparency in the Federal regulatory process by requiring Congress to approve all new major regulations.

Sec. 3. Congressional Review of Agency Rule Making. The bill amends chapter 8 of title 5, U.S. Code, to create the following method for congressional review of new major Federal rules:

801. Congressional Review—This section requires enhanced reporting of all Federal rules to Congress and the Comptroller General and provides that a major rule shall not take effect without a joint resolution of approval under section 802. Section 801 also caps the time to enact a joint resolution of approval at 70 legislative days, and empowers the President to grant 90-day waivers for certain emergency situations. Finally, Section 801 outlines carryover provisions from one session of Congress to the next.

802. Congressional Approval Procedure for Major Rules—Subsection (a) describes the content and method of introduction for a joint resolution of approval within 3 legislative or session days (as applicable), and prohibits any amendments to that joint resolution during its consideration. Subsection (b) provides for the appropriate referral of the measure to committees in both the Senate and House of Representatives.

Subsections (c) and (d) provide for expedited consideration of the joint resolution in the Senate. In the Senate, a vote on passage must occur within 15 session days after a committee is discharged or reports the measure. A motion to proceed to the joint resolution is in order anytime after the committees are discharged or have reported. All points of order against the joint resolution are waived. The motion to proceed is not subject to amendment, a motion to

postpone, or a motion to proceed to other business. A motion to reconsider the vote on the motion to proceed is not in order. If a motion to proceed to a joint resolution is agreed to, debate on the joint resolution (and all related motions and appeals) is limited to 2 hours. The joint resolution is not amendable, and motions to postpone, motions to proceed to other business, and a motion to recommit are not in order. All appeals are decided without debate, and a vote on final passage must occur after the conclusion of debate on the joint resolution.

Subsection (e) provides for consideration of the joint resolution in the House. Committees in the House must report the joint resolution without amendment within 15 days after referral, or they are automatically discharged from further consideration. After the joint resolution is on the calendar for at least 5 legislative days, the Speaker may recognize a Member favoring passage of the joint resolution on the second and fourth Thursdays of each month to call up the joint resolution for immediate consideration. All points of order against the resolution and its consideration are waived, and the resolution is debatable for 1 hour. The bill prohibits amendments, motions to recommit, and motions to reconsider. If a vote on final passage of the joint resolution has not been taken by the third Thursday on which the Speaker may recognize a member for consideration of the joint resolution, the vote on final passage will occur on that day without debate.

Subsection (f) provides for the disposition of a joint resolution by the other House. Notably, paragraph (2) provides that the House does not have to vote on passage of a joint resolution passed by the Senate if that joint resolution is a revenue measure.

Finally, subsection (g) provides that sections 802 and 803 are enacted as a rulemaking exercise and are deemed to be part of the rules of each body with respect to the joint resolution of approval, and supersedes other rules only where it explicitly does so and that Congress reserves the right to change these rules in the same manner as any other rule.

803. Congressional Disapproval Procedure for Nonmajor Rules—Section 803 preserves the existing disapproval process under the Congressional Review Act for all non-major rules. This section permits Congress to disapprove a rule if both houses of Congress pass a joint resolution of disapproval that the President signs (or if Congress overrides the veto). Section 803 also provides expedited procedural mechanisms in the Senate.

804. Definitions—This section defines certain terms, including "major rule" and "nonmajor rule." It also provides that rules of particular applicability, rules relating to agency management, or rules relating to agency organization are exempt from the REINS Act.

805. Judicial Review—This section provides that no determination, finding, action, or omission under this chapter will be subject to judicial review.

806. Exemption for Monetary Policy—Like the Congressional Review Act, section 806 exempts any rules concerning monetary policy promulgated by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

807. Effective Date of Certain Rules—Section 807 permits certain rules relating to hunting, fishing, or camping and certain nonmajor rules to take effect notwithstanding section 801.

Sec. 4. Budgetary Effects of Rules Subject to Section 802 of Title 5, United States Code. Provides for amendment of section 257(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 to add that rules subject to the congressional approval procedure set forth in section 802 of title 5 and "affecting budget authority, outlays, or receipts shall be assumed to be effective unless . . . not approved in accordance with such section.

Sec. 5. Government Accountability Office Study of Rules. Commissions a study and report to Congress by the Comptroller General on the number of regulations in effect on the date of enactment, the number of major regulations in effect on the date of enactment, and the total estimated economic cost imposed by all such regulations.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) 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 italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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[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 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 and make available to each House of Congress—

[(i) a complete copy of the cost-benefit analysis of the rule, if any;

[(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

[(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

[(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

[(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

[(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).

[(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

[(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

[(A) the later of the date occurring 60 days after the date on which—

[(i) the Congress receives the report submitted under paragraph (1); or

[(ii) the rule is published in the Federal Register, if so published;

[(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

[(i) on which either House of Congress votes and fails to override the veto of the President; or

[(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

[(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

[(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

[(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

[(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

[(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

[(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

[(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

[(A) necessary because of an imminent threat to health or safety or other emergency;

[(B) necessary for the enforcement of criminal laws;

[(C) necessary for national security; or

[(D) issued pursuant to any statute implementing an international trade agreement.

[(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

[(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

[(A) in the case of the Senate, 60 session days, or

[(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

[(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

[(i) such rule were published in the Federal Register (as a rule that shall take effect) on—

[(I) in the case of the Senate, the 15th session day, or

[(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

[(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

[(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

[(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

[(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

[(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

[(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

[(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

[(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

[(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

[(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

[§ 802. Congressional disapproval procedure

[(a) For purposes of this section, the term "joint resolution" means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: "That Congress disapproves the rule submitted by the — — relating to — —, and such rule shall have no force or effect." (The blank spaces being appropriately filled in).

[(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

[(2) For purposes of this section, the term "submission or publication date" means the later of the date on which—

[(A) the Congress receives the report submitted under section 801(a)(1); or

[(B) the rule is published in the Federal Register, if so published.

[(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

[(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

[(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An

amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

[(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

[(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

[(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

[(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

[(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

[(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

[(1) The joint resolution of the other House shall not be referred to a committee.

[(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

[(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

[(B) the vote on final passage shall be on the joint resolution of the other House.

[(g) This section is enacted by Congress—

[(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

[(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

[§ 803. Special rule on statutory, regulatory, and judicial deadlines

[(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection

shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

[(b) The term "deadline" means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

[§ 804. Definitions

[For purposes of this chapter—

[(1) The term "Federal agency" means any agency as that term is defined in section 551(1).

[(2) The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

[(A) an annual effect on the economy of $100,000,000 or more;

[(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

[(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

[(3) The term "rule" has the meaning given such term in section 551, except that such term does not include—

[(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

[(B) any rule relating to agency management or personnel; or

[(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

[§ 805. Judicial review

[No determination, finding, action, or omission under this chapter shall be subject to judicial review.

[§ 806. Applicability; severability

[(a) This chapter shall apply notwithstanding any other provision of law.

[(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

[§ 807. Exemption for monetary policy

[Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

[§ 808. Effective date of certain rules

[Notwithstanding section 801—

[(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

[(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.]

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

Sec.
801. Congressional review.
802. Congressional approval procedure for major rules.
803. Congressional disapproval procedure for nonmajor rules.
804. Definitions.
805. Judicial review.
806. Exemption for monetary policy.
807. Effective date of certain rules.

§ 801. Congressional review

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

(i) a copy of the rule;

(ii) a concise general statement relating to the rule;

(iii) a classification of the rule as a major or nonmajor rule, including an explanation of the classification specifically addressing each criteria for a major rule contained within sections 804(2)(A), 804(2)(B), and 804(2)(C);

(iv) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and

(v) 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 and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions pursuant to sections 603, 604, 605, 607, and 609 of this title;

(iii) the agency's actions pursuant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction by the end of 15 calendar days after the submission or publication date. The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B) and an assessment of whether the major rule imposes any new limits or mandates on private-sector activity.

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect upon enactment of a joint resolution of approval described in section 802 or as provided for in the rule following enactment of a joint resolution of approval described in section 802, whichever is later.

(4) A nonmajor rule shall take effect as provided by section 803 after submission to Congress under paragraph (1).

(5) If a joint resolution of approval relating to a major rule is not enacted within the period provided in subsection (b)(2), then a joint resolution of approval relating to the same rule may not be considered under this chapter in the same Congress by either the House of Representatives or the Senate.

(b)(1) A major rule shall not take effect unless the Congress enacts a joint resolution of approval described under section 802.

(2) If a joint resolution described in subsection (a) is not enacted into law by the end of 70 session days or legislative days, as applicable, beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), then the rule described in that resolution shall be deemed not to be approved and such rule shall not take effect.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a major rule may take effect for one 90-calendar-day period if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the major rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws;

(C) necessary for national security; or

(D) issued pursuant to any statute implementing an international trade agreement.

(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802.

(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

(A) in the case of the Senate, 60 session days, or

(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress is scheduled to adjourn a session of Congress through the date on which the same or succeeding Congress first convenes its next session, sections 802 and 803 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying sections 802 and 803 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register on—

(I) in the case of the Senate, the 15th session day, or

(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

§ 802. Congressional approval procedure for major rules

(a)(1) For purposes of this section, the term "joint resolution" means only a joint resolution addressing a report classifying a rule as major pursuant to section 801(a)(1)(A)(iii) that—

(A) bears no preamble;

(B) bears the following title (with blanks filled as appropriate): "Approving the rule submitted by _____ relating to _____.";

(C) includes after its resolving clause only the following (with blanks filled as appropriate): "That Congress approves the rule submitted by _____ relating to _____."; and

(D) is introduced pursuant to paragraph (2).

(2) After a House of Congress receives a report classifying a rule as major pursuant to section 801(a)(1)(A)(iii), the majority leader of that House (or his or her respective designee) shall introduce (by request, if appropriate) a joint resolution described in paragraph (1)—

(A) in the case of the House of Representatives, within three legislative days; and

(B) in the case of the Senate, within three session days.

(3) A joint resolution described in paragraph (1) shall not be subject to amendment at any stage of proceeding.

(b) A joint resolution described in subsection (a) shall be referred in each House of Congress to the committees having jurisdiction over the provision of law under which the rule is issued.

(c) In the Senate, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 session days after its introduction,

such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th session day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

(d)(1) In the Senate, when the committee or committees to which a joint resolution is referred have reported, or when a committee or committees are discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the House of Representatives, if any committee to which a joint resolution described in subsection (a) has been referred has not reported it to the House at the end of 15 legislative days after its introduction, such committee shall be discharged from further consideration of the joint resolution, and it shall be placed on the appropriate calendar. On the second and fourth Thursdays of each month it shall be in order at any time for the Speaker to recognize a Member who favors passage of a joint resolution that has appeared on the calendar for at least 5 legislative days to call up that joint resolution for immediate consideration in the House without intervention of any point of order. When so called up a joint resolution shall be considered as read and shall be debatable for 1 hour equally divided and controlled by the proponent and an opponent, and the previous question shall be considered as ordered to its passage without intervening motion. It shall not be in order to reconsider the vote on passage. If a vote on final passage of the joint reso-

lution has not been taken by the third Thursday on which the Speaker may recognize a Member under this subsection, such vote shall be taken on that day.

(f)(1) If, before passing a joint resolution described in subsection (a), one House receives from the other a joint resolution having the same text, then—

(A) the joint resolution of the other House shall not be referred to a committee; and

(B) the procedure in the receiving House shall be the same as if no joint resolution had been received from the other House until the vote on passage, when the joint resolution received from the other House shall supplant the joint resolution of the receiving House.

(2) This subsection shall not apply to the House of Representatives if the joint resolution received from the Senate is a revenue measure.

(g) If either House has not taken a vote on final passage of the joint resolution by the last day of the period described in section 801(b)(2), then such vote shall be taken on that day.

(h) This section and section 803 are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a) and superseding other rules only where explicitly so; and

(2) with full recognition of the Constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

§ 803. Congressional disapproval procedure for nonmajor rules

(a) For purposes of this section, the term "joint resolution" means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: "That Congress disapproves the nonmajor rule submitted by the _____ relating to _____, and such rule shall have no force or effect." (The blank spaces being appropriately filled in).

(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

(2) For purposes of this section, the term submission or publication date means the later of the date on which—

(A) the Congress receives the report submitted under section 801(a)(1); or

(B) the nonmajor rule is published in the Federal Register, if so published.

(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 15 session

days after the date of introduction of the joint resolution, such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

§ 804. Definitions

For purposes of this chapter—

(1) The term "Federal agency" means any agency as that term is defined in section 551(1).

(2) The term "major rule" means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

(A) an annual effect on the economy of $100,000,000 or more;

(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(3) The term "nonmajor rule" means any rule that is not a major rule.

(4) The term "rule" has the meaning given such term in section 551, except that such term does not include—

(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefore, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

(5) The term "submission date or publication date", except as otherwise provided in this chapter, means—

(A) in the case of a major rule, the date on which the Congress receives the report submitted under section 801(a)(1); and

(B) in the case of a nonmajor rule, the later of—

(i) the date on which the Congress receives the report submitted under section 801(a)(1); and

(ii) the date on which the nonmajor rule is published in the Federal Register, if so published.

§ 805. Judicial review

(a) No determination, finding, action, or omission under this chapter shall be subject to judicial review.

(b) Notwithstanding subsection (a), a court may determine whether a Federal agency has completed the necessary requirements under this chapter for a rule to take effect.

(c) The enactment of a joint resolution of approval under section 802 shall not be interpreted to serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, shall not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule except for purposes of determining whether or not the rule is in effect.

§ 806. Exemption for monetary policy

Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

§ 807. Effective date of certain rules

Notwithstanding section 801—

(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping; or

(2) any rule other than a major rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

* * * * * * *

BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

* * * * * * *

PART C—EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

* * * * * * *

SEC. 257. THE BASELINE.

(a) IN GENERAL.—For any budget year, the baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through the applicable date.

(b) DIRECT SPENDING AND RECEIPTS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions:

(1) IN GENERAL.—Laws providing or creating direct spending and receipts are assumed to operate in the manner specified in those laws for each such year and funding for entitlement authority is assumed to be adequate to make all payments required by those laws.

(2) EXCEPTIONS.—(A)(i) No program established by a law enacted on or before the date of enactment of the Balanced Budget Act of 1997 with estimated current year outlays greater than $50,000,000 shall be assumed to expire in the budget year or the outyears. The scoring of new programs with estimated

outlays greater than $50,000,000 a year shall be based on scoring by the Committees on Budget or OMB, as applicable. OMB, CBO, and the Budget Committees shall consult on the scoring of such programs where there are differences between CBO and OMB.

(ii) On the expiration of the suspension of a provision of law that is suspended under section 171 of Public Law 104–127 and that authorizes a program with estimated fiscal year outlays that are greater than $50,000,000, for purposes of clause (i), the program shall be assumed to continue to operate in the same manner as the program operated immediately before the expiration of the suspension.

(B) The increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.

(C) Excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at current rates.

(D) If any law expires before the budget year or any outyear, then any program with estimated current year outlays greater than $50,000,000 that operates under that law shall be assumed to continue to operate under that law as in effect immediately before its expiration.

(E) BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 802 OF TITLE 5, UNITED STATES CODE.—Any rules subject to the congressional approval procedure set forth in section 802 of chapter 8 of title 5, United States Code, affecting budget authority, outlays, or receipts shall be assumed to be effective unless it is not approved in accordance with such section.

(3) HOSPITAL INSURANCE TRUST FUND.—Notwithstanding any other provision of law, the receipts and disbursements of the Hospital Insurance Trust Fund shall be included in all calculations required by this Act.

(c) DISCRETIONARY APPROPRIATIONS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions regarding all amounts other than those covered by subsection (b):

(1) INFLATION OF CURRENT-YEAR APPROPRIATIONS.—Budgetary resources other than unobligated balances shall be at the level provided for the budget year in full-year appropriation Acts. If for any account a full-year appropriation has not yet been enacted, budgetary resources other than unobligated balances shall be at the level available in the current year, adjusted sequentially and cumulatively for expiring housing contracts as specified in paragraph (2), for social insurance administrative expenses as specified in paragraph (3), to offset pay absorption and for pay annualization as specified in paragraph (4), for inflation as specified in paragraph (5), and to account for changes required by law in the level of agency payments for personnel benefits other than pay.

(2) EXPIRING HOUSING CONTRACTS.—New budget authority to renew expiring multiyear subsidized housing contracts shall be adjusted to reflect the difference in the number of such contracts that are scheduled to expire in that fiscal year and the

number expiring in the current year, with the per-contract renewal cost equal to the average current-year cost of renewal contracts.

(3) SOCIAL INSURANCE ADMINISTRATIVE EXPENSES.—Budgetary resources for the administrative expenses of the following trust funds shall be adjusted by the percentage change in the beneficiary population from the current year to that fiscal year: the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account.

(4) PAY ANNUALIZATION; OFFSET TO PAY ABSORPTION.—Current-year new budget authority for Federal employees shall be adjusted to reflect the full 12-month costs (without absorption) of any pay adjustment that occurred in that fiscal year.

(5) INFLATORS.—The inflator used in paragraph (1) to adjust budgetary resources relating to personnel shall be the percent by which the average of the Bureau of Labor Statistics Employment Cost Index (wages and salaries, private industry workers) for that fiscal year differs from such index for the current year. The inflator used in paragraph (1) to adjust all other budgetary resources shall be the percent by which the average of the estimated gross domestic product chain-type price index for that fiscal year differs from the average of such estimated index for the current year.

(6) CURRENT-YEAR APPROPRIATIONS.—If, for any account, a continuing appropriation is in effect for less than the entire current year, then the current-year amount shall be assumed to equal the amount that would be available if that continuing appropriation covered the entire fiscal year. If law permits the transfer of budget authority among budget accounts in the current year, the current-year level for an account shall reflect transfers accomplished by the submission of, or assumed for the current year in, the President's original budget for the budget year.

(d) UP-TO-DATE CONCEPTS.—In deriving the baseline for any budget year or outyear, current-year amounts shall be calculated using the concepts and definitions that are required for that budget year.

(e) ASSET SALES.—Amounts realized from the sale of an asset shall not be included in estimates under section 251, 252, or 253 if that sale would result in a financial cost to the Federal Government as determined pursuant to scorekeeping guidelines.

* * * * * * *

Committee Jurisdiction Letters

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CHAIRMAN

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July 20, 2015

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On April 15, 2015, the Committee on the Judiciary ordered H.R. 427, the "Regulations From the Executive in Need of Scrutiny Act of 2015," reported to the House. As you know, the Committee on Rules was granted an additional referral upon the bill's introduction pursuant to the Committee's jurisdiction under rule X of the Rules of the House of Representatives over the rules of the House and special orders of business.

Because of your willingness to consult with my committee regarding this matter, I will waive consideration of the bill by the Rules Committee. By agreeing to waive its consideration of the bill, the Rules Committee does not waive its jurisdiction over H.R. 427. In addition, the Committee reserves its authority to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Rules Committee for conferees on H.R. 427 or related legislation.

I also request that you include our exchange of letters on this matter in the committee report to accompany H.R. 427 and in the *Congressional Record* during consideration of this legislation on the House floor. Thank you for your attention to these matters.

Sincerely,

Pete Sessions

Cc: The Honorable John Boehner
The Honorable John Conyers
The Honorable Louise Slaughter
Mr. Tom Wickham, Parliamentarian

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CHAIRMAN

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ONE HUNDRED FOURTEENTH CONGRESS

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House of Representatives

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July 20, 2015

The Honorable Pete Sessions
Chairman
Committee on the Rules
H-312, The Capitol
Washington, D.C. 20515

Dear Chairman Sessions,

Thank you for your letter regarding H.R. 427, the "Regulations from the Executive in Need of Scrutiny Act of 2015," which the Judiciary Committee ordered reported favorably, as amended, to the House on April 15, 2015.

As you noted, the Committee on Rules was granted an additional referral of the bill. I am most appreciative of your decision to forego further consideration of H.R. 427 so that it may proceed to the House floor. I acknowledge that although you are waiving formal consideration of the bill, the Committee on the Rules is in no way waiving its jurisdiction over the subject matter contained in those provisions of the bill that fall within your Rule X jurisdiction. In addition, if a conference is necessary on this legislation, I will support any request that your committee be represented therein.

Finally, I am pleased to include this letter and your letter in our committee's report as well as the *Congressional Record* during floor consideration of H.R. 427.

Sincerely,

Bob Goodlatte

Bob Goodlatte
Chairman

cc: The Honorable John Boehner
The Honorable John Conyers, Jr.
The Honorable Louise M. Slaughter
Mr. Thomas Wickham, Jr.

Dissenting Views

INTRODUCTION

H.R. 427, the "Regulations From the Executive in Need of Scrutiny (REINS) Act of 2015," is flawed and dangerous legislation that will make it nearly impossible to enact critical regulations to protect public health and safety. Specifically, H.R. 427 would amend the Congressional Review Act (CRA)[1] to prohibit a major rule from going into effect unless Congress enacts a joint resolution of approval. This radical departure from the longstanding separation of powers between the Executive and Legislative branches would delay and, in many cases, thwart implementation of statutory mandates and execution of duly enacted laws, increase business uncertainty, undermine much-needed protections of the American public, and create unnecessary confusion. The cumulative effect of H.R. 427 would be to substantially undermine agencies' ability to effectively regulate consumer health and product safety, environmental protection, workplace safety, and financial services industry misconduct, among other critical concerns.

Like nearly every other anti-regulatory measure that the Committee has considered this Congress and during the previous Congresses, the REINS Act is a solution in search of a problem. Congress already has sufficient tools to conduct effective oversight, which include narrowing delegations of authority to agencies, controlling agency appropriations, and conducting oversight of agency activity. Congress even has the authority under the CRA to disapprove any proposed rule.[2]

Recognizing that the REINS Act "represents the most radical threat in generations to our government's ability to protect the public from harm," the Coalition for Sensible Safeguards—an alliance of more than 150 consumer, labor, research, faith, and other public interest groups—strongly opposes this legislation.[3] Addition-

[1] 5 U.S.C. §§ 801–08 (2015).

[2] 5 U.S.C. § 801(b) (2015).

[3] Letter from the Coalition for Sensible Safeguards to Chairman Bob Goodlattee (R-VA) and Rep. John Conyers, Jr. (D-MI), Ranking Member, Committee on the Judiciary (April 14, 2015) (on file with the United States House of Representatives, Comm. on the Judiciary, Democrats). Current members of the Coalition include: AFL–CIO; Alliance for Justice; American Association of University Professors; American Federation of State, County and Municipal Employees; American Federation of Teachers Americans for Financial Reform; American Lung Association; American Rivers; American Values Campaign; American Sustainable Business Council; BlueGreen Alliance; Campaign for Contract Agriculture Reform; Center for Effective Government; Center for Digital Democracy; Center for Food Safety; Center for Foodborne Illness Research & Prevention; Center for Independent Living; Center for Science in the Public Interest; Citizens for Sludge-Free Land; Clean Air Watch; Clean Water Network; Consortium for Citizens with Disabilities; Consumer Federation of America; Consumers Union; CounterCorp; Cumberland Countians for Peace & Justice; Demos; Economic Policy Institute; Edmonds Institute; Environment America; Farmworker Justice; Free Press; Friends of the Earth; Green for All; Health Care for America Now; In the Public Interest; International Brotherhood of Teamsters; International Center for Technology Assessment; International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW); League of Conservation Voters; Los Angeles Alliance for a New Economy; Main Street Alliance; National Association of Consumer Advocates; National Center for Healthy Housing; National Consumers League; National Council for Occupational Safety and Health; National Employment Law Project; National Lawyers Guild, Louisville Chapter; National Women's Health Network; National Women's Law Center; Natural Resources Defense Council; Network for Environmental & Economic Responsibility of United Church of Christ; New Jersey Work Environment Council; New York Committee for Occupational Safety and Health; Oregon PeaceWorks; People for the American Way; Protect All Children's Environment; Public Citizen; Reproductive Health Technologies Project; Safe Tables Our Priority; Sierra Club; Service Employees International Union; Southern Illinois Committee for Occupational Safety and Health; The Arc of the United States; The Partnership for Working Families; Trust for America's Health; U.S. Chamber Watch; U.S. PIRG; Union of Concerned Sci-

Continued

ally, 83 academics in the fields of administrative and environmental law also oppose the REINS Act as being "unnecessary to establish agency accountability and unwise as a matter of public policy because it undercuts the implementation of laws intended to protect people and the environment."[4] The American Association for Justice,[5] Union of Concerned Scientists,[6] Natural Resource Defense Council,[7] Public Citizen,[8] and the Center for Effective Government also oppose the REINS Act.[9] Additionally, the Administration threatened to veto the REINS Act's predecessor from the 113th Congress, stating that it would "would delay and, in many cases, thwart implementation of statutory mandates and execution of duly-enacted laws, create business uncertainty, undermine much-needed protections of the American public, and cause unnecessary confusion."[10]

For the foregoing reasons and those discussed more fully below, we respectfully dissent and urge opposition to H.R. 427.

DESCRIPTION AND BACKGROUND

In addition to requiring both Houses of Congress and the President to approve all new major rules before they can take effect, H.R. 427 imposes an extensive series of procedural mandates under the CRA as amended by this measure. A summary of those provisions that are within the Committee's jurisdiction follows. New section 801(a)(1)(A) requires a Federal agency to submit a report to each House of Congress and to the Comptroller General of the Government Accountability Office (GAO) a report containing: (1) a copy of the rule; (2) a concise general statement relating to the rule; (3) a classification of the rule as a major or non-major rule, including the rule's classification specifically addressing each element of the definition of a "major rule;" (4) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective, together with a description of the rule's individual and aggregate effects; and (5) the rule's proposed effective date. With respect to the rule's classification as a major rule, the report must indicate: (1) whether the rule has an annual effect on the economy of $100 million or more; (2) whether the rule imposes a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic re-

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entists; Union Plus; United Food and Commercial Workers Union; United Steelworkers; Waterkeeper Alliance; and Worksafe. COALITION FOR SENSIBLE SAFEGUARDS—OUR MEMBERS, http://sensiblesafeguards.org/our-members.

[4] *See* Letter from Prof. Alfred C. Aman, Indiana University Maurer School of Law, *et al.* to Members of the United States Senate and United States House of Representatives (Apr. 14, 2015) (on file with H. Comm. on the Judiciary Democratic staff).

[5] Letter from the American Association for Justice to Rep. John Conyers, Jr. (D-MI), Ranking Member, Committee on the Judiciary (April 15, 2015) (on file with the United States House of Representatives, Comm. on the Judiciary, Democrats).

[6] Letter from the Union of Concerned Scientists (April 14, 2015) (on file with the United States House of Representatives, Comm. on the Judiciary, Democrats).

[7] Letter from the Natural Resource Defense Council (April 14, 2015) (on file with the United States House of Representatives, Comm. on the Judiciary, Democrats).

[8] Letter from the Public Citizen to Chairman Bob Goodlattee (R-VA) and Rep. John Conyers, Jr. (D-MI), Ranking Member, Committee on the Judiciary (April 14, 2015) (on file with the United States House of Representatives, Comm. on the Judiciary, Democrats).

[9] Letter from the Center for Effective Government to Chairman Bob Goodlattee (R-VA) and Rep. John Conyers, Jr. (D-MI), Ranking Member, Committee on the Judiciary (April 13, 2015) (on file with the United States House of Representatives, Comm. on the Judiciary, Democrats).

[10] OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY ON H.R. 367, THE REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY ACT OF 2013 (July 31, 2013).

gions; or (3) whether the rule imposes significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

In addition, new section 801(a)(1)(B) requires an agency to submit to GAO and both Houses of Congress: (1) a cost-benefit analysis of the rule, if any; (2) actions taken pursuant to the Regulatory Flexibility Act;[11] (3) actions taken to comply with the Unfunded Mandates Reform Act of 1995;[12] and (4) any other relevant information or requirement under any other act or executive order. Pursuant to new section 801(a)(1)(C), each House of Congress must provide copies of the report required by section 801(a)(1)(A) to the Chair and Ranking Member of each House and Senate standing committee with jurisdiction to report a bill to amend the provision of law under which the rule is issued (hereinafter "Committees of Jurisdiction").

New section 801(a)(2)(A) requires the GAO to provide a report on each major rule to the Committees of Jurisdiction within 15 calendar days from the date on which an agency submitted the report required by section 801(a)(1)(A). The GAO's report must include an assessment of the agency's compliance with section 801(a)(1)(B) as well as an assessment of whether the major rule imposes any new limits or mandates on private-sector activity. New section 801(a)(2)(B) specifies that agencies must cooperate with the GAO in providing information relevant to preparing its report required under section 801(a)(2)(A).

New section 801(a)(3) provides that a major rule takes effect upon enactment of a joint resolution of approval or whatever the enactment date is in the rule following enactment of the joint resolution, whichever is later. New section 801(a)(4) retains current law; i.e., nonmajor rules take effect after 60 days if Congress does not enact a joint resolution of disapproval. New section 801(a)(5) clarifies that if a joint resolution of approval is not enacted, a joint resolution relating to the same rule cannot be considered in the same Congress by either House.

New section 801(b)(1) prohibits a major rule from taking effect unless Congress enacts a joint resolution of approval pursuant to the Act. In turn, new section 801(b)(2) deems a major rule as not approved and without effect if a joint resolution of approval concerning that rule is not enacted within 70 legislative or session days beginning on the date on which Congress receives the report required by section 801(a)(1)(A), excluding days that either House is adjourned for more than 3 days during session.

New section 801(c) sets forth certain temporary exceptions to the congressional-approval process for major rules. New section 801(c)(1) provides that a major rule may take effect for one 90-calendar-day period if the President makes a determination under section 801(c)(2). New section 801(c)(2), in turn, authorizes the President to determine by executive order that a major rule should take effect notwithstanding the requirements of this statute if such rule is: (1) necessary because of an imminent threat to health or safety or other emergency; (2) necessary for the enforcement of criminal

[11] 5 U.S.C. §§ 601 *et seq.* (2015).
[12] Pub. L. No. 104–4, 109 Stat. 48 (1995).

laws; (3) necessary for national security; or (4) issued pursuant to a statute implementing an international trade agreement. New section 801(c)(3), however, clarifies that the President's exercise of authority under this subsection does not affect congressional approval procedures outlined in new section 802.

New section 801(d) addresses instances when major rules are submitted to Congress within 60 legislative or session days prior to the adjournment of a congressional session through the date Congress first convenes its next session. New section 801(d)(1) states that any rule submitted within such period is subject to the Act's approval and disapproval procedures in the succeeding session. New section 801(d)(2)(A) specifies that, in such a circumstance, the rule must be treated as if it were published in the Federal Register on the 15th session or legislative day after the succeeding session convenes and considers the report on such a rule to have been submitted on such day. New section 801(d)(2)(B) specifies that this subsection should not be construed to affect the requirement that a rule be submitted to Congress before it can take effect. Finally, new section 801(d)(3) provides that a rule in this circumstance takes effect as otherwise provided for by law, including pursuant to the other provisions of the Act.

Although new section 802 is not within the jurisdiction of our Committee, an explanation of this provision is necessary to place the remainder of the bill in proper perspective, particularly the impact of expedited House procedures on rulemaking. Subsections (c) and (d) detail the expedited Senate procedures for consideration of joint resolutions of approval. New section 802(e) outlines expedited procedures in the House of Representatives for consideration of joint resolutions of approval. The provision requires that if a Committee of Jurisdiction does not act on a joint resolution of approval within 15 legislative days, such a resolution shall be placed a floor calendar. On every second and fourth Thursday of a month, a Member who supports a joint resolution that has been on a calendar for at least five legislative days could call up the resolution and have it considered immediately on the House floor, with a limit of one our of debate total, after which the previous question shall be considered as ordered. A vote on final passage must take place by no later than the third eligible Thursday under this subsection.

New section 802(f) addresses the situation where one chamber of Congress, before it passes a joint resolution of approval, receives a joint resolution of approval from the other chamber. In such a situation, the chamber that has not yet passed the joint resolution will continue following its procedures as if no joint resolution had been received from the other chamber, but the vote on final passage shall be on the other chamber's joint resolution. Section 802(f) also clarifies that it does not apply to the House in the case of joint resolutions coming from the Senate regarding revenue measures. New section 802(g) requires that if both chambers have failed to take a vote on a joint resolution of approval within 70 legislative or session days, they must take such a vote on the 70th day.

Although new section 805(a) prohibits judicial review of any determination, finding, action, or omission under the Act, subsection (b) clarifies that, notwithstanding subsection (a), a court may review an agency's compliance with the Act's requirements.

New section 807 excepts from the Act's requirements any major or nonmajor rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping. Notably, this exception is not extended to other important matters such as those implicating critical public health and safety issues. With respect to a nonmajor rule, section 807 retains the exception for instances where an agency finds good cause that notice and procedure are impracticable, unnecessary, or contrary to the public interest.

Section 5 of the bill requires the GAO to study how many rules are in effect as of the enactment date, how many major rules exist on such date, and the estimated total cost of such rules. The GAO is required to report its findings to Congress 1 year from the enactment date. This amendment does not address the many concerns with H.R. 427 and, in fact, would only make a bad bill worse by taxing the GAO's already-limited resources.

CONCERNS WITH H.R. 427

I. THE REINS ACT WILL SEVERELY RESTRICT FEDERAL RULEMAKING, THEREBY UNDERMINING THE ABILITY OF AGENCIES TO PROTECT PUBLIC HEALTH AND SAFETY

The REINS Act will severely restrict agency rulemaking by adding numerous procedural hurdles to the rulemaking process and, as a result of these unworkable procedures for congressional consideration of major rules, well-financed industry representatives will have yet another opportunity to stop major rules from going into effect. In so doing, the REINS Act undermines the ability of agencies to protect public health and safety.

A. The Congressional Approval Requirement Will Further Ossify the Rulemaking Process and Create More Opportunities for Private Special Interests to Intervene

The REINS Act would effectively act as a chokehold on Federal agency rulemaking by requiring congressional assent to major rules before they can take effect. This approval process would be in addition to an already heavily proceduralized rulemaking process that often takes years to conclude. Under the new approval process imposed by the legislation, congressional gridlock or deliberate inaction would serve as a veto of even critically needed rules that often took years to develop.[13]

Notably, the REINS Act would consume vast amounts of limited congressional time and resources, which would necessarily have to

[13] *H.R. 367, the REINS Act of 2013: Promoting Jobs, Growth, and American Competitiveness: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Antitrust L. of the H. Comm. on the Judiciary,* 113th Cong. (2013) [hereinafter "REINS Act 2013 Hearing"] (statement of Ronald M. Levin, William R. Orthwein Distinguished Professor of Law, Washington University in St. Louis) [hereinafter "Levin Statement"] ("The reality is that the Act would in substance revive the legislative veto as a tool for controlling agency rulemaking."); *Regulations from the Executive in Need of Scrutiny Act of 2011: Hearing on H.R. 10 Before the Subcomm. on Courts, Commercial and Admin. L. of the H. Comm. on the Judiciary,* 112th Cong. (2011) [hereinafter "REINS Act 2012 Legislative Hearing"] (statement of David Goldston, Director of Government Affairs, Natural Resources Defense Council) [hereinafter "Goldston Statement"] ("Agencies often take several years to formulate a particular safeguard, reviewing hundreds of scientific studies, drawing on their own experts in science and economics, empaneling outside expert advisors, gathering thousands of public comments, and going though many levels of executive branch review").

be diverted from other critical legislative, oversight, and constituent responsibilities. In calendar year 2010 alone, Federal agencies issued 100 major new rules that would have been subject to the REINS Act's requirements.[14] Meanwhile, there were only 116 legislative days in the House during that same time period. Under these constraints, there would not have been enough time for Congress to consider and approve even the most worthy rules while also fulfilling its other responsibilities. Even under expedited procedures, Congress would likely be forced to choose between passing judgment on complex regulations, on the one hand, and other important duties, on the other.

By requiring Congress to pass judgment on major rules without the time or expertise to make a well-informed decision, the REINS Act would allow well-subsidized business interests to further influence the rulemaking process. Major rules generally involve highly technical and complex scientific data as well as other types of evidence that require substantive expertise to decipher. Simply put, Congress lacks the time and the resources to provide meaningful review of such rules.[15] In the face of this complexity and time constraints, Members of Congress would be susceptible to readily available "answers" from well-funded industry lobbyists, who no doubt would be on hand to supply Members with industry-friendly talking points and other information regarding the merits of a particular rule.[16]

Adding to the concern about Congress's ability to provide meaningful review of major rules is the fact that Congress would have only 70 legislative days within which to act, and Committees of Jurisdiction would have only 15 legislative days to consider a proposed rule's merits. Moreover, under the bill's expedited House procedures, which limit floor consideration of joint resolutions of approval to the second and fourth Thursdays of every month. Under this formula, there would only be 10 days remaining in 2015 for the House to consider major rules at the time of the bill's markup.

This is not the first time that Congress has considered a congressional-approval mechanism for agency rulemaking. In the early 1980's, Congress held a number of hearings on this concept[17] and a bill was introduced that would have required affirmative congressional assent to all major rules.[18] Wisely, Congress chose not to pursue such a mechanism. Tellingly, Chief Justice John G. Roberts,

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[14] MAEVE P. CAREY & CURTIS W. COPELAND, CONG. RESEARCH SERV., R61651, REINS ACT: NUMBER AND TYPE OF "MAJOR RULES" IN RECENT YEARS (2011).

[15] Levin Statement, *supra* note 13, at 2 ("The REINS Act would impose great strain on congressional workloads. In many instances, this would be a poor use of scarce legislative time, because the subject matter of numerous major rules is arcane and most prudently left to specialized administrators.").

[16] Goldston Statement, *supra* note 13, at 3 ("Lobbyists would descend on Congress with even greater fervor than is currently the case to pressure Members to take their side on individual regulations.").

[17] *See Constitutional Amendment to Restore Legislative Veto: Hearing Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary,* 98th Cong. (1984); *An Amendment to Sec. 13 of S. 1080, The Regulatory Reform Act, to Provide for Congressional Review of Agency Rules: Hearing Before the Subcomm. on Admin. Practice and Proc. of the S. Comm. on the Judiciary,* 98th Cong. (1984); *On the Impact of the Supreme Court Decision in the Case of Immigration and Naturalization Service v. Chadha Which Found the Legislative Veto Unconstitutional: Hearing Before the H. Comm. on Rules,* 98th Cong. (1983); *Legislative Veto and the "Chadha" Decision: Hearing Before the Subcomm. on Admin. Practice and Proc. of the S. Comm. on the Judiciary,* 98th Cong. (1983); *The Supreme Court Decision in INS v. Chadha and its Implications for Congressional Oversight and Agency Rulemaking: Hearing Before the Subcomm. on Admin. Law and Govt'l Rels. of the H. Comm. on the Judiciary,* 98th Cong. (1983).

[18] H.R. 3939, 98th Cong. Title II (1983). Then-Rep. Trent Lott (R-MS) was the sponsor of this legislation, which was cosponsored by 79 Members, all but five of them Republicans.

Jr., when he was an Associate White House Counsel in 1983, criticized this idea because it would "hobbl[e] agency rulemaking by requiring affirmative Congressional assent to all major rules."[19] He further noted that such a provision "would seem to impose excessive burdens on the regulatory agencies in a manner that could well impede the achievement of Administration objectives."[20]

B. By Restricting Rulemaking for Major Rules, the REINS Act Threatens Public Health and Safety and the Nation's Financial Stability

While the REINS Act is unnecessary and unworkable, its most pernicious effect will be putting the health, welfare, and safety of Americans at risk. In addition to the economic benefits of regulations, regulations promote improved air quality, healthier children, reduced discrimination, protection of our public health and safety, protection of human dignity, and other non-quantifiable, but fundamental, values. The costs of delaying these highly-beneficial rules could be devastating. As the Administration noted in its opposition to the REINS Act last Congress, the REINS Act would "delay and, in many cases, thwart implementation of statutory mandates and execution of duly enacted laws, increase business uncertainty, undermine much-needed protections of the American public, and create unnecessary confusion. There is no justification for such an unprecedented requirement."[21]

Addressing gun violence against children is just one example of a pressing threat to public safety that agencies may be tasked with addressing. According to the Brady Campaign to Prevent Gun Violence, there were 14 instances of major school shootings in the United States in 2012, including the killings of 20 children and 6 staff at Sandy Hook Elementary School in Newtown, Connecticut.[22] Hopefully, notwithstanding the Senate's failure to consider a universal background check requirement last Congress, legislation will soon be enacted into law that will help prevent further instances of gun violence directed at school children. More than likely, that law will require affected agencies to issue regulations to implement its provisions. There is absolutely no reason to delay any further efforts to safeguard schools from gun violence, which is exactly what the REINS Act would do by sending such rules into the morass that the congressional legislative process has become before such rules could take effect. To remedy this concern, Representative Judy Chu (D-CA) offered an amendment that would have exempted from the bill's congressional-approval requirement any proposed rule that pertains to protecting schools and children from

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[19] OMB WATCH, *Roberts Showed Prudence in Reg Reform Initiative* (Sept. 6, 2005), www.ombwatch.org/node/2652; *see also* ALLIANCE FOR JUSTICE, *Report on the Nomination of John G. Roberts to the United States Supreme Court* 78, http://www.afj.org/afjXrobertsXprehearingXreport.pdf ("In general, Judge Roberts disagreed with proposals to require Congress to approve regulations before they took effect.").

[20] OMB WATCH, *Roberts Showed Prudence in Reg Reform Initiative* (Sept. 6, 2005), www.ombwatch.org/node/2652.

[21] OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, STATEMENT OF ADMINISTRATION POLICY ON H.R. 367, THE REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY ACT OF 2013 (July 31, 2013).

[22] BRADY CAMPAIGN TO PREVENT GUN VIOLENCE, *Major School Shootings in the United States Since 1997,* http://www.bradycampaign.org/xshare/pdf/school-shootings.pdf.

gun violence.[23] This amendment failed on a party-line vote of 10 to 11.[24]

The dangerous consequences that can result from regulatory failure also include enormous economic harm. For example, the 2008 financial crisis and resultant Great Recession were largely caused by regulatory failure within the financial services industry as a whole, and with respect to mortgage-lending practices, securitization, and derivatives in particular. As a result of this failure, a home foreclosure crisis unprecedented since the Great Depression occurred, unemployment skyrocketed, and the Nation's economy to this day suffers from the lingering after-effects. Rules that are designed to protect the American economy from the harm caused by the kind of reckless practices of an under-regulated financial services industry should not be held hostage to the kind of political gridlock and industry influence in Congress that the REINS Act would impose.

In response, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act,[25] which established various new standards to strengthen the safety and soundness of the financial services industry and created the Consumer Finance Protection Board (CFPB), all of which require numerous implementing rules. Nevertheless, if the REINS Act were in effect, industry would have significant opportunities to delay and possibly derail these regulations required by the Dodd-Frank Act.

In recognition of these concerns, Representative Hakeem Jeffries (D-NY) offered an amendment exempting rules concerning the stability of banks and other financial services institutions.[26] This amendment was also defeated by a 9 to 15 party-line vote.[27]

II. THE REINS ACT IS BASED ON FALSE PREMISES ABOUT REGULATORY COSTS

Proponents of the REINS Act assert that Federal agency regulations impose excessive costs on businesses, stifle job creation, and hobble the Nation's economic growth. This premise, however, is based on flawed data and completely ignores the significant benefits of regulation.

A. Proponents Rely on Unreliable and Flawed Data regarding the Cost of Regulation

In support of their arguments concerning the costs of regulation, proponents of anti-regulatory measures, such as the REINS Act, regularly cite[28] a widely-debunked study by economists Nicole and Mark Crain, which claims that Federal rulemaking imposes a cumulative burden of $1.75 trillion a year.[29] Critics of this study note its flawed assumptions and methodologies.[30] For example, the Cen-

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[23] Unofficial Tr. of Markup of H.R. 427, the "Regulations of the Executive in Need of Scrutiny Act of 2015," by the H. Comm. on the Judiciary, 114th Cong. 73–76 (Apr. 15, 2015) [hereinafter "Markup Transcript"].

[24] *Id.* at 83.

[25] Pub. L. No. 111–203, 124 Stat. 1376 (2010).

[26] Markup Tr., *supra* note 23, at 96–99.

[27] *Id.* at 108.

[28] *See, e.g.,* Markup Transcript, *supra* note 23, at 4.

[29] Nicole V. Crain & W. Mark Crain, The Impact of Regulatory Costs on Small Firms, Rep. No. SBAHQ–08–M–0466 (Sept. 2010), *available at* http://archive.sba.gov/advo/research/rs371tot.pdf.

[30] *See, e.g., REINS Act—Promoting Jobs and Expanding Freedom by Reducing Needless Regulations: Hearing Before the Subcomm. on Courts, Commercial and Admin. Law of the H. Comm.*

ter for Progressive Reform (CPR) observed that the study does not account for any benefits of regulation.[31] Additionally, CPR documented that the study did not rely on actual data on costs imposed by Federal regulation in the United States.[32] Indeed, CPR found that the Crain study's methodology was defective because, in calculating economic costs, it relied on World Bank international public opinion polling on how friendly a particular country was to business interests.

The independent, nonpartisan Congressional Research Service (CRS) also criticized much of the Crain study's methodology.[33] CRS reported that the authors of the study admitted that it was "not meant to be a decision-making tool for lawmakers or Federal regulatory agencies to use in choosing the 'right' level of regulation. In no place in any of the reports do we imply that our reports should be used for this purpose. (How could we recommend this use when we make no attempt to estimate the benefits?)."[34] CRS concluded that "a valid, reasoned policy decision can only be made after considering information on both costs and benefits" of regulation.[35]

In a similar vein, a study by the American Action Forum (AAF) claims that Federal regulations added more than $236 billion in costs in 2012. As Professor Robert Glicksman of George Washington University Law School testified, however, the AAF study was flawed because it relied exclusively on *ex ante* agency cost estimates and those estimates, in turn, rely primarily on surveys of representative companies that will be regulated by the rule at issue.[36] Professor Glicksman noted that these companies have an incentive to vastly overstate estimated costs.[37]

B. The Benefits of Regulations Significantly Outweigh Their Costs

The Office of Management and Budget (OMB) has annually estimated the costs of regulations. Significantly, OMB's reports to Congress include data on the benefits of regulations. The Draft 2012 Report to Congress on Benefits and Costs of Federal Regulations finds that the net benefits of regulations through the third fiscal year of the Obama administration exceed $91 billion, which is 25 times more than the net benefits during the first 3 years of the

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on the Judiciary, 112th Cong. (2011) (statement of Sally Katzen, former OIRA Administrator); *see also* Sidney Shapiro *et al.,Setting the Record Straight: The Crain and Crain Report on Regulatory Costs* (2011), http://www.progressivereform.org/articles/SBAXRegulatoryXCostsXAnalysisX1103.pdf.

[31] Sidney Shapiro *et al., Setting the Record Straight: The Crain and Crain Report on Regulatory Costs* (Feb. 2011), http://www.progressivereform.org/articles/sba_regulatory_costs_analysis_1103.pdf.

[32] *Id.*

[33] CURTIS W. COPELAND, CONG. RESEARCH SERV., R41763, ANALYSIS OF AN ESTIMATE OF THE TOTAL COSTS OF FEDERAL REGULATIONS (2011).

[34] *Id.* at 26 (quoting an e-mail from Nicole and W. Mark Crain to the author of the CRS report).

[35] *Id.* The Economic Policy Institute also issued a critique of the Crain study outlining similar concerns with the study's methodology and data. *See* John Irons & Andrew Green, *Flaws Call for Rejecting Crain and Crain Model: Cited $1.75 Trillion Cost of Regulations Is Not Worth Repeating* ECONOMIC POLICY INSTITUTE (July 2011), http://sensiblesafeguards.org/assets/documents/report-flaws-call-for-rejecting-crain-and-crain-model-epi.pdf.

[36] *The Obama Administration's Regulatory War on Jobs, the Economy, and America's Global Competitiveness: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Antitrust L. of the H. Comm. on the Judiciary,* 113th Cong. (2013) (statement of Robert L. Glicksman, J.B. & Maurice C. Shapiro Professor of Environmental Law, The George Washington University Law School).

[37] *Id.*

George W. Bush administration.[38] Similarly, its 2011 report concluded that for fiscal year 2010, Federal regulations cost between $6.5 billion and $12.5 billion and generated between $18.8 billion and $86.1 billion in benefits.[39] According to OMB, the costs of regulations during the 10-year period from FY 1999 through FY 2009 were between $43 billion and $55 billion, while their benefits ranged from $128 billion to $616 billion.[40] Therefore, even if one uses OMB's highest estimate of costs and its lowest estimate of benefits, the regulations issued over the past 10 years have produced net benefits of $73 billion to our society. Such estimates were consistent across Democratic and Republican administrations.[41]

Given that the benefits of regulations consistently exceed the costs, the need for any legislation that would make the issuance of regulations more difficult or time-consuming is questionable. The benefits of regulation are also apparent when viewed through the lens of prevention. For example, a 2011 Environmental Protection Agency report found that the public health benefits of clean air regulations far outweigh the compliance cost to industry.[42] The report concluded that restrictions on fine particle and ground-level ozone pollution mandated by the 1990 Clean Air Act amendments would prevent 230,000 deaths and produce benefits of about $2 trillion by 2020.[43]

Alternatively, the costs of not regulating can be significant. For example, as the *New York Times* noted in a series of articles highlighting the danger of natural gas extraction practices, such largely unregulated practices led to toxic contamination of the drinking water of potentially millions of people. This contamination was the result of a lack of regulation, often because regulatory authorities were fearful of confronting a lucrative and politically powerful industry.[44]

While a cost-benefit analysis of the current regulatory process clearly establishes the fact that the benefits of regulations well exceed their costs, the REINS Act itself will definitely result in more costs than benefits. The real costs of the REINS Act will be the harm to public health and safety as well as the Nation's economy resulting from the uncertainty and delay implicit in the convoluted congressional approval process mandated by the legislation.

In an effort to highlight the benefits of major rules, Representative David Cicilline (D-RI) offered an amendment to exempt from H.R. 427's congressional approval requirement any proposed rule that OMB determines would result in a net benefit to society. He

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[38] OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, 2011 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES 21, https://www.whitehouse.gov/sites/default/files/omb/inforeg/2011_cb/2011_cba_report.pdf.

[39] *Id.*

[40] *See REINS Act—Promoting Jobs and Expanding Freedom by Reducing Needless Regulations: Hearing Before the Subcomm. on Courts, Commercial and Admin. Law of the H. Comm. on the Judiciary,* 112th Cong. (2011) (statement of Sally Katzen, former OIRA Administrator).

[41] *Id.*

[42] ENVIRONMENTAL PROTECTION AGENCY, *Benefits and Costs of the Clean Air Act, Second Prospective Study—1990 to 2020* (2011) *available at* http://www.epa.gov/air/sect812/prospective2.html.

[43] *Id.*

[44] *See* Ian Urbina, *Drilling Down: Regulation Lax as Gas Wells' Tainted Water Hits Rivers,* N.Y. TIMES, Feb. 26, 2011; Ian Urbina, *Drilling Down: Wastewater Recycling No Cure-All in Gas Process,* N.Y. TIMES, Mar. 1, 2011; Ian Urbina, *Drilling Down: A Tainted Water Well, and Concern There May Be More,* N.Y. TIMES, Aug. 3, 2011 (investigative series on the dangers associated with the controversial natural gas drilling technique known as fracking).

observed that when the benefits of a rule to society outweigh its costs, society has an interest in ensuring that the rule take effect without unnecessary delay.[45] Representative Cicilline's amendment, however, failed by a party-line vote of 15 to 10.[46]

C. Regulations Do Not Hinder Job Creation

Proponents of H.R. 427 consistently claim that regulations interfere with job creation because they create uncertainty for businesses, thereby preventing them from investing and hiring.[47] To the contrary, regulations have no determinable effect on job creation. For instance, a survey from the Bureau of Labor Statistics that tracks companies' reasons for large layoffs found that during the first and second quarters of 2011, 144,746 layoffs were attributable to poor "business demand," while only 1,119 were attributable to "government regulations."[48] Indeed, one of the Majority's own witnesses, during a hearing on another anti-regulatory bill, testified that when it came to linking jobs and regulations, the "focus on jobs . . . can lead to confusion in regulatory debates" and that the employment effects of regulation 'are indeterminate."[49] Similarly, a National Federation of Independent Business survey of its members reveals that poor sales, not regulations, are by far the biggest deterrent to hiring.[50] In addition, the *Wall Street Journal's* July 2011 survey of business economists found that the "main reason U.S. companies are reluctant to step up hiring is scant demand, rather than uncertainty over government policies, according to a majority of economists."[51]

According to Bruce Bartlett, an economist who worked in the Administrations of both Presidents Ronald Reagan and George H.W. Bush, the idea that cutting regulations will lead to significant job growth is "just nonsense. It's just made up."[52] He further opined that "regulatory uncertainty is a canard invented by Republicans that allows them to use current economic problems to pursue an agenda supported by the business community year in and year out. In other words, it is a simple case of political opportunism, not a serious effort to deal with high unemployment."[53]

Rather than hindering job growth, regulations can play a valuable role in promoting job growth. A report by Northeast States for Coordinated Air Use Management (NESCAUM) demonstrates a direct correlation between environmental regulations and job growth in the Northeast. It found that by enacting stricter fuel economy standards and pursuing cleaner forms of energy, more jobs would

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[45] Markup Transcript, *supra* note 23, at 108–111.

[46] *Id.* at 125.

[47] *See, e.g.,* Memorandum from Eric Cantor to House Republicans (Aug. 29, 2011) (on file with the House Majority Leader) http://majorityleader.gov/blog/2011/08/memo-on-upcoming-jobs-agenda.html. ("By pursuing a steady repeal of job-destroying regulations, we can help lift the cloud of uncertainty hanging over small and large employers alike, empowering them to hire more workers").

[48] BUREAU OF LABOR STATISTICS, ECONOMIC NEWS RELEASE, EXTENDED MASS LAYOFFS (QUARTERLY) NEWS RELEASE (Aug. 10, 2011), http://www.bls.gov/news.release/archives/mslo X08102011.htm.

[49] *The Regulatory Accountability Act of 2011: Hearing on H.R. 3010 Before the H. Comm. on the Judiciary,* 112th Cong. (2011) (statement of Christopher DeMuth, American Enterprise Instutute).

[50] *See* William C. Dunkelberg & Holly Wade, *NFIB Small Business Economic Trends* (Sept. 2011), http://www.nfib.com/Portals/0/PDF/sbet/sbet201109.pdf.

[51] *See* Phil Izzo, *Dearth of Demand Seen Behind Weak Hiring,* WALL ST. J., July 18, 2011.

[52] Bruce Bartlett, *Misrepresentations, Regulations and Jobs,* N.Y. TIMES (Oct. 4, 2011), http://economix.blogs.nytimes.com/2011/10/04/regulation-and-unemployment.

[53] *Id.*

be created.[54] Specifically, NESCAUM reported that stricter fuel economy standards and regulations governing cleaner forms of energy would increase employment from 9,490 to 50,700 jobs; increase gross regional product, a measure of the states' economic output, by $2.1 billion to $4.9 billion; and increase household disposable income by $1 billion to $3.3 billion.[55]

According to a report from the Natural Resources Defense Council, the United Auto Workers, and the National Wildlife Federation, vehicle emissions standards and clean vehicle research, development and production are already responsible for 155,000 jobs at 504 facilities in 43 states and the District of Columbia.[56] The report also found that 119,000 jobs were created in this industry just between 2009 and 2011 alone.[57]

By preventing the promulgation of rules, the REINS Act would seriously stifle economic growth and the creation of new jobs. To highlight this issue, Representative Hank Johnson (D-GA) offered an amendment to exempt from the bill's congressional approval requirement any proposed rule that OMB determines would result in job growth.[58] Representative Johnson's amendment, however, failed by a vote of 9 to 17 along party lines.[59]

III. THE REINS ACT IS UNNECESSARY BECAUSE CONGRESS ALREADY HAS THE TOOLS TO OVERSEE FEDERAL AGENCY RULEMAKING

Congress already has various mechanisms at its disposal to oversee and influence the Federal agency rulemaking process. In its simplest and most straightforward form, Congress can delegate rulemaking authority to agencies with greater specificity or restriction, which would limit an agency's rulemaking authority either from the outset or through later amendment of an agency's organic statute. Indeed, Congress can simply pass legislation to stay the effect of an existing rule, as the House did with respect to the Environmental Protection Agency's cement manufacturing standards.[60]

Further, Congress can impose restrictions on agency rulemaking through the appropriations process. These restrictions can take a variety of forms, including restrictions on the finalization of particular proposed rules, restrictions on regulatory activity within certain areas, restrictions on implementation or enforcement of certain rules, and conditional restrictions that prevent a rule from taking effect until an agency takes certain steps.[61] For instance, no fewer than 19 out of the 67 amendments to H.R. 1, the "Full-Year Continuing Appropriations Act, 2011," were aimed at de-funding the promulgation or implementation of existing and proposed regulations.[62]

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[54] NORTHEAST STATES FOR COORDINATED AIR USE MANAGEMENT (NESCAUM), *Economic Analysis of a Program to Promote Clean Transportation Fuels in the Northeast/Mid-Atlantic Region* (July 2011), http://switchboard.nrdc.org/blogs/ngreene/CFS%20Economic%20Analysis%20Report%20INTERNAL.PDF.

[55] *Id.*

[56] NATURAL RESOURCES DEFENSE COUNCIL ET AL., *Supplying Ingenuity: U.S. Suppliers of Clean, Fuel-Efficient Vehicle Technologies* (Aug. 2011), *available at* http://www.nrdc.org/transportation/autosuppliers/files/SupplierMappingReport.pdf.

[57] *Id.*

[58] Markup Transcript, *supra* note 23, at 60–64.

[59] *Id.* at 72.

[60] Cement Sector Regulatory Relief Act of 2011, H.R. 2681, 112th Cong. (2011).

[61] *See* CURTIS W. COPELAND, CONG. RESEARCH SERV., R3435, CONGRESSIONAL INFLUENCE ON RULEMAKING AND REGULATION THROUGH APPROPRIATIONS RESTRICTIONS (2008).

[62] These amendments primarily targeted environmental regulations and regulations implementing health care reform legislation. H.R. 1, 112th Cong. (2011).

Congress can also prescribe rulemaking procedures. Prior examples include the Administrative Procedure Act,[63] which was enacted in 1946 to establish baseline procedures for rulemaking. Others include the Unfunded Mandates Reform Act,[64] the Regulatory Flexibility Act,[65] the Paperwork Reduction Act,[66] and the Small Business Regulatory Enforcement Fairness Act,[67] all of which added procedural and analytical requirements to the agency rulemaking process. In addition, the CRA already allows Congress to disapprove of an agency rule, thereby giving Congress yet another way to take accountability for agency rules.

Finally, Congress can exert influence over rulemaking through its oversight activities, whether by conducting periodic oversight hearings, requesting GAO studies, or conveying its concerns to the agencies. Such oversight actions can ensure that agencies are subject to democratic accountability for their actions.

IV. THE REINS ACT MAY BE UNCONSTITUTIONAL

The REINS Act raises constitutional concerns because it may provide for what arguably is an unconstitutional one-House legislative veto. As Professor Ronald Levin of Washington University Law School testified, one House of Congress can effectively veto an agency's rule under H.R. 427's congressional approval mechanism by simply not acting within the 70-legislative-day time frame provided for in the bill.[68] Such a mechanism would be, in effect, indistinguishable from the one-House legislative veto that the Supreme Court held to be unconstitutional in *INS v. Chadha.*[69] The Court held in that decision that a veto of a Federal agency's legislative act was itself a legislative act that required passage by both Houses of Congress and presentment to the President for his signature.[70] Under H.R. 427, one House could effectively veto an agency rule (i.e., a legislative act) without meeting the Constitutional requirements discussed in *Chadha* by simply not acting to pass a resolution of approval. The REINS Act, therefore, may violate the constitutional rule announced in *Chadha.*

CONCLUSION

H.R. 427 would effectively throw sand in the gears of rulemaking by making it nearly impossible for important regulations to take effect. By requiring that each House pass and the President sign every new major regulation, this misguided legislation will require Congress to expend time and expertise that it does not have, while increasing the opportunity for regulated entities to influence the rulemaking process.

The tangible benefits of regulations far outweigh any purported costs. Regulations play a critical role in protecting the health of all Americans, ensuring the safety of our workers, promoting the stability of our financial system, and preserving the environment. De-

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[63] 5 U.S.C. §§ 551–59, 701–06, 1305, 3105, 3344, 5372, 7521 (2015).
[64] 2 U.S.C. §§ 1501 *et seq.* (2015).
[65] 5 U.S.C. §§ 601 *et seq.* (2015).
[66] 44 U.S.C. §§ 3501 *et seq.* (2015).
[67] Pub. L. No. 104–121, § 242, 110 Stat. 847, 857 (1996).
[68] Levin Statement, *supra* note 13, at 7.
[69] 462 U.S. 919 (1983) (holding that a one-House legislative veto violated the Constitution's bicameralism and presentment clauses).
[70] *Id.*

laying or thwarting these critical measures imperils our Nation's well-being.

This bill is an unworkable solution to an artificial problem. There is no evidence that regulations stifle job creation or are in any way hindering economic growth. And even if Congress wanted to exercise greater control over the regulatory process, there are already myriad tools at its disposal to shape agency rulemaking, such as disapproving proposed rules, limiting delegations of authority to agencies, controlling agency appropriations, staying the effect of specific rules, and holding oversight hearings. These tools, unlike the REINS Act, are not constitutionally suspect and will not lead to government gridlock.

For all of the foregoing reasons, we strongly oppose H.R. 427 and we urge our colleagues to join us in opposition.

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MR. COHEN.
MR. JOHNSON, JR.
MS. CHU.
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