

115TH CONGRESS
1ST SESSION

H. R. 4014

To amend chapter 5 of title 31, United States Code, to require publication of information relating to regulatory conflicts of interest, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 11, 2017

Mr. CICILLINE (for himself, Mr. CONYERS, Mr. DEFazio, Mr. GRIJALVA, Mr. CONNOLLY, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 5 of title 31, United States Code, to require publication of information relating to regulatory conflicts of interest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Determining if Regu-
5 latory Actions are in the Interest of the Nation or the
6 Swamp Act of 2017” or as the “DRAIN the Swamp Act
7 of 2017”.

1 **SEC. 2. REQUIRING GREATER TRANSPARENCY FOR REGU-**
 2 **LATORY CONFLICTS OF INTEREST.**

3 (a) IN GENERAL.—Chapter 5 of title 5 is amended
 4 by inserting after chapter 6, the following new chapter:

5 **“CHAPTER 6A—PUBLICATION OF INFOR-**
 6 **MATION RELATING TO REGULATORY**
 7 **CONFLICTS OF INTEREST**

“651. Agency Submission to Comptroller General.

“652. Definitions.

8 **“§ 651. Agency Submission to Comptroller General**

9 “(a) REGULATORY CONFLICTS OF INTEREST.—The
 10 head of each agency shall submit to the Comptroller Gen-
 11 eral of the United States in such a manner as the Comp-
 12 troller General may reasonably require, for each major
 13 rule that the agency proposes or finalizes, an assessment
 14 and quantification of any regulatory conflict of interest
 15 pertaining to that major rule.

16 “(b) EXCEPTION.—Nothing in this chapter shall
 17 apply to rules which an agency for good cause finds (and
 18 incorporates the finding and a brief statement of reasons
 19 therefor in the rules issued) that notice and public proce-
 20 dure thereon are impracticable, unnecessary, or contrary
 21 to the public interest.

22 “(c) MAJOR RULES.—Before a major rule may take
 23 effect, the Federal agency promulgating such rule shall

1 submit to the Comptroller General and publish in the Fed-
2 eral Register a report pursuant to subsection (a).

3 **“§ 652. Definitions**

4 “In this chapter:

5 “(1) AGENCY; RULE; RULE MAKING.—The
6 terms ‘agency’, ‘rule’, and ‘rule making’ have the
7 meanings given those terms in section 551 of title 5,
8 United States Code.

9 “(2) MAJOR RULE.—The term ‘major rule’ has
10 the meaning given that term in section 804 of title
11 5, United States Code.

12 “(3) REGULATORY CONFLICT OF INTEREST.—
13 The term ‘regulatory conflict of interest’ means a
14 major rule that has a substantial pecuniary benefit
15 to a covered person.

16 “(4) COVERED PERSON.—The term ‘covered
17 person’ means the President, senior advisors to the
18 President, including special advisors that do not re-
19 ceive an official salary, the head of the agency
20 issuing the rule, the director of the Office of Man-
21 agement and Budget, the Administrator of the Of-
22 fice of Information and Regulatory Affairs, or any
23 individual who serves on a Regulatory Reform Task
24 Force established by section 3 of Executive Order
25 13777.”.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting after the item relating to chapter 5, the following:

“6. The Analysis of Regulatory Functions	601
“6A. Publication of Information Relating to Regulatory Conflicts of Interest	651”.

SEC. 3. ACUS STUDY AND REPORT ON REGULATORY CAPTURE.

(a) IN GENERAL.—The Administrative Conference of the United States shall conduct a study on—

- (1) compliance by Federal agencies with this Act and the amendments made by this Act; and
- (2) effective measures to minimize regulatory capture.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrative Conference of the United States shall submit a report to Congress that contains the findings of the study conducted under subsection (a).

SEC. 4. JUDICIAL REVIEW.

(a) AGENCY STATEMENTS ON REGULATORY CONFLICTS OF INTEREST.—

- (1) IN GENERAL.—Compliance or noncompliance by any agency with the provisions of this section shall be subject to judicial review only in accordance with this section.

1 (2) LIMITED REVIEW OF AGENCY COMPLIANCE
2 OR NONCOMPLIANCE.—

3 (A) IN GENERAL.—Agency compliance or
4 noncompliance with the provisions of this sec-
5 tion shall be subject to judicial review only
6 under section 706(1) of title 5, and only as pro-
7 vided under subparagraph (B).

8 (B) FAILURE TO PREPARE WRITTEN
9 STATEMENT.—If an agency fails to prepare the
10 written statement (including the preparation of
11 the estimates, analyses, statements, or descrip-
12 tions) under this section, a court may compel
13 the agency to prepare such written statement.

14 (3) REVIEW OF AGENCY RULES.—In any judi-
15 cial review under any other Federal law of an agency
16 rule for which a written statement is required under
17 this section, the inadequacy or failure to prepare
18 such statement shall not be used as a basis for stay-
19 ing, enjoining, invalidating or otherwise affecting
20 such agency rule.

21 (4) CERTAIN INFORMATION AS PART OF
22 RECORD.—Any information generated under this
23 section that is part of the rule making record for ju-
24 dicial review under the provisions of any other Fed-
25 eral law may be considered as part of the record for

1 judicial review conducted under such other provi-
2 sions of Federal law.

3 (5) APPLICATION OF OTHER FEDERAL LAW.—

4 For any petition under paragraph (2) the provisions
5 of such other Federal law shall control all other mat-
6 ters, such as exhaustion of administrative remedies,
7 the time for and manner of seeking review and
8 venue, except that if such other Federal law does not
9 provide a limitation on the time for filing a petition
10 for judicial review that is less than 1 year, such limi-
11 tation shall be 1 year after a final rule is promul-
12 gated by the appropriate agency.

13 (b) JUDICIAL REVIEW AND RULE OF CONSTRUC-
14 TION.—Except as provided in subsection (a)—

15 (1) any information submitted under this sec-
16 tion shall not be subject to judicial review; and

17 (2) no provision of this Act shall be construed
18 to create any right or benefit, substantive or proce-
19 dural, enforceable by any person in any administra-
20 tive or judicial action.

21 **SEC. 5. DEFINITIONS.**

22 Terms used in this Act have the meaning given such
23 terms in section 652 of title 5, United States Code.

1 **SEC. 6. EFFECTIVE DATE.**

2 This Act shall take effect beginning on the date of
3 enactment shall apply only to any agency rule for which
4 a general notice of proposed rule making is made on or
5 after such date.

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