113TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
113–53

SEC REGULATORY ACCOUNTABILITY ACT

MAY 13, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1062]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1062) to improve the consideration by the Securities and Exchange Commission of the costs and benefits of its regulations and orders, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1062, the SEC Regulatory Accountability Act, requires the U.S. Securities and Exchange Commission (SEC) to conduct enhanced cost-benefit analyses in order to ensure that the benefits of its regulation justify the costs of the regulation.

BACKGROUND AND NEED FOR LEGISLATION

Introduced by Capital Markets and Government Sponsored Enterprises Subcommittee Chairman Garrett on March 12, 2013, H.R. 1062 requires the SEC to generally follow the principles set forth in Executive Order No. 13563, which directs non-independent executive branch agencies to adopt regulations only if the benefits of the regulations justify their costs; to tailor regulations to impose the least burden on society; and to develop plans for analyzing existing rules to identify those that are outmoded, ineffective, insuffi-

cient, or excessively burdensome and to modify, streamline, expand, or repeal them accordingly.

H.R. 1062 requires, in general, the SEC to identify a problem and assess its significance before the SEC issues a rule. The bill requires the SEC's Chief Economist to conduct a cost-benefit analysis of proposed regulations, and it requires that the benefits of proposed regulations justify their costs before the SEC can issue them. The bill requires the SEC to identify and assess alternatives to regulations that it considers, and to explain why a regulation that it issues meets regulatory objectives more effectively than the alternatives. The bill requires the SEC to ensure that its regulations are accessible, consistent, written in plain language, and easy to understand, and to measure and seek to improve the results of regulatory requirements.

More specifically, H.R. 1062 requires the SEC, in deciding whether and how to regulate, to assess the costs and benefits of regulatory alternatives, including the alternative of not regulating, and to choose the approach that maximizes net benefits. The bill requires the SEC to specifically consider whether rulemaking will promote efficiency, competition, and capital formation; to evaluate whether the regulation is tailored to impose the least burden on society—including market participants, individuals, different-sized businesses, and other entities (including state and local governments)—taking into account the cumulative costs of regulation; and to evaluate whether the regulation is inconsistent with, incompatible with, or duplicative of other federal regulations. The bill also requires the SEC to consider the effect of a potential regulation on investor choice, market liquidity, and small businesses. The SEC is not required to conduct cost-benefit analyses for orders that are not "generally applicable," formal rulemakings related to enforcement actions, or regulations certified by the SEC as an emergency action.

H.R. 1062 requires the SEC to review its existing regulations within one year of the bill's enactment and every five years thereafter, to determine whether any of its regulations are outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with that review. The bill also requires the SEC to conduct a post-adoption or post-amendment assessment of any major regulation to measure the economic impact of the regulation and the extent to which it has accomplished its stated purposes.

Finally, H.R. 1062 includes a Sense of Congress that the Public Company Accounting Oversight Board, the Municipal Securities Rulemaking Board, and any national securities association registered under section 15A of the Securities Exchange Act of 1934 should comply with the requirements of the bill.

Perhaps the most compelling rationale for H.R. 1062 was offered by the U.S. Court of Appeals for the D.C. Circuit when it struck down the SEC's proxy access rule.[1] As the court's unanimous opinion explained, the SEC—in promulgating its rule—"inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified; neglected to support its pre-

[1] *See Bus. Roundtable v. SEC,* 2011 WL 2936808 (D.C. Cir. July 22, 2011).

dictive judgments; contradicted itself; and failed to respond to substantial problems raised by commenters."

HEARINGS

The Committee on Financial Services' Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing on H.R. 1062 on April 11, 2013.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 7, 2013 and ordered H.R. 1062 favorably reported to the House by a record vote of 31 yeas to 28 nays (Record vote no. FC–17), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Chairman Hensarling to report the bill to the House with a favorable recommendation was agreed to by a record vote of 31 yeas and 28 nays (Record vote no. FC–17).

RECORD VOTE NO. FC–17

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters		X	
Mr. Gary G. Miller (CA)	X			Mrs. Maloney (NY)		X	
Mr. Bachus	X			Ms. Velázquez		X	
Mr. King (NY)	X			Mr. Watt		X	
Mr. Royce	X			Mr. Sherman		X	
Mr. Lucas	X			Mr. Meeks		X	
Mrs. Capito	X			Mr. Capuano		X	
Mr. Garrett	X			Mr. Hinojosa		X	
Mr. Neugebauer	X			Mr. Clay		X	
Mr. McHenry	X			Mrs. McCarthy (NY)		X	
Mr. Campbell	X			Mr. Lynch		X	
Mrs. Bachmann	X			Mr. David Scott (GA)		X	
Mr. McCarthy (CA)	X			Mr. Al Green (TX)		X	
Mr. Pearce				Mr. Cleaver		X	
Mr. Posey	X			Mr. Moore		X	
Mr. Fitzpatrick	X			Mr. Ellison		X	
Mr. Westmoreland				Mr. Perlmutter		X	
Mr. Luetkemeyer	X			Mr. Himes		X	
Mr. Huizenga (MI)	X			Mr. Peters (MI)		X	
Mr. Duffy	X			Mr. Carney		X	
Mr. Hurt	X			Ms. Sewell (AL)		X	
Mr. Grimm	X			Mr. Foster		X	
Mr. Stivers	X			Mr. Kildee		X	
Mr. Fincher	X			Mr. Murphy (FL)		X	
Mr. Stutzman	X			Mr. Delaney		X	
Mr. Mulvaney	X			Ms. Sinema		X	
Mr. Hultgren	X			Mrs. Beatty		X	
Mr. Ross	X			Mr. Heck (WA)		X	
Mr. Pittenger	X						
Mrs. Wagner	X						
Mr. Barr	X						
Mr. Cotton	X						
Mr. Rothfus	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1062 will improve consideration by the SEC of the costs and benefits of its regulations and orders.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 13, 2013.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1062, SEC Regulatory Accountability Act.

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

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 1062—SEC Regulatory Accountability Act

H.R. 1062 would expand the amount of analysis performed by the Securities and Exchange Commission (SEC) when developing or amending regulations. Specifically, the bill would direct the SEC to:

- Assess the significance of the problem the regulation is designed to address;
- Determine whether the estimated costs of the proposed regulation justify its estimated benefits; and
- Identify alternatives to the proposed regulation that are available.

Further, under the bill, the SEC would be required to review its regulations every five years to determine whether they are outmoded, ineffective, or excessively burdensome. Using the results of the review, the agency would then need to consider modifying or repealing such rules.

For major rules (that is, rules expected to have an economic impact greater than $100 million annually), the bill would require the SEC to develop and publish a plan to assess whether the regulation has achieved its stated purposes. H.R. 1062 would direct the agency, no later than two years after the date such a rule was published, to publish a report assessing the costs, benefits, and consequences of the rule using performance measures that were identified when the rule was adopted.

Based on information from the SEC, CBO estimates that the commission would ultimately need 20 additional staff positions (less than a 1 percent increase in the agency's 2012 staffing level) to handle the new rulemaking, reporting, and analytical activities required under the bill. CBO estimates that implementing H.R. 1062 would cost the SEC $23 million over the 2013–2018 period, assuming appropriation of the necessary amounts, for additional personnel and overhead expenses. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net budgetary effect of the SEC's activities to implement H.R. 1062 would not be significant, assuming appropriation actions consistent with the commission's authorities. Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 1062 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Assuming that the SEC increases fees to offset the costs of implementing the additional regulatory activities required by the bill, H.R. 1062 would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the SEC, CBO estimates that the aggregate cost of the mandate would fall well below the annual threshold for private-sector mandates established in UMRA ($150 million in 2013, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Paige Piper/Bach (for the impact on the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1062 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 1062 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that H.R. 1062 does not require any directed rule makings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section states that the bill may be referred to as the "SEC Regulatory Accountability Act."

Section 2. Consideration by the Securities and Exchange Commission of the costs and benefits of its regulations and certain other agency actions

This section amends the Securities Exchange Act of 1934 to require the SEC to weigh the burden of compliance with its regulations against the benefits of such regulations. It requires the SEC to explain in its findings the nature of the comments it received while crafting the regulation and to provide the SEC's response to those comments. The section also requires the SEC to conduct a cost-benefit analysis of its current regulations and to monitor the ongoing impact of its regulations after they are implemented. The section provides a statutory definition for "regulation" for purposes of the legislation.

Section 3. Sense of Congress relating to other regulatory entities

This section expresses the sense of Congress that other regulatory entities, including those in the financial services sector, should also follow the requirements of this legislation.

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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

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RULES, REGULATIONS, AND ORDERS; ANNUAL REPORTS

SEC. 23. (a) * * *

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(e) CONSIDERATION OF COSTS AND BENEFITS.—

(1) IN GENERAL.—Before issuing a regulation under the securities laws, as defined in section 3(a), the Commission shall—

(A) clearly identify the nature and source of the problem that the proposed regulation is designed to address, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted;

(B) utilize the Chief Economist to assess the costs and benefits, both qualitative and quantitative, of the intended regulation and propose or adopt a regulation only on a reasoned determination that the benefits of the intended regulation justify the costs of the regulation;

(C) identify and assess available alternatives to the regulation that were considered, including modification of an existing regulation, together with an explanation of why the regulation meets the regulatory objectives more effectively than the alternatives; and

(D) ensure that any regulation is accessible, consistent, written in plain language, and easy to understand and shall measure, and seek to improve, the actual results of regulatory requirements.

(2) CONSIDERATIONS AND ACTIONS.—

(A) REQUIRED ACTIONS.—In deciding whether and how to regulate, the Commission shall assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating, and choose the approach that maximizes net benefits. Specifically, the Commission shall—

(i) consistent with the requirements of section 3(f) (15 U.S.C. 78c(f)), section 2(b) of the Securities Act of 1933 (15 U.S.C. 77b(b)), section 202(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(c)), and section 2(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(c)), consider whether the rulemaking will promote efficiency, competition, and capital formation;

(ii) evaluate whether, consistent with obtaining regulatory objectives, the regulation is tailored to impose the least burden on society, including market participants, individuals, businesses of differing sizes, and

other entities (including State and local governmental entities), taking into account, to the extent practicable, the cumulative costs of regulations; and

(iii) evaluate whether the regulation is inconsistent, incompatible, or duplicative of other Federal regulations.

(B) ADDITIONAL CONSIDERATIONS.—In addition, in making a reasoned determination of the costs and benefits of a potential regulation, the Commission shall, to the extent that each is relevant to the particular proposed regulation, take into consideration the impact of the regulation on—

(i) investor choice;

(ii) market liquidity in the securities markets; and

(iii) small businesses.

(3) EXPLANATION AND COMMENTS.—The Commission shall explain in its final rule the nature of comments that it received, including those from the industry or consumer groups concerning the potential costs or benefits of the proposed rule or proposed rule change, and shall provide a response to those comments in its final rule, including an explanation of any changes that were made in response to those comments and the reasons that the Commission did not incorporate those industry group concerns related to the potential costs or benefits in the final rule.

(4) REVIEW OF EXISTING REGULATIONS.—Not later than 1 year after the date of enactment of the SEC Regulatory Accountability Act, and every 5 years thereafter, the Commission shall review its regulations to determine whether any such regulations are outmoded, ineffective, insufficient, or excessively burdensome, and shall modify, streamline, expand, or repeal them in accordance with such review. In reviewing any regulation (including, notwithstanding paragraph (6), a regulation issued in accordance with formal rulemaking provisions) that subjects issuers with a public float of $250,000,000 or less to the attestation and reporting requirements of section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)), the Commission shall specifically take into account the large burden of such regulation when compared to the benefit of such regulation.

(5) POST-ADOPTION IMPACT ASSESSMENT.—

(A) IN GENERAL.—Whenever the Commission adopts or amends a regulation designated as a "major rule" within the meaning of section 804(2) of title 5, United States Code, it shall state, in its adopting release, the following:

(i) The purposes and intended consequences of the regulation.

(ii) Appropriate post-implementation quantitative and qualitative metrics to measure the economic impact of the regulation and to measure the extent to which the regulation has accomplished the stated purposes.

(iii) The assessment plan that will be used, consistent with the requirements of subparagraph (B) and under the supervision of the Chief Economist of the Commission, to assess whether the regulation has achieved the stated purposes.

(iv) Any unintended or negative consequences that the Commission foresees may result from the regulation.

(B) REQUIREMENTS OF ASSESSMENT PLAN AND REPORT.—

(i) REQUIREMENTS OF PLAN.—The assessment plan required under this paragraph shall consider the costs, benefits, and intended and unintended consequences of the regulation. The plan shall specify the data to be collected, the methods for collection and analysis of the data and a date for completion of the assessment.

(ii) SUBMISSION AND PUBLICATION OF REPORT.—The Chief Economist shall submit the completed assessment report to the Commission no later than 2 years after the publication of the adopting release, unless the Commission, at the request of the Chief Economist, has published at least 90 days before such date a notice in the Federal Register extending the date and providing specific reasons why an extension is necessary. Within 7 days after submission to the Commission of the final assessment report, it shall be published in the Federal Register for notice and comment. Any material modification of the plan, as necessary to assess unforeseen aspects or consequences of the regulation, shall be promptly published in the Federal Register for notice and comment.

(iii) DATA COLLECTION NOT SUBJECT TO NOTICE AND COMMENT REQUIREMENTS.—If the Commission has published its assessment plan for notice and comment, specifying the data to be collected and method of collection, at least 30 days prior to adoption of a final regulation or amendment, such collection of data shall not be subject to the notice and comment requirements in section 3506(c) of title 44, United States Code (commonly referred to as the Paperwork Reduction Act). Any material modifications of the plan that require collection of data not previously published for notice and comment shall also be exempt from such requirements if the Commission has published notice for comment in the Federal Register of the additional data to be collected, at least 30 days prior to initiation of data collection.

(iv) FINAL ACTION.—Not later than 180 days after publication of the assessment report in the Federal Register, the Commission shall issue for notice and comment a proposal to amend or rescind the regulation, or publish a notice that the Commission has determined that no action will be taken on the regulation. Such a notice will be deemed a final agency action.

(6) COVERED REGULATIONS AND OTHER AGENCY ACTIONS.—Solely as used in this subsection, the term "regulation"—

(A) means an agency statement of general applicability and future effect that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, including rules, orders of general applicability, interpretive releases, and other

statements of general applicability that the agency intends to have the force and effect of law; and

(B) does not include—

(i) a regulation issued in accordance with the formal rulemaking provisions of section 556 or 557 of title 5, United States Code;

(ii) a regulation that is limited to agency organization, management, or personnel matters;

(iii) a regulation promulgated pursuant to statutory authority that expressly prohibits compliance with this provision; and

(iv) a regulation that is certified by the agency to be an emergency action, if such certification is published in the Federal Register.

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MINORITY VIEWS

H.R. 1062 seeks to substantially raise the bar for the Securities and Exchange Commission (SEC) to propose or adopt any rule or general order, by requiring that the agency meet a heightened standard to justify any action. Not only would the bill require the SEC to meet a long list of requirements, but that list is weighted significantly in favor of industry and "investor choice," with no mention of investor protection, the prime mission of the SEC.

This is an agency that already operates under stringent standards for economic reviews. Many of the current requirements for economic analysis to which the SEC is subject are the same as other agencies: the Paperwork Reduction Act, the Congressional Review Act, and the Regulatory Flexibility Act. Unlike other agencies, however, the SEC also is subject to additional statutory requirements under the National Securities Markets Improvement Act of 1996.

The courts have held the SEC responsible for meeting these standards, as evidenced by the DC Circuit Court striking down the SEC's rules to expand proxy access for shareholders on the basis of its cost/benefit analysis. In response to that case, the SEC has developed guidelines for economic review that, in the view of the Government Accountability Office (GAO), include all the elements of sound regulatory economic analysis.

Not only does the bill impose an extremely high level of review for a new rule to be adopted, it requires the SEC to review all of its rules every five years. This is essentially a recipe for an agency enmeshed in permanent litigation, unable to issue any new rules and potentially unable to maintain even its current rules.

There is an irony to the fact that this bill has been brought forward at the same time the majority continues to push the SEC to adopt rules to implement the JOBS Act, which would relax a number of SEC rules. The majority want these rules adopted faster and without the level of analysis they say is necessary for rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act, even though the Dodd-Frank Act was enacted more than a year earlier than the JOBS Act.

The main casualty here is investor protection. For that reason, Democrats overwhelmingly oppose H.R. 1062.

MAXINE WATERS,
Ranking Member.
GWEN MOORE.
JAMES A. HIMES.
DANIEL T. KILDEE.
JOHN K. DELANEY.
GARY C. PETERS.
ED PERLMUTTER.
MELVIN L. WATT.

CAROLYN MCCARTHY.
KYRSTEN SINEMA.
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DAVID SCOTT.
MICHAEL E. CAPUANO.
GREGORY W. MEEKS.
CAROLYN B. MALONEY.
BILL FOSTER.
KEITH ELLISON.
AL GREEN.
JOYCE BEATTY.
RUBÉN HINOJOSA.
DENNY HECK.
TERRI A. SEWELL.
EMANUEL CLEAVER.
PATRICK MURPHY.
BRAD SHERMAN.
JOHN C. CARNEY, Jr.
WM. LACY CLAY.

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