

CORPORATE MANAGEMENT ACCOUNTABILITY ACT OF
2019

DECEMBER 11, 2019.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4320]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4320) to ensure that irresponsible corporate executives, rather than shareholders, pay fines and penalties, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Corporate Management Accountability Act of 2019”.

SEC. 2. FINE, PENALTY, AND SETTLEMENT ACCOUNTABILITY.

(a) **DEFINITIONS.**—In this section—

(1) the term “Commission” means the Securities and Exchange Commission;

(2) the term “covered fine or similar penalty”—

(A) means a fine or similar penalty, as that term is defined in Treasury Regulation section 1.162–21(b); and

(B) includes any fine or similar penalty—

(i) that is paid by a reporting company; and

(ii) with respect to which the Commission determines disclosure under subsection (b)(1) is appropriate;

(3) the term “issuer” has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

(4) the term “named executive officer”—

(A) means an individual for whom disclosure is required under section 229.402(a)(3) of title 17, Code of Federal Regulations; and

(B) includes any other employee of a reporting company with respect to whom the Commission determines disclosure under subsection (b)(1) is appropriate; and

(5) the term “reporting company” means an issuer—

(A) the securities of which are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(B) that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

(b) **REQUIREMENT TO ISSUE RULES.**—Not later than 360 days after the date of enactment of this Act, the Commission shall issue final rules to require each reporting company, in each annual report submitted under section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o(d)), or in each proxy statement filed pursuant to section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) for an annual meeting of shareholders, to—

(1) disclose whether the reporting company, in order to align the incentives of those managing the reporting company with the incentives of the shareholders of the reporting company, has established procedures to recoup from compensation paid to, and to withhold from future compensation paid to, any named executive officer all or a portion of the cost of any covered fine or similar penalty that has been paid by the reporting company;

(2) if the reporting company has established procedures described in paragraph (1)—

(A) provide a description of those procedures; and

(B) disclose the amount that the reporting company has recouped from each named executive officer under those procedures during each of the 3 most recent fiscal years; and

(3) if the reporting company has not established procedures described in paragraph (1), provide an explanation of why no such procedures are necessary for the benefit of the shareholders of the reporting company.

PURPOSE AND SUMMARY

On September 12, 2019, Representative Katie Porter introduced H.R. 4320, the Corporate Management Accountability Act of 2019, which would require public companies to disclose their policies on whether senior executives or shareholders bear the costs of paying the company’s fines and penalties.

BACKGROUND AND NEED FOR LEGISLATION

Over the past year, the SEC has focused its efforts on individual accountability. According to the Securities and Exchange Commission (SEC), “[i]nstitutions act only through their employees, and holding culpable individuals responsible for wrongdoing is essential to achieving our goals of general and specific deterrence and pro-

tecting investors by removing bad actors from our markets.”¹ In FY 2018, the SEC charged individuals in more than 70% of the standalone enforcement actions it brought.²

The Dodd-Frank Wall Street Reform and Consumer Protection Act also recognized the importance of holding individuals accountable by, among other things, requiring companies that are listed on a national securities exchange to adopt and disclose clawback policies to recover from current and former executives their incentive-based compensation received over the past three years before the date the companies are required to prepare an accounting restatement due to material noncompliance with any financial reporting requirements.³

H.R. 4320 would build on the requirements of the Dodd-Frank Act and ensure that culpable individuals at all public companies are accountable for wrongdoing by requiring the SEC to, within 360 days of enactment of the Act, issue final rules requiring public reporting companies in their annual reports or in their proxy statements for an annual shareholder meeting to disclose whether the companies have clawback policies in place for executives and describe those policies, as well as, the amount that the companies have recouped from each executive under those policies in the three most recent fiscal years. If a company does not have such a clawback policy, the bill would require the company to explain why it is not necessary for the benefit of the company’s shareholders.

At a hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, former SEC prosecutor Jordan Thomas stated that “[f]ar too often, corporations violate the law and are required to pay fines or penalties, but the executives responsible for management of the corporate business suffer no consequences.” According to Mr. Thomas, H.R. 4320 “would provide greater transparency about corporate policies for recouping compensation from the executives on whose watch a corporate issuer engaged in misconduct warranting fines or penalties.” He stated that the bill would “have the effect of giving shareholders greater insight into issuer practices, and thereby may help them in promoting more aggressive use of claw-backs to hold management accountable.”

This bill is supported by Public Citizen and the North American Securities Administrators Association (NASAA).

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the short title of the bill is the Corporate Management Accountability Act of 2019.

Section 2. Fine, penalty, and settlement accountability

Subsection (a) defines the terms.

Paragraph (1) of subsection (b) requires the Securities and Exchange Commission to issue final rules requiring each reporting company to disclose whether the reporting company has estab-

¹2018 Annual Report, Division of Enforcement, Securities and Exchange Commission, available at <https://www.sec.gov/files/enforcement-annual-report-2018.pdf>.

²*Id.*

³See Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law 111–203.

lished procedures to recoup or withhold compensation paid to any named officer for the amount of all or a portion of the cost of any covered fine or penalty paid by the reporting company.

Paragraph (2) of subsection (b) requires that if a reporting company has established such procedures described under paragraph (1), the reporting company must provide a description of these procedures and disclose the amount the reporting company has recouped from each named executive over the 3 most recent fiscal years.

Paragraph (3) of subsection (b) requires that if a reporting company has not established such procedures described under subparagraph (1), it must provide an explanation as to why no such procedures are necessary for the benefit of the shareholders of the reporting company.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress, the Committee on Financial Services' Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets held a hearing to consider H.R. 4320 entitled, "Putting Investors First: Examining Proposals to Strengthen Enforcement Against Securities Law Violators," on June 19, 2019. Testifying before the Committee was Jordan A. Thomas, Partner, Labaton Sucharow; Urksa Velikonja, Professor of Law, Georgetown University Law Center; Andrew N. Vollmer, Professor of Law, University of Virginia School of Law; and Stephen Crimmins, Partner, Murphy & McGonigle PC.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 18, 2019 and ordered H.R. 4320 to be reported favorably to the House 31-22.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 4320.

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>		X
	Mrs. Maloney		X
	Ms. Velázquez		X
	Mr. Sherman		X
	Mr. Meeks		X
	Mr. Clay		X
	Mr. Scott		X
	Mr. Green		X
	Mr. Cleaver		X
	Mr. Perlmutter		X
	Mr. Himes		X
	Mr. Foster		X
	Mrs. Beatty		
	Mr. Heck		X
	Mr. Vargas		X
	Mr. Gottheimer		X
	Mr. Gonzalez (TX)		X
	Mr. Lawson		X
	Mr. San Nicolas		
	Ms. Tlaib		X
	Ms. Porter		X
	Ms. Axne		X
	Mr. Casten		X
	Ms. Pressley		X
	Mr. McAdams		X
	Ms. Ocasio-Cortez		X
	Ms. Wexton		X
	Mr. Lynch		X
	Ms. Gabbard		X
	Ms. Adams		
	Ms. Dean		X
	Mr. Garcia (IL)		X
	Ms. Garcia (TX)		X
	Mr. Phillips		X
34			
	Mr. McHenry, <i>Ranking Member</i>	X	
	Mrs. Wagner	X	
	Mr. King		
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Duffy		
	Mr. Huizenga	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman		
26			

Committee on Financial Services
Full Committee
116th Congress (1st. Session)

Date: _____ 9/19/2019

Measure ____ H.R. 4320

Amendment No. _____ 12a

Offered by: ____ Loudermilk to Porter ANS

Agreed To	Yes	No	Prsnt	Wdm
Voice Vote	Ayes		Nays	

Record Vote	FC
	22 Ayes- 32 Noes

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter	X	
	Mr. Himes	X	
	Mr. Foster	X	
	Mrs. Beatty		
	Mr. Heck	X	
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas		
	Ms. Tlaib	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez	X	
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard	X	
	Ms. Adams		
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
34			
	Mr. McHenry, <i>Ranking Member</i>		X
	Mrs. Wagner		X
	Mr. King		
	Mr. Lucas		X
	Mr. Posey		X
	Mr. Luetkemeyer		X
	Mr. Duffy		
	Mr. Huizenga		X
	Mr. Stivers		X
	Mr. Barr		X
	Mr. Tipton		X
	Mr. Williams		X
	Mr. Hill		X
	Mr. Emmer		X
	Mr. Zeldin		X
	Mr. Loudermilk		X
	Mr. Mooney		X
	Mr. Davidson		X
	Mr. Budd		X
	Mr. Kustoff		X
	Mr. Hollingsworth		X
	Mr. Gonzalez (OH)		X
	Mr. Rose		X
	Mr. Steil		X
	Mr. Gooden		X
	Mr. Riggleman		
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: _____ 9/18/2019

Measure ____ H.R. 4320 (Final Passage)

Amendment No. _____

Offered by: ____ Ms. Porter

Agreed To	Yes	No	Prsnt	Wdm
Voice Vote	Ayes		Nays	

Record Vote	FC
	31 Ayes- 22 Noes

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE
COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 4320 are to require public companies to disclose their policies on whether senior executives or shareholders bear the costs of paying the company's fines and penalties.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 4320 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 6, 2019.

Hon. MAXINE WATERS,
*Chairwoman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4320, the Corporate Management Accountability Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 4320, Corporate Management Accountability Act of 2019			
As ordered reported by the House Committee on Financial Services on September 20, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	*
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between -\$500,000 and \$500,000.			

H.R. 4320 would require publicly traded companies to annually disclose to the Securities and Exchange Commission (SEC) or to shareholders, in proxy statements, whether they have policies that require their executive officers to help pay fines or penalties levied against the company and to disclose any amounts collected from those officers.

Using information from the SEC, CBO estimates that it would cost the agency less than \$500,000 in 2020 to issue rules to implement the bill's requirements. CBO expects that issuing the rules would require the work of two employees, at a cost of \$260,000 each, for less than one year. Because the SEC is authorized to collect fees sufficient to offset its annual appropriation, CBO expects that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with that authority.

H.R. 4320 contains private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) that CBO estimates would be well below the threshold established in UMRA (\$164 million in 2019, adjusted annually for inflation).

The disclosure requirement would impose a mandate as defined in UMRA but the incremental cost of the mandate would be small because the mandated entities generally already possess the information to be reported under the bill. The bill also would increase the cost of an existing private-sector mandate if the SEC increased its fees to offset the cost of implementing the bill. CBO estimates that the incremental cost of that mandate would be very small.

H.R. 4320 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 4320. However, clause

3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104-4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 4320, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

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

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104-1, H.R. 4320, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4320 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 4320 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.

CHANGES TO EXISTING LAW

H.R. 4320 does not make any changes in existing law, so it is not necessary to show changes in order to be in compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives.

MINORITY VIEWS

Financial Services Committee Republicans believe that corporate executives should be accountable to their shareholders and boards of directors, and that public markets should be protected from bad actors. Moreover, Committee Republicans believe that corporations should be transparent with respect to corporate bad actors.

Unfortunately, Committee Democrats have failed to articulate the problem that H.R. 4320, the so-called “*Corporate Management Accountability Act of 2019*”, is intended to address. H.R. 4320 would require public companies to disclose in annual reports and proxy statements whether the company has established procedures to recoup and/or withhold compensation from certain executive officers in the event the company is subject to a “fine or similar penalty.”¹ The bill also requires companies with compensation withholding or recoupment procedures to disclose any clawed back or withheld compensation. Companies without such procedures must disclose the reason for failing to adopt the procedures.

Like previous mandatory disclosure bills that Democrats have moved during the 116th Congress, this bill does not accomplish the important goal of informing investors of material information—information that will help investors make better decisions to save for retirement, buy a home, or a child’s education. Instead, this bill only accomplishes the goal of naming and shaming public companies.

For example, the bill requires: (1) companies to disclose each named executive officer for the last three fiscal years; and (2) whether the named executive officer was required to pay back any fines or had compensation withheld regardless of whether the company was subject to a fine or penalty. For the vast majority of law-abiding companies, there will be a long list of executives with “\$0” next to their names in a column. That information is simply not necessary or helpful for investors.

H.R. 4320 would also lead to higher compliance cost for public companies in the U.S. markets. In fact, the increased cost associated with the bill, as well as the intentional and unnecessary infliction of reputational damage stemming from disclosures required under the bill, would deter companies from going public—and would encourage public companies to go private. We should foster and support robust capital markets to support opportunity for all investors.

Committee Republicans worked diligently to improve the bill. In particular, Mr. Loudermilk offered an amendment that would limit the bill’s disclosure requirements only to companies that have actually clawed back or withheld compensation from executives because

¹H.R. 4320 specifies penalties and fines as set out in Treasury Reg section 1.162–21(b) and additional fines or penalties the SEC determines disclosure may be appropriate.

of a fine or similar penalty. The amendment also removed the mandate that companies disclose whether they have a clawback policy. Unfortunately, Committee Democrats rejected this commonsense amendment, revealing the bill's real purpose: to name and shame companies.

Committee Republicans continue to support efforts to provide useful information to investors as well as grow vibrant public markets. However, this burdensome bill does not accomplish these goals.

BILL HUIZENGA.
DAVID KUSTOFF.
TOM EMMER.
SCOTT TIPTON.
WILLIAM R. TIMMONS IV.
TREY HOLLINGSWORTH.
BRYAN STEIL.
WARREN DAVIDSON (OH).
ANDY BARR.
FRANK D. LUCAS.
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STEVE STIVERS.
PATRICK T. MCHENRY.
BLAINE LUETKEMEYER.
BARRY LOUDERMILK.
PETER T. KING (NY).
TED BUDD.
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JOHN W. ROSE (TN).
DENVER RIGGLEMAN.
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LEE M. ZELDIN.
ANN WAGNER.
BILL POSEY.
LANCE GOODEN.

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