

STREAMLINING EXCESSIVE AND COSTLY REGULATIONS
REVIEW ACT

JANUARY 28, 2016.—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. 2354]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2354) to direct the Securities and Exchange Commission to review all its significant regulations to determine whether such regulations are necessary in the public interest or whether such regulations should be amended or rescinded, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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 “Streamlining Excessive and Costly Regulations Review Act”.

SEC. 2. REGULATORY REVIEW.

(a) REVIEW AND ACTION.—Not later than 5 years after the date of enactment of this Act, and at least once within each 10-year period thereafter, the Securities and Exchange Commission shall—

- (1) review each significant regulation issued by the Commission;
- (2) determine by Commission vote whether each such regulation—
 - (A) is outmoded, ineffective, insufficient, or excessively burdensome; or
 - (B) is no longer necessary in the public interest or consistent with the Commission’s mandate to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation;

(3) provide notice and solicit public comment as to whether a regulation described in subparagraph (A) or (B) of paragraph (2) (as determined by Commission vote pursuant to such paragraph) should be amended to improve or modernize such regulation so that such regulation is in the public interest, or whether such regulation should be repealed; and

(4) amend or repeal any regulation described in subparagraph (A) or (B) of paragraph (2), as determined by Commission vote pursuant to such paragraph.

(b) DEFINITION.—As used in this Act and for purposes of the review required by subsection (a) the term “significant regulation” has the meaning given the term “major rule” in section 804(2) of title 5, United States Code.

(c) REPORT TO CONGRESS.—Not later than 45 days after any final Commission vote described in subsection (a)(2), the Commission shall transmit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the Commission’s review under subsection (a), its vote or votes, and the actions taken pursuant to paragraph (3) of such subsection. If the Commission determines that legislation is necessary to amend or repeal any regulation described in subparagraph (A) or (B) of subsection (a)(2), the Commission shall include in the report recommendations for such legislation.

(d) NOT SUBJECT TO JUDICIAL REVIEW.—Any vote by the Commission made pursuant to subsection (a)(2) shall be final and not subject to judicial review.

PURPOSE AND SUMMARY

On May 15, 2015, Representative Hurt introduced H.R. 2354, the Streamlining Excessive and Costly Regulations Review Act, which requires the Securities and Exchange Commission (SEC) to review significant regulations it has previously issued. H.R. 2354 requires that within the first five years after enactment, and every ten years thereafter, the SEC engage in a retrospective review of all significant SEC rules and regulations. Significant regulations are those with (1) an annual economic impact of \$100 million or more as defined by the Office of Management and Budget, or that (2) result in a major increase in costs or prices for consumers, individual industries, federal, state, or local governments, or geographic regions, or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete against their foreign counterparts. H.R. 2354 requires the five SEC Commissioners to vote on whether each regulation identified by the review is outmoded, ineffective, insufficient, excessively burdensome, or no longer necessary in the public interest or inconsistent with the SEC’s mandates to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. H.R. 2354 requires the SEC to allow for notice and public comment and mandates that the Commissioners vote to amend or repeal any regulation identified as outmoded, ineffective, insufficient, or excessively burdensome, or as no longer necessary in the public interest or consistent with the SEC’s mandates.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2354 is modeled on an existing statute and Executive Orders. Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) requires the Federal Financial Institutions Examination Council, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and Board of Governors of the Federal Reserve System (FRB) to review their regulations at least every 10 years to identify any outdated or otherwise unnecessary regulations imposed on insured depository institutions. Only the OCC, FRB, and FDIC are statutorily required to undertake this review. While it is not re-

quired to do so, the National Credit Union Administration also reviews its regulations under the EGRPRA guidelines. The Consumer Financial Protection Bureau is also not included in the EGRPRA process, but is required to review its significant regulations and publish a report five years after the regulations take effect. The last EGRPRA review was completed in 2006, and the prudential regulators are currently engaged in their decennial EGRPRA review.

In addition to EGRPRA, President Obama has issued two executive orders, E.O. 13563 and E.O. 13579, to facilitate regulatory review by executive branch and independent agencies. E.O. 13579 instructs independent agencies, including the SEC, “to facilitate the periodic review of existing significant regulations,” and directs them to “consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”

In response to E.O. 13579, on September 6, 2011, then-Chairman Mary Schapiro announced that the SEC had issued a request for comment on the process it should use to conduct retrospective reviews of its existing regulations. The SEC received comments but did not create a process to review or eliminate old rules. SEC Chair Mary Jo White testified before the Senate Appropriations Committee on May 5, 2015, that the SEC performs retrospective review “really every year.” Despite her testimony, however, there has been little evidence to suggest that the SEC has eliminated or streamlined outmoded, ineffective, insufficient, or excessively burdensome regulations.

At a May 13, 2015 Capital Markets and Government Sponsored Enterprises Subcommittee hearing, U.S. Chamber of Commerce Senior Vice President Tom Quaadman testified that Congress should mandate that regulatory agencies periodically review their regulations:

Unfortunately, without legislation, the 2011 retrospective review went nowhere, while the current efforts on Disclosure Effectiveness—updating corporate disclosures to provide investors with meaningful decision useful information—is threatened by bureaucratic inertia. The periodic structure of the draft bill and reports to Congress are critical to keeping the SEC’s feet to the fire.

HEARINGS

The Committee on Financial Services’ Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing examining matters relating to H.R. 2354 on May 13, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 20, 2015, and ordered H.R. 2354 to be reported favorably to the House with an amendment by a recorded vote of 41 yeas to 16 nays (recorded vote no. FC-40), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Representative Hurt by voice vote and rejected an

amendment by Representative Hinojosa by recorded vote of 24 yeas to 33 nays (FC-39).

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. An amendment offered by Representative Hinojosa was not agreed to by a recorded vote of 24 yeas to 33 nays (FC-39). The second and last recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House with an amendment. The motion was agreed to by a recorded vote of 41 yeas to 16 nays (Record vote no. FC-40), a quorum being present.

Record vote no. FC-39

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X	.....	Ms. Waters (CA)	X		.....
Mr. King (NY)	Mrs. Maloney (NY)	X		.....
Mr. Royce		X	.....	Ms. Velázquez	X		.....
Mr. Lucas		X	.....	Mr. Sherman	X		.....
Mr. Garrett		X	.....	Mr. Meeks	X		.....
Mr. Neugebauer		X	.....	Mr. Capuano	X		.....
Mr. McHenry		X	.....	Mr. Hinojosa	X		.....
Mr. Pearce		X	.....	Mr. Clay	X		.....
Mr. Posey		X	.....	Mr. Lynch	X		.....
Mr. Fitzpatrick		X	.....	Mr. David Scott (GA)	X		.....
Mr. Westmoreland		X	.....	Mr. Al Green (TX)	X		.....
Mr. Luetkemeyer		X	.....	Mr. Cleaver .....			.....
Mr. Huizenga (MI)		X	.....	Ms. Moore	X		.....
Mr. Duffy		X	.....	Mr. Ellison	X		.....
Mr. Hurt (VA)		X	.....	Mr. Perlmutter	X		.....
Mr. Stivers		X	.....	Mr. Himes	X		.....
Mr. Fincher		X	.....	Mr. Carney	X		.....
Mr. Stutzman		X	.....	Ms. Sewell (AL)	X		.....
Mr. Mulvaney		X	.....	Mr. Foster	X		.....
Mr. Hultgren		X	.....	Mr. Kildee	X		.....
Mr. Ross		X	.....	Mr. Murphy (FL)	X		.....
Mr. Pittenger		X	.....	Mr. Delaney	X		.....
Mrs. Wagner		X	.....	Ms. Sinema	X		.....
Mr. Barr		X	.....	Mrs. Beatty	X		.....
Mr. Rothfus		X	.....	Mr. Heck (WA) .....			.....
Mr. Messer		X	.....	Mr. Vargas	X		.....
Mr. Schweikert		X	.....			
Mr. Guinta		X	.....			
Mr. Tipton		X	.....			
Mr. Williams		X	.....			
Mr. Poliquin		X	.....			
Mrs. Love		X	.....			
Mr. Hill		X	.....			
Mr. Emmer		X	.....			

Record vote no. FC-40

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)				Mrs. Maloney (NY)		X	
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman		X	
Mr. Garrett	X			Mr. Meeks		X	
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa		X	
Mr. Pearce	X			Mr. Clay		X	
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)		X	
Mr. Westmoreland	X			Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver			
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter	X		
Mr. Stivers	X			Mr. Himes	X		
Mr. Fincher	X			Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty		X	
Mr. Rothfus	X			Mr. Heck (WA)			
Mr. Messer	X			Mr. Vargas		X	
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, 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.

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. 2354 will reduce regulatory burden by requiring the Securities and Exchange Commission to periodically review its significant rules.

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, July 6, 2015.

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. 2354, the Streamlining Excessive and Costly Regulations Review Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susan Willie and Ben Christopher.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 2354—Streamlining Excessive and Costly Regulations Review Act

H.R. 2354 would require the Securities and Exchange Commission (SEC) 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 and submit a report to the Congress for each rule change.

Based on information from the SEC, CBO estimates that the new review and reporting activities required under the bill would not have a significant effect on the agency's workload. CBO estimates that implementing H.R. 2354 would cost less than \$500,000 over the 2016–2020 period, assuming availability of the necessary amounts. 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. 2354 would be negligible, assuming appropriation actions consistent with that authority. Because the legislation does not affect direct spending or revenues, pay-as-you-go procedures do not apply.

H.R. 2354 contains no intergovernmental or private mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Susan Willie and Ben Christopher. The estimate was approved by H. Samuel Papenfuss, 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. 2354 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(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 2354 establishes or re-authorizes 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 RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 2354 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 2354 as the “Streamlining Excessive and Costly Regulations Review Act.”

Section 2. Regulatory review

This section requires the SEC to periodically review each significant regulation and determine, by vote of the Commissioners, whether such regulation is outmoded, ineffective, insufficient, or excessively burdensome, or is no longer necessary in the public interest or consistent with the SECs statutory mandates. This section further requires notice and public comment regarding whether any such regulation should be amended; requires the Commissioners to vote whether to amend or repeal the regulation; and mandates that the SEC issue a report to Congress following the Commissioners’ vote.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2354 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by Clause 3(e)(1)(B) of rule XIII of the House of Representatives.

MINORITY VIEWS

H.R. 2354 would require the Securities and Exchange Commission to, within five years of enactment, and then once every ten years thereafter, review all significant SEC rules and determine by Commission vote whether they are “outmoded, ineffective, insufficient, or excessively burdensome,” or are no longer in the public interest or consistent with the SEC’s mission. The SEC would then be required to provide public notice and comment, amend or repeal any rule, and report to Congress its vote, as well as, any suggestions for legislative changes. The Manager’s Amendment, accepted by voice vote, modestly improved the bill by limiting judicial challenges to the SEC’s initial vote in the process.

While regular review of regulations by our regulators is necessary to ensure that those rules are still relevant to our ever-changing economy, this bill places an additional administrative burden on the SEC, an already overburdened and underfunded regulator. Today, the SEC has a number of formal and informal processes for identifying existing rules for review. For example, the Regulatory Flexibility Act requires the SEC to conduct a 10-year retrospective rule review, and the Paperwork Reduction Act requires periodic reviews of information collection burdens. The agency is also currently conducting several broad-based reviews of rules of issuer disclosures, equity market structure, and the definition of accredited investor.

The bill is designed to replicate the retrospective rule review applicable to our banking regulators. However, there are important distinctions between their review and the review that this bill would impose on the SEC. For example, the SEC would be required to first vote, then provide notice and comment, and then “amend or repeal any regulation,” possibly supplanting the normal notice and comment process under the Administrative Procedures Act. In addition, unlike the bank regulators review, the SEC may be able to amend or replace a congressionally-mandated rulemaking, simply if it determines that it is “ineffective.” Perversely then, even if it is in the public interest to retain such a rule, the SEC could override the will of Congress and repeal the provision.

The bill also appears to require the SEC to review and amend all of its significant regulations dating from 1934 within the first 5 years of the bill’s enactment, which would be exceptionally resource intensive and unworkable. This initial review and the ongoing burden on the SEC is particularly concerning without providing the agency with additional funds to carry out those burdens. Democrats offered an amendment to address this by authorizing appropriations of such sums as necessary to comply with the bill. By rejecting this amendment on a party-line vote (24–33), Republicans threaten to compromise the work of the SEC, an already a cash-strapped agency, as it attempts to implement the remaining provi-

sions in Dodd-Frank and the JOBS Act and to fulfill its mandate to oversee our rapidly expanding securities markets. For these reasons, we oppose H.R. 2354.

MAXINE WATERS.
AL GREEN.
JOYCE BEATTY.
GWEN MOORE.
KEITH ELLISON.
CAROLYN B. MALONEY.
WM. LACY CLAY.
DAVID SCOTT.
RUBÉN HINOJOSA.
EMANUEL CLEAVER.
JUAN VARGAS.
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