

105TH CONGRESS  
1ST SESSION

# H. R. 1544

To prevent Federal agencies from pursuing policies of unjustifiable non-acquiescence in, and relitigation of, precedents established in the Federal judicial circuits.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 7, 1997

Mr. GEKAS (for himself and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To prevent Federal agencies from pursuing policies of unjustifiable nonacquiescence in, and relitigation of, precedents established in the Federal judicial circuits.

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 “Federal Agency Com-  
5 pliance Act”.

1 **SEC. 2. PROHIBITING INTRACIRCUIT AGENCY NON-**  
2 **ACQUIESCENCE IN APPELLATE PRECEDENT.**

3 (a) IN GENERAL.—Chapter 7 of title 5, United  
4 States Code, is amended by adding at the end the follow-  
5 ing:

6 **“§ 707. Adherence to court of appeals precedent**

7 “(a) Except as provided in subsection (b), an agency  
8 (as defined in section 701(b)(1) of this title) shall, in ad-  
9 ministering a statute, rule, regulation, program, or policy  
10 within a judicial circuit, adhere to the existing precedent  
11 respecting the interpretation and application of such stat-  
12 ute, rule, regulation, program, or policy, as established by  
13 the decisions of the United States court of appeals for that  
14 circuit.

15 “(b) An agency is not precluded under subsection (a)  
16 from taking a position, either in administration or litiga-  
17 tion, that is at variance with precedent established by a  
18 United States court of appeals if—

19 “(1) it is not certain whether the administra-  
20 tion of the statute, rule, regulation, program, or pol-  
21 icy will be subject to review by the court of appeals  
22 that established that precedent or a court of appeals  
23 for another circuit;

24 “(2) the Government did not seek further re-  
25 view of the case in which that precedent was first es-  
26 tablished, in that court of appeals or the United

1 States Supreme Court, because neither the United  
2 States nor any agency or officer thereof was a party  
3 to the case or because the decision establishing that  
4 precedent was otherwise substantially favorable to  
5 the Government; or

6 “(3) it is reasonable to question the continued  
7 validity of that precedent in light of a subsequent  
8 decision of that court of appeals or the United  
9 States Supreme Court, a subsequent change in any  
10 pertinent statute or regulation, or any other subse-  
11 quent change in the public policy or circumstances  
12 on which that precedent was based.”.

13 (b) CLERICAL AMENDMENT.—The table of sections  
14 at the beginning of chapter 7 of title 5, United States  
15 Code, is amended by adding at the end of following new  
16 item:

“707. Adherence to court of appeals precedent.”.

17 **SEC. 3. PREVENTING UNNECESSARY AGENCY RELITIGA-**  
18 **TION IN MULTIPLE CIRCUITS.**

19 (a) IN GENERAL.—Chapter 7 of title 5, United  
20 States Code, as amended by section 2(a), is amended by  
21 adding at the end the following:

22 **“§ 708. Supervision of litigation; limiting unnecessary**  
23 **relitigation of legal issues**

24 “(a) In supervising the conduct of litigation, the offi-  
25 cers of any agency of the United States authorized to con-

1 duct litigation, including the Department of Justice acting  
2 under sections 516 and 519 of title 28, United States  
3 Code, shall ensure that the initiation, defense, and con-  
4 tinuation of proceedings in the courts of the United States  
5 within, or subject to the jurisdiction of, a particular judi-  
6 cial circuit avoids unnecessarily repetitive litigation on  
7 questions of law already consistently resolved against the  
8 position of the United States, or an agency or officer  
9 thereof, in precedents established by the United States  
10 courts of appeals for 3 or more other judicial circuits.

11 “(b) Decisions on whether to initiate, defend, or con-  
12 tinue litigation for purposes of subsection (a) shall take  
13 into account, among other relevant factors, the following:

14 “(1) The effect of intervening changes in perti-  
15 nent law or the public policy or circumstances on  
16 which the established precedents were based.

17 “(2) Subsequent decisions of the United States  
18 Supreme Court or the courts of appeals that pre-  
19 viously decided the relevant question of law.

20 “(3) The extent to which that question of law  
21 was fully and adequately litigated in the cases in  
22 which the precedents were established.

23 “(4) The need to conserve judicial and other  
24 parties’ resources.

1       “(c) The Attorney General shall report annually to  
2 the Committees on the Judiciary of the Senate and the  
3 House of Representatives on the efforts of the Department  
4 of Justice and other agencies to comply with subsection  
5 (a).

6       “(d) A decision on whether to initiate, defend, or con-  
7 tinue litigation is not subject to review in a court, by man-  
8 damus or otherwise, on the grounds that the decision vio-  
9 lates subsection (a).”.

10       (b) CLERICAL AMENDMENT.—The table of sections  
11 at the beginning of chapter 7 of title 5, United States  
12 Code, as amended by section 2(b), is amended by adding  
13 at the end of following new item:

“708. Supervision of litigation; limiting unnecessary relitigation of legal issues.”.

